

GAHC010225222023



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

Case No. : WP(C)/6110/2023

AMINA KHATUN
DAUGHTER OF ISMAIL HUSSAIN,
RESIDENT OF VILL.- RANGALOOGAON,
P.S.- KAMPUR, P.O.- JUMURMUR,
DIST.- NAGAON, PIN- 782426, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
NAGAON DISTRICT- 782001.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
KATHIATOLI
NAGAON DISTRICT
PIN- 782427.

5:THE DEPUTY COMMISSIONER
NAGAON
ASSAM CUM CHAIRMAN OF DSC
PIN- 782001

Advocate for the Petitioner : MR. A DEKA

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

Date : 16-10-2023

JUDGMENT & ORDER (ORAL)

Heard Mr. A Deka, learned counsel for the petitioner, Ms. N Phukan, learned counsel for the respondents in the Elementary Education Department, Government of Assam and Mr. P Saikia, learned Junior Government Advocate for the Deputy Commissioner, Nagaon, Assam.

2. The petitioner Amina Khatun is a teacher in the Barpani ME School in the Nagaon district having been appointed on 14.11.2004 when the school was in its venture stage. When the teachers of the school were provincialised under the Assam Education (Provincialisation of Services of Teachers and re-organization of Educational Institutions) Act, 2017 (in short Act of 2017), the claim of the petitioner for provincialisation was left out and in the circumstance, the petitioner instituted WP(C) No. 5504/2022, wherein an order dated 03.08.2022 was passed requiring the respondent No. 2 being the Director of Elementary Education, Assam to consider the representation dated 08.02.2021 claiming for provincialisation. Consequent thereof, the impugned order dated 31.05.2023 had been passed by the Director and the conclusion thereof is extracted below:-

“In view of the above and as per minutes of the SLC dated 02/04/2005 as well as enquiry report submitted by the enquiry officer it reveals that the maximum limitation of staff in ME School is 5 No.s of teachers. Accordingly the SLSC as well as Joint Committee recommended 4 No.s of teachers against Barpani ME School for provincialisation of services as tutor as per Act of 2017 wherein Science Tutor post could not be recommended as the name of Science Teacher does not appear in DISE data up to the year 2011-12. Hence the claim of petitioner Amina Khatun for provincialisation of service is as additional to the 5 tutors in Barapani ME School so cannot be considered as per Act of 2017 and

the petition dated 08/02/20212 is hereby is rejected.”

3. The Director was of the view that as the Science Teacher of the school could not be provincialised because the name did not appear in the DISE Code, therefore, four other teachers having been appointed, it has to be construed that under the law five teachers have already been appointed in respect of Barpani ME School. Accordingly, the Director was of the view that the claim of the petitioner would be against the 6th post which under the Act of 2017 the school would not be entitled to a 6th post.

4. Provincialisation of teachers in respect of ME Schools is provided under section 3(1)(xi) of the Act of 2017, which is extracted below:-

“(xi) 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).”

5. A plain reading of Section 3(1)(xi) shows that three teachers or tutors of whom at least one teacher for Science and Mathematics, Social Studies and Language would mandatorily have to be appointed. For additional post, the norms and standards provided in the schedule under sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009 (in short Act of 2009) would be applicable. The schedule under sections 19 and 25 under the Act of 2009 in respect of a ME School is extracted as below:-

“(b) For sixth class to eighth class

(1) At least one teacher per class so that there shall be at least one teacher each for-

(i) Science and Mathematics;

(ii) Social Studies;

(iii) Languages

(2) At least one teacher for every thirty-five children

*(3) where the admission of children is
above one hundred-*

(i) a full time head- teacher;

(ii) part time instructors for-

(A) Art Education;

(B) Health and Physical Education;

(C) Work Education.”

6. A reading of the afore-extracted provision of the schedule of the Act of 2009 makes it discernible that the schedule also provides for one teacher each for Science and Mathematics, Social Studies and Language. Sub clause 2 of Serial No. 1(b) of the schedule provides for at least one teacher for every 35 children. If under the proviso to section 3(1)(xi) of the Act of 2017, the schedule would govern as regards provincialisation of additional teachers, serial 1(b) (2) of the schedule of the Act of 2009 would also be a relevant provision which provides for one teacher for every 35 students.

7. Mr. A Deka, learned counsel for the petitioner states that in the Barpani ME School, the total number of students are 270, which means that up to 175 students as per serial 1(b) of the schedule, the requirement would be five teachers and up to 210 students, it would be six teachers and thereafter up to 245 students, it will be seven teachers.

8. If the information provided that the school has 270 students is correct, a plain reading of the provision of serial 1(b) of the schedule to the Act of 2009 reading with the proviso of Section 3(1)(xi) of the Act of 2017 makes it discernible that the school in question would be entitled to a 7th teacher.

9. In view of the above, the rejection of the claim of the petitioner for

provincialisation by the order dated 31.05.2023 of the Director appears to be a rejection without taking note of the relevant provision of the proviso to Section 3(1)(xi) of the Act of 2017 read with Serial 1(b) (2) of the schedule to the Act of 2009.

10. Accordingly, the matter is remanded back to the Director for a fresh consideration taking note of the aforesaid provisions and also to arrive at a factual determination as to what would be the number of teachers for the Barpani ME School. Upon doing the needful, a reasoned order on the claim of provincialisation of the services of the petitioner be passed within a period of two months from the date of receipt of a certified copy of this order.

The writ petition is disposed of as indicated above.

JUDGE

Comparing Assistant