

GAHC010236032023



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

Case No. : WP(C)/6211/2023

MD. ABDUL KADIR
S/O- LATE ISHAQUE ALI, R/O- VILL.- GORGORI, P.O. TENIPUKHURI, DIST.
NALBARI, ASSAM, PIN- 781367.

VERSUS

THE STATE OF ASSAM AND 6 ORS
NOTICE THROUGH THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR.

2:THE SECRETARY TO THE GOVT. OF ASSAM
DEPTT OF SCHOOL EDUCATION
DISPUR.

3:S. N. CHOUDHURY
SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF SCHOOL EDUCATION
DISPUR.

4:DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19.

5:THE INSPECTOR OF SCHOOLS
NDC
NALBARI
PIN- 781035.

6:AHEDUL HUSSAIN
S/O- LATE ABDUL SAMAD
R/O- VILL.- AND P.O. RANGIA
WARD NO. 2 (KURIARA PATH) DIST. KAMRUP(R)
ASSAM

7:HEAD MASTER
PASCHIM BANBHAG ANCHALIK HIGH SCHOOL
NALBARI TINIPUKHURI
VILL.- NARAYANGAON
P.O. TINIPUKHURI
P.S. GHAGRAPAR
DIST NALBARI
PIN- 781367

Advocate for the Petitioner : MR D CHOUDHURY

Advocate for the Respondent : SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 21.12.2023

Heard Mr. D. Choudhury, learned Counsel, appearing on behalf of the petitioner. Also heard Ms. Dimpi Musahary, learned standing counsel, Secondary Education Department, Government of Assam; appearing on behalf of respondent Nos. 1, 2 & 5.

In view of the order being proposed to be passed in the present writ petition, notices upon respondent Nos. 3, 6 & 7, at this stage, is not deemed necessary.

2. The challenge in the present proceeding is with regard to an order, dated 16.08.2023, passed by the Secretary to the Government of Assam, Department of School Education, by which, it was decided not to provincialize the services of the petitioner, herein.

3. The dispute as raised in the present writ petition, is with regard to the claims made by the petitioner and the respondent No. 6 for provincialization of their services. The petitioner, as projected in this writ petition, was initially appointed as a Hindi Teacher on 08.08.2009, in Paschim Banbhag Anchalik High School, Nalbari. The writ petitioner in terms of his said order of appointment, joined his service as a Hindi Teacher on 10.08.2009. The said school at the time of the appointment of the petitioner was in its venture stage. Being aggrieved by the denial of financial assistance to him, the petitioner had approached this Court by way of instituting a writ petition being WP(c)3870/2012. This Court, vide order, dated 14.08.2012, upon consideration of the matter, disposed of the said writ petition, directing the Director of Secondary Education to make an inquiry as to whether the petitioner is entitled to financial assistance. It was also directed that basing on the said inquiry, orders as regards entitlement of the petitioner to financial assistance, be issued. The Director of Secondary Education, vide order, dated 11.04.2013, upon consideration of the matter, was pleased to hold that as the petitioner was not found as a working Teacher in the said school, he would not be entitled to get any financial assistance. Thereafter, the cases of the eligible teachers working in the said school were taken-up for consideration for provincialization of their services. In course of such consideration, vide order, dated 11.04.2013, issued by the Director of Secondary Education, Assam; the petitioner was declared to be an excess Hindi Teacher in the said school. The said order dated 11.04.2013 was assailed by the writ petitioner before this Court by way of instituting a writ petition being WP(c)3186/2013. This Court vide order, dated 21.07.2014, on consideration of the matter, was pleased to dispose of the said writ petition by directing the Commissioner & Secretary to the Government of Assam, Education (Secondary)

Department, Assam, to cause an inquiry into the matter though the appointed committee and basing on the outcome of such inquiry, to pass orders as may be called for. It is to be noted that provincializations as effected in question was made subject to the outcome of the exercise as was directed to be carried-out in the matter. In pursuance of the said order, dated 21.07.2014, passed by this Court in the said writ petition, the matter was taken-up for consideration and on such consideration, the Secretary to Government of Assam, Secondary Education Department, vide order, dated 12.06.2015, proceeded to record that the services of the respondent No. 6, for the reasons assigned, cannot be provincialized. However, it was held that the petitioner is eligible for provincialization and the Director of Secondary Education, Assam, was directed to take necessary action for provincializing the post and the services of the petitioner, herein.

In pursuance of the directions as contained in the order, dated 12.06.2015; the Director of Secondary Education, Government of Assam, vide his order, dated 10.07.2015, proceeded to provincialize the services of the petitioner against the post of Hindi Teacher w.e.f. 01.01.2013 with all consequential benefits. Thereafter, the matter was being processed for release of salary of the petitioner.

4. The respondent No. 6, herein, being aggrieved by the order, dated 12.06.2006, and the consequential orders passed therein, had instituted a writ petition being WP(c)4565/2015. This Court vide order, dated 16.02.2018, on consideration of the matter and also on perusal of the records as produced by

the learned standing counsel was pleased to hold that the inquiry as was directed by this Court vide order, dated 21.07.2014, was to have the cases of the petitioner and respondent No. 6, herein, considered by the appointed committee under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011.

