

GAHC010232192022



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

Case No. : WP(C)/7386/2022

ABDULLAH AND 17 ORS
S/O LATE JAMAL ULLAH, VILL- ALURBHUI, P.O.-SILAGARA, P.S.-
KOKRJHAR, DIST- KOKRAJHAR, PIN-783348

2: RAMJAN ALI SARKAR
S/O ABDUL KUDDUS SARKAR
VILL- SRIGRAM PART-VI
P.O. HATIPOTA
P.S.-CHAPOR
DIST-DHUBRI
ASSAM
PIN-783348

3: SHAMSUDDIN
S/O LATE WELAYAT ALI
VILL- SRIGRAM PART-VI
P.O. HATIPOTA
P.S.-CHAPOR
DIST-DHUBRI
ASSAM
PIN-783348

4: ABDUL AZIZ SK
S/O LATE IMAN ALI
VILL- SUAPARA PART-V
P.O.-BILASIPARA
P.S.-BILASIPARA
DIST- DHUBRI
ASSAM
PIN-783348

5: MOSADDAR ALI
S/O FAZAR ALI
VILL-KASARIVITA

P.O.-BAHALPUR
P.S.-CHAPOR
DIST-DHUBRI
ASSAM
PIN-783371

6: JAHANARA KHATUN
W/O ANOWAR HUSSAIN
VILL- SRIGRAM PART-VI
P.O. AND P.S.-CHAPOR
DIST-DHUBRI
ASSAM
PIN-783371

7: NIZAMUUDIN
S/O MOKBUL HUSSAIN
VILL- DHIRERCHAR PART-II
P.O.-CHAPOR
P.S.-CHAPOR
DIST- DHUBRI
PIN-783371

8: JAHANGIR ALOM
S/O JAMAL UDDIN
VILL- FULJORPARA PART-II
P.O. AND P.S.-CHAPOR
DIST-DHUBRI
ASSAM
PIN-783371

9: MOIDUL ISLAM
S/O SAMSUL HOQUE
VILL- SRIGRAM PART-VI
P.O. HATIPOTA
P.S.-CHAPOR
DIST-DHUBRI
ASSAM
PUIN-783371

10: RAHIM ALI
S/O ABDUL MANNAF MOLLAH
VILL- LALKURA
P.O.-CHAPOR
DIST- DHUBRI
ASSAM
PIN-783371

11: KURMAN ALI

S/O MOZIBAR RAHMAN
VILL- AREARJHAR PART-II
P.O.-CHAPOR
P.S.-CHAPOR
DIST- DHUBRI
ASSAM
PIN-783371

12: NURJAMAL KHAN
S/O SHAHEB ALI KHAN
VILL- SRIGRAM PART-VI
P.O. HATIPOTA
P.S.-CHAPOR
DIST-DHUBRI
ASSAM
PIN-783348

13: ROUSHONARA ALOM
W/O KHORSED ALOM
P.O.-CHAPOR
P.S.-CHAPOR
VILL- KAZIPARA PART-1
WARD NO. 4
DIST-DHUBRI
ASSAM
PIN-783371

14: JABED ALI
S/O LATE RUSTOM ALI
VILL-SIMLABARI PART-III
P.O.-CHAPOR
P.S.-CHAPOR
DIST-DHUBRI
ASSAM
PIN-783371

15: ABDUR RAZZAK
S/O LATE AYAN ULLAH SK.
VILL- SRIGRAM PART-VI
P.O. HATIPOTA
P.S.-CHAPOR
DIST-DHUBRI
ASSAM
PIN-783348

16: MUSADDER ALI
S/O LATE DANEZ ALI
VILL- SRIGRAM PART-VI

P.O. HATIPOTA
P.S.-CHAPOR
DIST-DHUBRI
ASSAM
PIN-783348

17: KURMAN ALI
S/O SHAHA ALI
VILL-LALKURA
P.O.-CHAPOR
P.S.-CHAPOR
DIST-DHUBRI
ASSAM
PIN-783371

18: SHAJAHAN ALI
S/O LATE MOJIBAR RAHMAN
VILL- LALKURA
P.O.-CHAPOR
P.S.-CHAPOR
ASSAM
DIST- DHUBRI
ASSAM
PIN-78337

VERSUS

THE STATE OF ASSAM AND 5 ORS
TO BE REPRESENTED BY THE PRINCIPAL SECRETARY, GOVERNMENT OF
ASSAM, EDUCATION SECONDARY DEPARTMENT, DISPUR, GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY
GOVERNMENT OF ASSAM
EDUCATION SECONDARY DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DIRECTOR SECONDARY EDUCATION
ASSAM
DISPUR
GUWAHATI-19

