

GAHC010212032021



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

Case No. : WP(C)No.6884 of 2021

AJAY KUMAR SINGH
S/O LT. RAMAYAN SINGH R/O MAILOO BAZAR P.O. MAILOO BAZAR
DIST. KARBI ANGLONG (WEST) PIN-782446 ASSAM

VERSUS

1: THE STATE OF ASSAM AND 4 ORS REP. BY THE SECRETARY TO THE
GOVT. OF ASSAM ELEMENTARY EDUCATION DEPTT. DISPUR GUWAHATI-
781006

2:DIRECTOR OF ELEMENTARY EDUCATION
ASSAMKAHILIPARA GUWAHATI-781019 ASSAM

3:ADDITIONAL DIRECTOR OF EDUCATION (HILLS)
HAFLONGASSAM PIN-788819

4:N.C. HILLS AUTONOMOUS COUNCIL REP. BY THE PRINCIPAL SECRETARY
NC HILLS HAFLONG DIMA HASAO PIN-788819

5:INSPECTOR OF SCHOOLS
NC HILLS HAFLONG DIMA HASAO PIN-788819

Advocate for the Petitioner : MR. B CHAKRABORTY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 14-12-2023

Heard Mr. B. Chakraborty, learned counsel for the petitioner. Also

heard Mr. P.K. Borah, learned standing counsel, Education (Elementary) Department, representing the respondent Nos.1 & 2 and Ms. R. Deka, learned standing counsel, N.C. Hills Autonomous Council, representing the respondent Nos.3, 4 & 5.

2. The petitioner was appointed as an Assistant Teacher in Hazawari M.E. School by its Managing Committee on 05.01.1993. The School, at the relevant point of time, was a venture School. The petitioner joined his services on 19.03.1993. The services of the petitioner was approved by the Deputy Inspector of Schools, N.C. Hills, Haflong on 27.05.1995. The services of the petitioner being threatened to be terminated, he along with 4(four) others instituted WP(C) No.1809/2002 before this Court. Although an *interim* direction was passed on 20.03.2002 directing the respondents not to disturb the services of the petitioner in Hazawari M.E. School, the same was not complied with. The said writ petition was finally disposed of on 16.12.2004 directing the Director of Elementary Education, Assam and the Additional Director of Education, Hills, Haflong, Assam to make an enquiry with regard to all the allegations levelled against the petitioner, through a Senior Officer. The said enquiry was directed to be completed within a period of 2(two) months from the date of receipt of a certified copy of the said judgment & order. It was provided in the said judgment & order dated 16.12.2004 that if the allegations made against the petitioner are found to be not correct, their names be forwarded to the appropriate authority for provincialisation of their services as and when the School is provincialised. The aspect of the matter of not allowing the petitioner to join their services inspite of the *interim* order dated 20.03.2002 was also directed to be considered in the enquiry that was directed to be undertaken.

3. The Additional Director of Education (Hills), vide his communication dated 10.04.2013, required the Managing Committee of another School, i.e. Surangdisa M.E. School, N.C. Hills, Haflong, to absorb the petitioner in the vacant post of Hindi Teacher. The petitioner was accordingly appointed by the Managing Committee of Surangdisa M.E. School as a Hindi Teacher on 28.05.2013, which appointment was subsequently approved by the Inspector of Schools on 15.06.2013. The said School, i.e. Surangdisa M.E. School, was provincialised by the Director of Secondary Education, Assam, vide order dated 12.09.2013, however, the post of Hindi Teacher held by the petitioner was shown to be vacant and the petitioner's services were not provincialised. The Inspector of Schools, vide communication dated 18.12.2013, had sought permission of the respondent No.2 for provincialisation of the services of the petitioner. The Inspector of Schools again, vide his communication dated 10.01.2014, reiterated his earlier request for provincialisation of the services of the petitioner. However, in the communication dated 10.01.2014, the petitioner's services was proposed to be provincialised as a Science Teacher of Hazawari M.E. School.

4. The Managing Committee of Hazawari M.E. School, Dima Hasao, vide a communication dated 13.08.2014, communicated its decision to the Departmental Authorities to re-absorb the petitioner, who was denoted as a founder Teacher of the School against the vacant post of Assistant Teacher (Science). The Additional Director, Education (Hills), vide his order dated 29.07.2015, referring to the order dated 20.03.2002 passed by this Court in WP(C) No.1809/2002 and on the basis of the enquiry report submitted by the Enquiry Officer in the matter, absorbed the petitioner in the vacant post of Science Teacher at Hazawari M.E. School w.e.f. the date of his termination, i.e.

23.11.2001. The District Scrutiny Committee thereafter, in its meeting held on 27.10.2017 vide resolution No.3 considered the case of the petitioner for provincialisation of his services and accordingly upon such consideration, it was resolved that the name of the petitioner be recommended for provincialisation of his services.

5. The resolutions adopted by the District Scrutiny Committee in its meeting held on 27.10.2017 came to be forwarded to the Director of Elementary Education, Assam by the Inspector of Schools, Dima Hasao, Haflong. It is under these circumstances that the impugned communication dated 18.11.2019 came to be issued, by which noticing the various developments taken place in the case of the petitioner, it was held that the petitioner's services were not eligible to be considered either under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (as amended in 2012) (*hereinafter referred to as "the 2011 Act"*) or under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (*hereinafter referred to as "the 2017 Act"*).

