

GAHC010204862016



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

Case No. : WP(C)/3518/2016

NRIPEN KALITA and 34 ORS
D/O. LT. GUN KANTA NATH, VILL. SINGIA DEWRIGAON, P.O. BIHORIGAON,
DIST. NAGAON, ASSAM, PIN-782101.

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
SECONDARY EDUCATION, DISPUR, GHY.-06, ASSAM.

Advocate for the Petitioner : MR.P K DAS

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

23-02-2023

Heard Mr. P. K. Das, learned counsel for the petitioners and Mr. N. J. Khataniar, learned Standing counsel, Department of School (Secondary) Education Assam for the respondent Nos. 1 & 2.

The petitioners' services as Music Teachers serving in different venture educational institutions

being left out from provincialisation under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 as amended in 2012 as the State Government in the Secondary Education Department vide No. ASE 19/2014/79/132 dated 15.02.2016 issued a Notification exercising the power conferred under Section 14 of the said 2011 Act as amended providing the qualification of HSLC passed and Sangeet Bisharad from Bhatkhande Sangeet Vidyapith for the posts of Music Teacher of recognized Higher Secondary and High School appointed prior to 01.01.2006 and considered and accepted for provincialisation of services of such Music Teachers as a very special case as one time measure for the purpose of provincialisation of services of those Music Teachers under the said 2011 Act.

Being aggrieved with the said Notification dated 15.02.2016, the petitioners have filed this writ petition on 08.06.2016 praying amongst others to set aside and quash the said impugned Notification dated 15.02.2016 and for direction to the respondent authorities to forthwith cancel/recall/rescind and/or otherwise forebear from giving effect to the said Notification dated 15.02.2016.

Section 14 of the said 2011 Act relates to "Power of interpretation and removal of difficulties" which reads as follows:-

“(1) If any difficulty arises in interpretation of any provisions of said Act, the interpretation of the State Government shall be final.

(2) If any difficulty arises in giving effect to the provisions of said Act, the State Government may, by order do anything not inconsistent with the provisions of the said Act that appear to be necessary or expedient for the purpose of removing the difficulty.

In the said Notification dated 15.02.2016, the authorities in the Secondary Education Department specifically mentioned about the provisions of Section 14 of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 for provincialisation of the incumbents serving as Music Teachers in different venture educational institutions under the said 2011 Act as a very special case and as one time measure, that too during the force of the said 2011 Act.

A Division Bench of this Court by the judgment and order dated 23.09.2016 passed in the case of *Shri Chandan Kumar Neog & others Vs. the State of Assam and others* [WP(C) No. 3190/2012] and other connected cases, have declared the said 2011 Act as ultra-vires and as such, the prayer of the petitioners to set aside the said Notification dated 15.02.2016, noted above and not to give any effect of the said Notification dated 15.02.2016 at this stage is infructuous since the said 2011 Act is

no longer in force w.e.f. 23.09.2016.

In view of the above, this writ petition being infructuous, stands dismissed.

JUDGE

Comparing Assistant