

GAHC010235542022



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

Case No. : WP(C)/7429/2022

MAMONI GOGOI
W/O- SRI REBOT HANDIQUE, R/O- GOGAMUKH CHAULDHOWA
BALIGAON, P.O. AND P.S. GOGAMUKH, DIST. DHEMAJI, ASSAM, PIN-
787034.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19
DIST. KAMRUP(M)
ASSAM

3:THE INSPECTOR OF SCHOOLS

DHEMAJI DISTRICT CIRCLE
DHEMAJI
DIST
DHEMAJI
ASSAM
PIN- 787057.

4:THE SCHOOL MANAGING COMMITTEE
GOGAMUKH GIRLS SENIOR SECONDARY SCHOOL
DIST. DHEMAJI
ASSAM

REPRESENTED BY ITS PRESIDENT
DIST.- DHEMAJI
ASSAM
PIN- 787034.

5:THE DISTRICT SCRUTINY COMMITTEE FOR SECONDARY EDUCATION
DHEMAJI DISTRICT
REPRESENTED BY ITS CHAIRMAN I.E. THE DEPUTY COMMISSIONER
DHEMAJI
DIST. DHEMAJI
ASSAM
PIN- 787057

Advocate for the Petitioner : MR. M K NEOG

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

02.08.2023

Heard Shri M.K. Neog, learned counsel for the petitioner. Also heard Shri U. Sharma, learned Standing Counsel, Secondary Education Department who submits that affidavit-in-opposition has been filed on 28.06.2023.

The issue raised in this writ petition is with regard to provincialisation of the service of the petitioner who is serving as a Post Graduate Teacher in the subject of History in the Gogamukh, Senior Secondary School in the district of Dhemaji.

It is the projected case of the petitioner that he was appointed in the aforesaid post on 18.08.1987 and has been working continuously. However, in the exercise undertaken for provincialisation of service under the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017, the case of the petitioner was not considered without assigning

any reason.

Shri Neog, the learned counsel has submitted that the petitioner has obtained information that the denial of provincialisation is mainly on account of not meeting the minimum enrolment in the particular subject which has to be 10. The learned counsel however submits that there are instances where even in case of enrolment being less than the prescribed numbers, certain incumbents have been given the benefit of such provincialisation.

In this connection, Shri Neog, the learned counsel has drawn the attention of this Court to a reply dated 22.09.2022 received under the Right to Information Act whereby it has been informed that out of 6 numbers of incumbents named therein, so far as three incumbents are concerned, the numbers of students is less than 10. He accordingly submits that a direction be issued for consideration of the case of the petitioner.

Per contra, Shri Sharma, the learned Standing Counsel of the Department has submitted that the direction sought for is not supported by the statute holding the field. By drawing the attention of this Court to the affidavit-in-opposition filed by the respondent no. 2 - Director of Secondary Education, Assam on 28.06.2023, he submits that a specific stand has been taken by the Department on the point of number of students who are enrolled in the particular subject. The learned Standing Counsel refers to the pleadings made in paragraph 6 of the said affidavit-in-opposition which reads as follows:

“6. That the deponent begs to state that the deponent examined the records of the District Scrutiny Committee, Dhemaji submitted as per the provision of the Act "The Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 as amended in 2018, for provincialisation of teaching staff of Gogamukh Senior Secondary School, Dhemaji. As per the records of the Assam Higher Secondary Education Council, the number of students appeared in the HSLC Examination in the year 2016 against the subject History from

Gogamukh Sr. Secondary School is 06 (six) which contradicts Section 3(1) (VII) of "The Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 as amended in 2018 required for services of teachers/ tutors to be provincialised."

Shri Sharma, the learned Standing Counsel accordingly submits that the petition is misconceived and is liable to be dismissed. He further submits that merely by citing certain instances of incumbents being given the benefit of provincialisation despite not meeting the enrolment criteria, the same would not justify issuing a direction as the rights guaranteed under Article 14 of the Constitution of India is a positive right.

Shri Neog, the learned counsel for the petitioner however submits that the matter may be directed to be considered by the Director of Secondary Education.

The stand taken by the Department in paragraph 6 is a categorical one wherein it has been stated that the number of students in the subject of History in the year 2016 was 6 whereas Section 3 (1) (vii) of the Act stipulates that there should be at least 10 students. The aforesaid averments made in paragraph 6 of the affidavit-in-opposition have not been controverted or denied by the petition by filing any rejoinder affidavit and therefore, the said stand appears to be an uncontroverted one.

So far as the instance cited by the petitioner that certain incumbents have been given the benefit of provincialisation in spite of less enrolment, this Court finds force in the contention of Shri Sharma, the learned Standing Counsel that Article 14 of the Constitution of India is a positive concept and only because certain action is irregular, the petitioner cannot seek a direction for a similar treatment.

In view of the aforesaid facts and circumstances, this Court is of the opinion that no legally enforceable right has been able to be established by the petitioner in the instant case and accordingly, the petition is dismissed.

It is however observed that in the event the enrolment is more than the minimum prescribed. The petitioner is at liberty to submit necessary application before

the authorities which may be considered strictly in accordance with law and by taking note of the criteria laid down for such provincialisation.

JUDGE

Comparing Assistant