

GAHC010190622021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6364/2021

MD. OHAD ALI
S/O LATE RIAZUDDIN, R/O VILL- PUBHATI, P.O.-BHABANIPUR, DIST-
BARPETA, PIN-781352

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BARPETA
ASSA

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

20/03/2023

Heard Mr. A Chakraborty, learned counsel for the petitioner and Mr. P K Bora, learned Standing counsel, Department of School (Elementary) Education for the respondent Nos. 1 to 3.

Matter pertains to non-provincialisation of the service of the petitioner under the provisions of the *Assam Education (Provincialisation of Services of Teacher and Re-organization of Educational Institutions) Act, 2017*, though the service of the teacher junior to him has been provincialised.

The petitioner since January, 1993 served as an Assistant Teacher in Naba Noor M.E. Madrasa in the Bhabanipur Education Block of District-Barpeta.

Petitioner submitted that name of one Ms. Ayesha Khatun was provincialised as a Tutor under the said 2017 Act, who served in said Naba Noor M.E. Madrasa, but much junior to him.

Petitioner also submitted that an error occurred while recording his name as 'Md. Chab Ali' instead of 'Md. Ohad Ali'.

Petitioner contended that though his name was recommended by the District Scrutiny Committee, Barpeta, but the State level Scrutiny Committee did not consider his case for provincialisation.

Being aggrieved with the same, the petitioner has filed this writ petition on 11.11.2021.

Section 14 of the said 2017 Act relates to "Appellate Authority" which reads as follows:-

"Appellate Authority:-

The State Level Scrutiny Committee shall be the appellate authority against any recommendation of the District Scrutiny Committee and the State Government in the concerned administrative department shall be the Appellate Authority against any recommendation of the State Level Scrutiny Committee."

The Hon'ble Supreme Court in the case of *Commissioner of Income Tax and Another - Vs-*

Chhabil Dass Agarwal reported in (2014) 1 SCC 603 held that “when a statutory forum is created by law for redressal of grievances, writ petition should not be entertained ignoring said statutory provision”.

After hearing the learned counsels for the parties and considering the entire aspects of the matter, the petitioner is directed to prefer a statutory appeal before the Secretary in the Department of School (Elementary) Education, Assam as provided under Section 14 of said 2017 Act **on or before 10.04.2023** along with a certified copy of this order and a copy of this writ petition including the Annexures appended thereto, obtaining necessary acknowledgment from the said authority in that regard.

In the event of filing such statutory appeal by the petitioner within the time so specified, the Secretary in the Department of School (Elementary) Education, Assam on verification of the relevant records, shall dispose of the said statutory appeal of the petitioner, with a reasoned order, within a period of 60 days, after giving an opportunity of hearing to the petitioner, intimating him about the outcome of the said appeal.

However, in the event, the petitioner is found to be eligible for provincialisation following the provisions of the said 2017 Act, the respondent authorities shall provincialise his service from the date of provincialisation of the other teachers of the said Naba Noor M.E. Madrasa in the Bhabanipur Education Block of District-Barpeta, giving him all such financial and other service benefits as applicable under the law.

With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant