

GAHC010195172021



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

Case No. : WP(C)/6419/2021

DWIMUSHRI BARO

D/O. MANESWAR BODO, VILL. NO.3 SILAKUTI, P.O. BARIMAKHA, P.S.
BARBARI, DIST. BAKSA (BTAD), TEACHER OF DOUL GOBINDA M.E.
SCHOOL, BAKSA, PIN-781346.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, ELEMENTARY
EDUCATION DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DIRECTOR OF EDUCATION
B.T.C.
KOKRAJHAR
ASSAM.

4:THE DISTRICT SCRUTINY COMMITTEE
REP. THROUTY ITS CHAIRMAN
THE DEPUTY COMMISSIONER
BAKSA DISTRICT
ASSAM
PIN-781346.

5:THE DIST. ELEMENTARY EDUCATION OFFICER
DIST. BAKSA
MUSHALPUR
ASSAM
PIN-781346.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
MUSHALPUR BARAMA BLOCK
ASSAM

PIN-781346.

7:THE HEAD MASTER
DOUL GOBINDA M.E. SCHOOL
VILL. NO.1 BHOGPARA
P.O. NARAYANPUR
UNDER BAKSA (BTAD) DISTRICT
ASSAM
PIN-781346

Advocate for the Petitioner : MRS A BUJARBARUAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

15.02.2023.

Heard Ms. A Bujarbaruah, learned counsel for the petitioner and Mr. A Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2, 5 & 6. Also heard Ms. R B Bora, learned Standing counsel, BTC for the respondent No. 3 as well as Mr. G Bokalia, learned Government Advocate, Assam for the respondent No. 4.

By this application filed on 17.11.2021, the petitioner has prayed for provincialisation of her service as Bodo Language Teacher in DouL Gobinda M.E. School in the Mushalpur Education Block of District-Baksa, BTC, Assam.

It is contended by the petitioner that she passed her Matriculation in the year 2007, Higher Secondary Examination in the year 2009 and also obtained B.Ed. degree from Mushalpur College, Mushalpur in the year 2012. Thereafter, she obtained her Diploma in Elementary Education from Normal School, Bongaigaon in the year 2019.

It is stated by the petitioner that the School Managing Committee of said DouL Gobinda M.E. School, No. 1 Bhogpara, Narayanpur, an Assamese and Bodo mixed medium M.E. school during its venture stage appointed her as an Assistant Teacher of Bodo Wings, pursuant to which she joined the said school on 09.09.2009 and till date she is rendering her service.

Though her case was considered for provincialisation of her service under the

provisions of the Assam Venture Education Institution (Provincialisation of Service) Act, 2011 as amended in 2012 during its force, but her case has been left out from provincialisation as she was found as 8+1 excess posts of Teachers in the said DouL Gobinda M.E. School and the services of the Teachers recommended by the District Scrutiny Committee, Baksa were provincialised excluding the petitioner and some others.

The respondent authorities in the Director of Education, BTC, respondent No. 3 filed an affidavit in the matter on 08.06.2022 clarifying that the service of the petitioner was not provincialised under the said 2011 Act, considering her to be an excess Teacher. However, considering that the said DouL Gobinda M.E. School is an Assamese and Bodo mixed medium M.E. school and as the enrollment of Bodo students in the said school is same as that of the Assamese students, her service should have been provincialised.

We have already noted that the petitioner has filed this writ petition on 17.11.2021 and the said 2011 Act as amended in 2012 has already been declared to be ultra virus and unconstitutional by a Division Bench of this Court vide Judgment and Order dated 23.09.2016 passed in WP(C) No. 3190/2012 (*Chandan Kumar Neog -Vs- State of Assam and Others*).

The case of the petitioner was also not recommended by the District Scrutiny Committee, Baksa.

As such, in exercise of the power under Article 226 of the Constitution of India, the name of the petitioner can not be recommended to the respondent authorities for consideration of her case for provincialisation under the said 2011 Act, as said DouL Gobinda M.E. School, Baksa has already been provincialised under the provisions of said 2011 Act, during its force.

The Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 as amended in 2018 has come into force w.e.f. 05.05.2017 (except Sections 4 & 8 of said 2017 Act) and is applicable to only those whereof the services of the teachers have not been provincialised under any Act enacted by the State Legislature and which remains as an Venture Educational Institution and fulfills the eligibility for provincialisation as provided under the provisions of said 2017 Act.

But in the case in hand, said DouL Gobinda M.E. School, Baksa was provincialised

under the provisions of the said 2011 Act as amended in 2012 during its force and the 2017 Act does not prescribe any such provision for provincialisation of the teaching staff of any such school provincialised under the provisions of the 2011 Act as amended in 2012 and for those who were left out from provincialisation during the force of the said 2011 Act.

Considering the above, no such direction can be issued to the respondent authorities by exercising the power under Article 226 of the Constitution of India to provincialise the service of the petitioner as Bodo Language Teacher in Doula Gobinda M.E. School under Baksa district. To that extent, the prayer of the petitioner stands rejected.

It is to be noted herein that the State Government after the Full Bench decision of this Court dated 11.11.2014 passed in WP(C) No. 2272/2013 (*Abdul Gofur Mondal -Vs- State of Assam and Others*) reported in 2015 (2) GLT 337 constituted Educational Tribunals relating to claims for provincialisation in respect of teaching and non-teaching staff of venture educational institutions.

Section 19 (2) of said 2017 Act also provides that any such claim for provincialisation in respect of teaching staff of Venture Educational Institution, there shall be an Educational Tribunal for each district within their respective Territorial Jurisdiction. The District and Sessions Judges and the Additional District and Sessions Judges of each District are designated as Educational Tribunal.

The petitioner may, if so advised, approach the concerned Educational Tribunal for redressal of her grievances, as per law.

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

JUDGE

Comparing Assistant