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
P.O. AND P.S.-DHUBRI
DIST-DHUBRI
ASSAM

5:THE INSPECTOR OF SCHOOLS
DHUBRI
P.O. AND P.S.-DHUBRI
DIST-DHUBRI
ASSAM

6:THE DISTRICT LEVEL SCRUTINY COMMITTEE
DHUBRI
REPRESENTED BY ITS CHAIRMAN -CUM- DC
DHUBRI

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

12-04-2023

Heard Mr. M. Rohman, learned counsel for the petitioner and Ms. H. Terangpi, learned Standing Counsel, Department of School Education for the respondent Nos. 1 to 5. Also heard Ms. D. Das Barman, learned Government Advocate, Assam for the respondent No.6.

Petitioners are the employees of Dihirghat Senior Madrassa, Chapar, Dhubri, a venture educational institution.

Petitioner Nos. 1 to 16 are the teaching staff whereas, the petitioner Nos. 17 and 18 are the non-teaching staff of the said Madrassa.

It is claimed by the petitioners that they have been left out of provincialisation under *the Assam Venture Madrassa Educational Institutions (Provincialisation of Services) Act, 2011*, which was declared to be ultravires in the year 2016 and also under *the provisions of the Assam Madrassa Education*

(Provincialisation of Services of Employees and Re-organisation of Madrassa Educational Institutions) Act, 2018 repealed in the year 2000 by the Repealing Act, 2000. As such, the petitioner have prayed for provincialisation of their services under the provisions of *the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017*, as amended, as well as under the provisions of *the Assam Education (Provincialisation of Services of non-teaching staff of Venture Educational Institutions) Act, 2018*, as applicable to the petitioners concerned.

Petitioners also submitted that because of the Repealing Act, 2000 brought into force by the State Government said Dihirghat Senior Madrassa has been re-named as Dihirghat High School and submitted that they are covered under *the Assam Secondary Education (Provincialisation of Services) Rules, 2018*.

Because of non-provincialisation of services of the petitioner Nos. 1 to 16 under the said 2017 Act as well as for non provincialisation of services of the petitioner Nos. 17 and 18 under the said 2018 Act, they have been deprived of all the benefit of provincialisation.

Hence, this writ petition.

Petitioners admitted the fact that their School, namely, Dihirghat Senior Madrassa that has been re-named as Dihirghat High School, is still a venture educational institution.

A full Bench of this Court in the case of *Abdul Gofur Mondal Vs. State of Assam and Ors.*, decided on 19.03.2015, reported in *(2015) 2 GLR 575* have provided that for any such provincialisation of their services, the incumbent concerned have to approach the Educational Tribunal for that purpose. The State Government in the Education Department in compliance of the order

dated 11.11.2014 passed by this Hon'ble Court in WP(C) Nos. 4612/2011, 6109/2012 and 2272/2013 and also complying the order dated 19.03.2015 in the case of *Abdul Gofur Mondal (supra)* by the Full Bench vide Notification No. ELC/WP(C)2272/2013/403/194 dated 03.12.2015 as well as Notification No. ELC/WP(C)2272/2013/403/196 dated 02.06.2016 constituted Educational Tribunal in each of the Districts of Assam including the District of Dhubri to adjudicate the disputes relating to the teaching and non-teaching staff of such Educational Institutions including the claim for provincialisation in respect of teaching and non-teaching staff of venture educational institution within their respective territorial jurisdiction from the date of issuance of those Notifications.

It is well settled that - *when a certain things should be done in a certain way, the thing must be done in that way or not at all.*

For the reasons above, in exercise of the powers conferred under Article 226 of the Constitution of India, this Court is not inclined to entertain this writ petition, as the petitioners have an appropriate forum for redressal of their grievances regarding the claim of provincialisation of their services.

However, the petitioners are at liberty to approach the concerned Educational Tribunal, having appropriate jurisdiction, regarding the claim for provincialisation of their services, if so advised.

With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant