

GAHC010207492021



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

Case No. : WP(C)/7080/2021

MINU MAMTAZ BEGUM
D/O MD. MATIUR RAHMAN, VILL. HIRAPARA, P.O. DHULA, P.S DARRANG,
ASSAM, PIN-784146

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION ELEMENTARY DEPTT. DISPUR, GUWAHATI-781006

2:THE DIRECTOR ELEMENTARY EDUCATION
ASAM
KAHILIPARA
GUWAHATI-781019

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DARRANG
MANGALDAI
DIST. MANGALDAI
ASSAM
PIN-784529

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
DALGAON SIALMARA BLOCK
DALGAON
DARRANG
PIN-784125

5:ADDL DEPUTY COMMISSIONER (EDU) DARRANG
MANGALDAI CUM CHAIRMAN DSLC
DARRANG
MANGALDAI
PIN-784125

6:THE HEADMASTER OF DHULA GIRLS M.E. SCHOOL
R/O VILL. PANIAKHAT P.O DHULA
P.S. AND DIS. DARRANG
PIN-784146

7:THE PRESIDENT/SECRETARY
OF THE SCHOOL MANAGING COMMITTEE DHULA GIRLS M.E. SCHOOL
DIS. DARRANG
PIN-78414

Advocate for the Petitioner : MR K K MAHANTA (Sr. Advocate)

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 23-01-2023

Heard Mr. K Singha, learned counsel for the petitioner and Mr. PN Sharma, learned Standing Counsel, Elementary Education Department appearing for respondent No. 6.

2. By filing this writ petition, the petitioner has sought for a direction to the respondent authorities concerned to provincialize her service in Dhula Girls M.E. School, Darrang, Assam. The petitioner contends that as per the Right of Children to Free and Compulsory Education Act, 2009 (Act of 2009), she is eligible to be given the benefit of provincialization against the school mentioned since the number of students enrolled in the School is 250 for the year 2020-2021. The petitioner contends that only 4 teachers have been provincialised, as on date.

3. Mr. K Singha, learned counsel by drawing the attention of this Court to the communication dated 17.07.2019 (Annexure-10) written by the Deputy

Director, Elementary Education to the District Elementary Education Officer, Darrang submits that the latter was asked to make appropriate communication of recommendation made through the proper channel, i.e., through the District Level Scrutiny Committee (DLSC) concerned. Although the DLSC met on 20.09.2019 but without clarifying as to whether the name of the petitioner was recommended for provincialization or not, they simply decided to forward her application for further necessary action to the authority considering the enrolment at the relevant time. Although a communication was made in furtherance of the decision of the DLSC, the Deputy Director on 13.01.2020 has written back to the District Elementary Education Officer, Darrang to submit the proposal for provincialization of the service of the petitioner backed by the recommendation of the DLSC. Since further step was not taken, the petitioner is before this Court.

4. Mr. K Singha by referring to the affidavit-in-opposition filed by the Director of Elementary Education submits that as the Director himself has admitted that there was no such recommendation by the DLSC, further step could not be taken. He submits that since the Act of 2009 clearly provides that for every 35 students enrolled there should be 1 teacher available and that since there are 250 number of students enrolled in the school, the service of the petitioner should be provincialised.

5. Mr. PN Sharma, learned Standing Counsel, Elementary Education Department submits that there is a provision under the law, which provides for filing of an appeal and the petitioner has not filed such appeal. As such, the petitioner may be asked to file such an application for consideration by the authority concerned. Referring to the counter-affidavit of the Director of Elementary Education, the learned Standing Counsel also submits that the

petitioner was not recommended by the DLSC and therefore, there is no question of provincialization of her service.

6. I have heard the submissions made by the learned counsels for the rival parties.

7. The Section 25 of the Act of 2009 provides that the appropriate Government as well as the local authority should ensure that the pupil teacher ratio in the ratio of 35:1 is to be maintained for effective implementation of the Act. In the present case, it is not in dispute that the number of enrolment against Dhula Girls M.E. School, Darrang for the year 2020-2021 is 250 numbers and that the service of only 4 teachers have been provincialised so far. The DLSC has also found it fit and appropriate to forward the application of the petitioner for consideration of her absorption in terms of its meeting minutes dated 20.09.2019. However, the DLSC without taking any such decision has simply forwarded the name of the petitioner to the Director. It is not in dispute that the recommendation is to be made by the DLSC concerned and not by the Director of the Department.

8. Since such exercise as stated above has not been undertaken, the writ petition is disposed of with a direction to the respondent authorities concerned to place the case of the petitioner before the next meeting of the DLSC for consideration of her absorption. If the case of the petitioner is found to have merit keeping in view the number of enrolment made in the said school, the DLSC shall make appropriate recommendation and forward it immediately to the authority concerned for finalisation of the grant of the benefit of provincialization to the petitioner. The consideration of the case of the petitioner should be undertaken by the DLSC as expeditiously as possible and preferably within a period of 6 (six) weeks, if not sooner from the date of receipt of a

certified copy of this order by the respondent No. 5, i.e., Additional Deputy Commissioner (Edu), Darrang. The petitioner shall also submit a copy of the writ petition to the respondent No. 5.

JUDGE

Comparing Assistant