5. However, on finding that an inquiry as directed by this Court was not held in the manner as required, this Court, vide the order, dated 12.06.2006, required the inquiry to be conducted by the appointed committee as provided for in Section 10(7) of the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, and the report of such inquiry was directed to be placed before this Court for further consideration. Thereafter, the case of the petitioner was considered by the committee vide the Minutes of its Meeting held on 27.04.2018 and the case of the writ petitioner came to be recommended for provincialization as a Hindi Teacher in the school in question. In terms of the report of the appointed committee, the Joint Secretary to the Government of Assam, Education(Secondary) Department, vide his communication, dated 07.05.2018, informed the Director of School Education, that the Government in the Secondary Education Department, has allowed the petitioner to draw his salaries w.e.f. March, 2017. In terms of the directions as passed vide order, dated 07.05.2018; the Director of Secondary Education, Government of Assam, vide his order, dated 08.06.2018, proceeded to notify that the provincialization of the services of the petitioner as effected vide order, dated 10.07.2015, to hold the field and that he would be entitled to get his salaries for the working period.

6. Being aggrieved by the steps taken in the matter for provincialization of the services of the petitioner and for release of his salaries; the respondent No. 6, herein, approached this Court by way of instituting a writ petition being WP(c)4733/2018. This Court, vide order, dated 27.07.2018, stayed the effect and operation of the impugned order, dated 07.05.2018. Thereafter, the petitioner, herein, approached this Court by way of preferring an interlocutory application being IA(c)3188/ 2018 in WP(c)4733/2018 praying for vacation of the interim order passed therein. This Court, vide order, dated 03.09.2018, on consideration of the matter and also taking note of the manner in which the inquiry was held, was pleased to direct the Commissioner & Secretary to the Government of Assam, Department of Secondary Education, to decide the inter-se dispute between the petitioner and the respondent No. 6, by passing a reasoned order. The said order so passed was required to be placed before this Court. In pursuance of the said directions passed by this Court, vide order, dated 03.09.2018; the Commissioner & Secretary to the Government of Assam, Elementary & Secondary Education Department, vide his order, dated 14.09.2018, on consideration of the issues arising therein, decided that the claim of the respondent No. 6 cannot be accepted for provincialization of his services. Thereafter, by recording a finding that the selection and appointment of the present writ petitioner by the school authorities during his venture stage, having been found to be proper and his date of appointment and joining to the post of Hindi Teacher in the said school being recorded as 10.08.2009; the petitioner's such particulars were found to be genuine. The said order was also placed before this Court in the proceedings of WP(c)6721/2018. This Court, vide order, dated 21.07.2022, proceeded to take-up the said writ petition for final consideration and after noticing the facts involved in the matter and also the

various orders passed by this Court as well as the orders passed by the respondent authorities, proceeded to dispose of the said writ petition by setting aside and quashing the orders, dated 07.05.2018 and 14.09.2018. The matter was then remanded back to the Commissioner & Secretary to the Government of Assam, Secondary Education Department, with a direction to reconsider the cases of the petitioner and the respondent No. 6 in the light of the observations made in the said order. It was further provided that the order of provincialization of the services of the petitioner as well as the benefits accruing thereon to the petitioner shall be subject to the orders to be passed by the Commissioner & Secretary to the Government of Assam, Secondary Education Department, upon consideration of the cases of the petitioner and the respondent No. 6.

Thereafter, on a consideration of the issues arising in the matter, the Secretary to the Government of Assam, Department of School Education, vide order, dated 16.08.2023, proceeded to reject the claim of the petitioner for provincialization of his services.

7. The relevant portion of the order, dated 16.08.2023, for ready reference, is extracted hereibelow:

“Again, while the matter was re-examined, some new facts have come to the notice of the department in respect of the Respondent No. 5. It appears that Md. Abdul Kadir(Respondent No. 5) tried to mislead the Inspector of Schools, Nalbari, by providing a fake Govt. order for release of his monthly salary, for which an FIR has been filed against him. As per direction issued by Hon'ble High Court, monthly salary has not been paid to Md. Abdul Kadir w.e.f. 1/8/2018. Recently, he submitted a prayer petition along with a copy Govt. speaking order No. ASE.655/2018/WP©4733/2018/130-A dated 16/8/2022 to the Inspector of Schools, Nalbari for release of his pending salary stating that the departmental authority has already issued direction to release his salary. But for authentication, while the Inspector of Schools, Nalbari brought the issue to the notice of the Govt. it appears

that there is no such letter in existence in the relevant Govt. file and some technical discrepancies are observed which does not generally happen in a departmental letter. As such, the Inspector of Schools, Nalbari has filed an FIR against Md Abdul Kadir in the Nalbari Police Station for submission of a fake speaking order.

