

GAHC010111392021



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

Case No. : WP(C)/7163/2021

AMIR HUSSAIN
S/O- LT. OSMAN GONI
VILL- BALARCHAR
PO- KIRTANPARA
PS- MERERCHAR
DIST- BONGAIGAON
ASSAM PIN NO. 783384

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
EDUCATION (ELEMENTARY) DEPARTMENT
DISPUR GHY-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR GHY-6

3:THE DIRECTOR OF ELEMENTARY EDUCATION
- CUM- CHAIRMAN
STATE SCRUTINY COMMITTEE
ASSAM KAHILIPARA GUWAHATI-19

4:THE DEPUTY COMMISSIONER
BONGAIGAON-CUM-CHAIRMAN
DISTRICT LEVEL SCRUTINY COMMITTEE
ELEMENTARY EDUCATION
PO AND PS- BONGAIGAON
DIST- BONGAIGAON
ASSAM PIN- 783380

5:THE DISTRICT ELELMENTARY EDUCATION OFFICER

-CUM-MEMBER SECRETARY
OF DISTRICT LEVEL SCRUTINY COMMITTEE
BONGAIGAON
PO AND PS- BONGAIGAON
DIST- BONGAIGAON
ASSAM PIN- 783380

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
SRIJANGRAM
PO AND PS-SRIJANGRAM
DISTRICT- BONGAIGAON
ASSAM PIN- 783384

7:ABDUS SALAM AHMED
S/O- SEKANDER ALI
VILL- KIRTANPARA PT. I
PO- KIRTANPARA
PS- MERERCHAR
DIST- BONGAIGAON
ASSAM PIN NO. 783384

8:NUR BAKTA SARKAR
ASSISTANT TEACHER
JANAPRIYA ME MADRASSA
VILL- BALARCHAR
PO- KIRTANPARA
PS- MERERCHAR
DIST- BONGAIGAON
ASSAM PIN NO. 783384

Advocate for : MD H R AHMED
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

02-05-2023

Heard Mr. H.R. Ahmed, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School Education for the respondent Nos. 1, 3, 5 and 6. Also heard Mr. B. Gogoi, learned Standing Counsel, Finance Department for

the respondent No.2 as well as Ms. D. Das Barman, learned Government Advocate, Assam for the respondent No.4.

2) Pursuant to the order dated 01.01.1989, issued by the Headmaster-cum-Secretary of Janapriya ME Madrassa of village-Balarchar, Kirtanpara in the Srijangram Education Block of Bongaigon District, the petitioner joined the said Madrassa as an Assistant Teacher on 25.06.1989 and since then, he is serving in the said Madrassa as a Language Teacher.

3) The respondent No.7 joined the said Madrassa in the year 1987 and used to teach all subjects, whereas, the respondent No.8 joined that Madrassa in the year 1992 and also teaching all subjects, which is reflected in the DISE data of the said Madrassa of the year 2009-10 and other subsequent year.

4) However, while considering the cases for provincialisation of service under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017*, as amended, the District Scrutiny Committee (Elementary), Kamrup recommended the names of the respondent Nos.7 and 8 for provincialisation disregarding the better claim of the petitioner on the basis of which, the names of the respondent Nos.6 and 7 have been uploaded in the website of the Directorate of Elementary Education, Assam as eligible for provincialisation under the said 2017 Act.

5) On 05.02.2021, the services of the 4 teachers as recommended by the District Scrutiny Committee have been provincialised by the Director of Elementary Education, Assam pursuant to the approval of the State Level Scrutiny Committee and on recommendation of the Government.

6) Being aggrieved, the petitioner has preferred this writ petition praying amongst others, for a direction to the respondents to set aside and quash the provincialisation of the services of respondent Nos. 7 and 8 and to provincialise the service of the petitioner as a Social Science Teacher or Language Teacher in order of seniority and to

provincialise 4 numbers of Teacher of said Madrassa considering the pupil teacher ratio, as provided under the Right of Children to Free and Compulsory Education, Act, 2009.

7) While issuing notice, the Court by order dated 03.01.2022 stayed the provincialisation of service of the respondent No.7 Abdul Salam Ahmed, which is still in force.

8) Section 3(1) (xi) of said 2017 Act, as amended provides as follows:-

In case of Venture Upper Primary School there shall be minimum three teachers or tutors at least one teacher each for (a) Science and Mathematics (b) Social Studies and (c) Languages:

Provided that for additional posts it shall be considered in accordance with the norms and standards stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No.35 of 2009).

9) Section 14 of 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."

10) The Hon'ble Supreme Court in the case of *the 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."

11) As there is a statutory provision of appeal under the said 2017 Act, the petitioner is directed to prefer an appeal before the Secretary, Department of School (Elementary) Education, Assam as provided under Section 14 of said 2017 Act as

amended, on or before **25.05.2023** for redressal of his grievances along with a certified copy of this order, a copy of this writ petition including the Annexures appended thereto obtaining necessary acknowledgement from the said authority in that regard.

12) In the event of filing of such appeal by the petitioner before the Secretary, Department of School (Elementary) Education, Assam as directed above, within the time so specified, the said authority on verification of relevant records in original and after giving an opportunity of hearing to the petitioner and the respondent No.7 shall dispose of the said appeal of the petitioner within ninety days from the date of its receipt by a reasoned order intimating him about the outcome of his said appeal.

13) In the event of filing of such appeal by the petitioner before the authority concerned within the time so specified, the order dated 30.09.2021 passed by the Court staying the benefit of provincialisation of the respondent Nos. 6 and 7 shall remain in force.

14) However, if the petitioner fails to prefer the appeal before the authority within the time so specified, the order dated 30.09.2021 passed by the Court staying the benefit of provincialisation of the respondent Nos. 6 and 7 shall stand vacated.

15) With the above observation and direction, this writ petitions stands disposed of.

JUDGE

Comparing Assistant