6. Mr. B. Chakraborty, learned counsel for the petitioner, by reiterating the facts narrated hereinabove, has contended that vide order dated 16.12.2004 passed by this Court in WP(C) No.1809/2002, it was mandated that in the event the allegations made against the petitioner were found not to be correct, the name of the petitioner along with his requisite particulars should be sent to the appropriate authority for provincialisation of his services as and when the School is provincialised. The said exercise was to be done after an enquiry to be carried out through a Senior Officer of the Department.

7. The said enquiry was carried out and the Additional Director, vide his

order dated 29.07.2015 (*Annexure-14 to the writ petition*), on the basis of the enquiry report submitted in pursuance to the directives passed by this Court vide the said order dated 20.03.2002, had absorbed the petitioner in a vacant post of Science Teacher at Hazawari M.E. School. It is the contention of Mr. Chakraborty that the enquiry report having been considered and the petitioner having been absorbed as a Science Teacher in the said School, in terms of the directions passed by this Court, his case for provincialisation was required to be taken up by the authorities. It is the contention of the petitioner that his case was actually taken up for consideration and the District Scrutiny Committee had also submitted their recommendation in the matter.

8. Mr. P.K. Borah, learned standing counsel, Education (Elementary) Department has contended that the case of the petitioner having been considered for appointment in different Schools at various points of time, there exist a doubt as to the School in which the petitioner is actually functioning and as such, it is the contention of Mr. Borah that the petitioner's case for provincialisation does not merit consideration.

9. I have considered the submissions advanced by the learned counsel appearing for the parties and have also perused the materials available on record.

10. It is an undisputed fact that the petitioner was initially appointed as a Hindi Teacher in Hazawari M.E. School when the School was in its venture stage. Apprehending termination of his services, the petitioner had instituted WP(C) No.1809/2002, which was given a final consideration by this Court vide order dated 16.12.2004 requiring the Departmental Authorities to cause an enquiry into the allegations levelled against the petitioner through a Senior

Officer of the Department. This Court also provided that in the event the allegations levelled against the petitioner are not proved, his case for provincialisation shall be forwarded for consideration before the appropriate authority.

11. The respondent authorities, more particularly, the Additional Director of Education (Hills), at first, absorbed the services of the petitioner in Surangdisa M.E. School, vide an order dated 10.04.2013, against a vacant post of Hindi Teacher existing therein. The petitioner was also consequently appointed by the Managing Committee of Surangdisa M.E. School as a Hindi Teacher on 28.05.2013. The Inspector of Schools, vide order dated 15.06.2013, had also approved the appointment of the petitioner as Hindi Teacher in Surangdisa M.E. School.

12. Thereafter, on the School under the District Elementary Education Officer, Dima Hasao having been provincialised and the post of Hindi Teacher held by the petitioner in Surangdisa M.E. School being left vacant, a move was initiated for provincialising the services of the petitioner. However, till that relevant point of time, the enquiry as directed by this Court was not concluded and accordingly, the matter remained still. Thereafter, the petitioner's services were absorbed in his original School against the vacant post of Science Teacher and in this connection, a proposal was submitted by the Inspector of Schools on 10.01.2014. The Managing Committee of Hazawari M.E. School, i.e. the original School of the petitioner, informed the Additional Director of Education (Hills), vide their communication dated 13.08.2014 that a resolution has already been taken for re-absorbing the petitioner in the vacant post of Science Teacher. Accordingly, the Additional Director of Education (Hills) passed an order,

whereby the petitioner was absorbed in Hazawari M.E. School in the vacant post of Science Teacher w.e.f. the date of his termination, i.e. 23.11.2001.

13. It is in the said background that the case of the petitioner for provincialisation was taken up for consideration and the matter was placed before the District Scrutiny Committee. The District Scrutiny Committee had submitted its recommendations in the matter, which were subsequently placed before the Government in the Elementary Education Department. In view of the different Schools the petitioner came to be appointed during his service tenure and more particularly, after the directions were passed by this Court on 16.12.2004, naturally led to a doubt being arisen with regard to the *bonafide* behind the proposal made for provincialisation of the services of the petitioner and accordingly, the impugned communication dated 18.11.2019 holding that the petitioner was not even eligible for being considered under the provisions of the 2017 Act came to be issued. The directions passed by this Court, vide order dated 16.12.2004, having been implemented vide the order dated 29.07.2015 passed by the Additional Director of Education (Hills), it has to be deemed that the allegations levelled against the petitioner have been found to be without any substance and for the said purpose, the services of the petitioner was absorbed in his original School vide the order dated 29.07.2015.

14. In such view of the matter, the second part of the directions passed by this Court, vide order dated 16.12.2004, requiring the case of the petitioner to be considered for provincialisation of his services now has to be implemented.

15. In view of the said position, this writ petition stands disposed of by directing the petitioner to approach the Director of Elementary Education,

Assam by way of a representation along with a certified copy of this order praying for taking steps towards facilitating his case to be considered for provincialisation by the District Scrutiny Committee for N.C. Hills Autonomous Council. The Director of Elementary Education, Assam, on receipt of such representation from the petitioner, shall require the concerned authorities of N.C. Hills Autonomous Council to process and place the case of the petitioner before the jurisdictional District Scrutiny Committee for having his case scrutinized strictly in terms of the provisions of the 2017 Act. The said exercise be carried out by the Director of Elementary Education, Assam within a period of 1(one) month from the date of receipt of the representation along with a certified copy of this order from the petitioner. Thereafter, the jurisdictional District Scrutiny Committee shall, within a period of further 1(one) month thereof, consider the case of the petitioner for provincialisation and the decision that may be arrived at shall be forwarded to the Director of Elementary Education, Assam for further necessary action.

16. With the above observations and directions, the writ petition stands disposed of. There will be no order as to cost.

JUDGE

Comparing Assistant