

GAHC010212032021



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

Case No. : WP(C)/6838/2021

ARUN KUMAR
S/O LT. SURYAHARDWAR THAKUR, R/O NO. 1,
NAWAIBILL P.O. LAMSAKHANG, ASSAM, PIN-782446

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:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM KAHILIPARA GUWAHATI ASSAM PIN-781019

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

4:ADDITIONAL DIRECTOR OF EDUCATION (HILLS)
HAFLONG ASSAM PIN-788819

5:INSPECTOR OF SCHOOLS NC HILLS
HAFLONG DIMA HASAO PIN-78881

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.

The petitioner by way of the present writ proceeding has presented a challenge to the order dated 04.11.2019 issued by the Director of Elementary Education, Assam, by which it was held that the case of the petitioner cannot be considered either under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (*hereinafter referred to as "the 2011 Act"*) or under the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (hereinafter referred to as "the 2017 Act").

The brief facts requisite for adjudication of the issues in the present proceeding is as under.

The petitioner was initially appointed as a Headmaster of Arlongphala M.E. School. At the time of his appointment, the said School was at the venture stage. While the petitioner was continuing in his services as a Headmaster of the said School, the Managing Committee of the School on 15.10.1998 resolved to discharge the petitioner from his service.

The petitioner instituted WP(C) No.1055/1999 before this Court assailing such order of discharge. This Court, vide order dated 24.07.2002, gave a final consideration to the writ petition and interfered with the said order of discharge. The petitioner was also directed to be reinstated in service. In the meantime, the School, wherein the petitioner was serving, was shifted from its original site and was re-named as Natun Boila M.E. School. The petitioner after much persuasion was permitted by the authorities to join as Headmaster of

Natun Boila M.E. School on 28.10.2013. The Inspector of Schools, Dima Hasao thereafter, vide order dated 30.06.2015, approved the services of the petitioner as Hindi Teacher in lieu of Headmaster.

The matter of provincialisation of the services of the petitioner was considered and in process thereof, the communication dated 04.11.2019 came into being issued, by which it was held that the petitioner's case cannot be considered under the provisions of the 2011 Act or the 2017 Act.

Being aggrieved, the present writ petition has been preferred.

Mr. B. Chakraborty, learned counsel for the petitioner, by reiterating the facts narrated hereinabove, has contended that the order dated 24.07.2002 passed by this Court in WP(C) No.1055/1999, by which an interference was made with the order of his discharge with further direction to reinstate him in service, has not been set aside and/or modified and has since attained its finality. In view of the directions passed by this Court vide the said order dated 24.07.2002, the petitioner is deemed to be in service since the date of his initial appointment, i.e. from 01.12.1996. The petitioner submits that in that view of the matter, he is entitled to have his case considered for provincialisation of his services under the provisions of the 2017 Act.

Per contra, Mr. P.K. Borah, learned standing counsel, Education (Elementary) Department has contended that the case of the petitioner having not been recommended by the District Scrutiny Committee, his case for provincialisation cannot be considered at the level of the respondent No.2 and accordingly, the petitioner's case for provincialisation has not materialized.

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

It is undisputed that the petitioner had joined his services on 01.12.1996 as the Headmaster of the said School and thereafter, in terms of a resolution of the Managing Committee of the School, his services came to be terminated w.e.f. 15.10.1998. The order of termination dated 15.10.1998 was assailed before this Court in the proceeding of WP(C) No.1055/1999 and this Court vide order dated 24.07.2002 was pleased to set aside the order of termination with further direction for reinstatement of the petitioner in his service. The petitioner's reinstatement occasioned on 28.10.2013 only, however, in view of the fact that the directions passed by this Court on 24.07.2002 has attained finality, the petitioner has to be deemed to be in service w.e.f. 01.12.1996 continuously. It is also an admitted fact that the petitioner's case is yet to be placed before the District Scrutiny Committee in terms of the provisions of the 2017 Act. In absence of a necessary recommendation from the District Scrutiny Committee, further processing of the matter in terms of the 2017 Act cannot be done.

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.

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

JUDGE

Comparing Assistant