After careful consideration of the above and all other aspects and in cancellation of our views expressed in the earlier speaking order issued vide ASE.655/2018/WP©4733/2018/126 dated 14/9/2018, the Government in the Department of School Education has decided that the claim of the petitioner for provincialization of services as Hindi Teacher in the Paschim Banbhag Anchalik High School, Nalbari, cannot be considered as he had been appointed in excess and before he acquired the requisite qualification. Further, considering the unfair means adopted by the Respondent No. 5 for pecuniary gains, the department has also decided not to provincialize the services of the Respondent No. 5(Md Abdul Kadir)."

8. The order, dated 16.08.2023, reveals that the petitioner's case for provincialization of his services as Hindi Teacher in the school in question, was rejected on the ground that he had tried to mislead the Inspector of Schools, Nalbari, by providing a fake Government order for release of his monthly salaries for which, an FIR has already been filed against him. It is also reflected that the petitioner had submitted before the Inspector of Schools, Nalbari, a copy of the Government speaking order No. ASE.655/2018/WP©4733/2018/130-A, dated 16.08.2022, and on the basis thereof, had prayed for release of his pending salaries. The said speaking order was placed by the Inspector of Schools, Nalbari, before the Government for authentication and at that point of time, it was revealed that the said order was not available in the relevant file. Further, technical discrepancies were also noticed in the said speaking order which generally does not figure in the letter from the Department.

9. It is to be noted that vide the said speaking order, dated 16.08.2022, the Commissioner & Secretary to the Government of Assam, Secondary Education

Department, had also considered the case of the Respondent No. 6 and on such consideration being made, it was held that the Respondent No. 6 was, in all probability, appointed in excess of the strength of the teachers of the school in question in-as-much as on the date i.e. 30.10.2001, when the Respondent No. 6 claims that he was appointed in the said school, there was already a teacher working against the said post and it was further brought on record that there was no vacant post available in the school from 19.09.2001 to 24.06.2009. Accordingly, the Secretary to the Government of Assam, Department of School Education, has not recommended either the case of the petitioner or the Respondent No. 6, for the reasons as recorded in the order, dated 16.08.2023, for provincialization of their services. Further, in respect of the petitioner, the earlier speaking order issued on 14.09.2018 was also cancelled vide order, dated 16.08.2023. In pursuance of the order, dated 16.08.2023, the position that emerges is that neither the case of the petitioner nor the case of the Respondent No. 6 was found fit for being considered for the reasons assigned in the said order for provincialization of their services. The facts, as narrated hereinabove, would reveal that inspite of repeated directions passed by this Court in the proceedings as instituted by the petitioner as well as the Respondent No. 6 and the orders passed in pursuance thereof by the respondent authorities; the grievance with regard to provincialization of their services of the petitioner and Respondent No. 6, respectively, have not been, according to them, redressed till date. The case of the petitioner for provincialization of his services, vide order, dated 16.08.2023, was rejected on the ground that he had misled the authorities by way of producing a speaking order, dated 16.08.2022, which, on examination, was found not to be issued by the Government.

10. In support of the contention of the petitioner that the speaking order, dated 16.08.2022, was given to him by the Respondent No. 3, viz. Shri S. N. Choudhury, the then Joint Secretary to the Government of Assam, Secondary Education Department, in the year 2022, has filed an additional affidavit in the matter. In the said affidavit, it is stated by the petitioner that he had met Shri S. N. Choudhury, in the latter's Office on 22.08.2022 and thereon, he was handed over a photo copy of the said speaking order dated 16.08.2022 and he was also told to place the same before the Inspector of Schools, Nalbari, for early process of his claim for release of his pending salaries. However, the order, dated 16.08.2023, was passed by the same very Shri S. N. Choudhury, who, in the meantime, was working as Secretary & Commissioner to the Government of Assam, Department of School Education, and in the said order, there is no whisper of the fact that he while working as the Joint Secretary of the Department concerned, had passed the speaking order, dated 16.08.2022, as such, a disputed question of fact arises in the matter with regard to the existence of the order, dated 16.08.2022, basing on the contrary claims made by the petitioner and absence of any reference to the same in the said speaking order, dated 16.08.2023.

11. In view of the said position and the fact that the claims made by both the petitioner and the Respondent No. 6, being contradictory in nature; the same cannot be decided by this Court on the basis of the documents as well as the affidavits filed by the respective parties to the proceeding.

12. Envisaging such a position, this Court in the case of ***Abdul Gofur Mondal V. State of Assam & ors.***, reported in ***2015(2) GLR 575*** had directed that such issues can be determined by an Education Tribunal. In terms of the said decision rendered by the Full Bench of this Court, till establishment of the Education Tribunals, the State Government was required, in consultation with the High Court, to designate the District Courts as the Education Tribunals of the District. Accordingly, the Government of Assam, Elementary Education Department, vide Notification dated 02.06.2015, designated the Courts of District Judge and Addl. District Judge of each District to function as Education Tribunals to adjudicate the dispute of teaching and non-teaching staff of the non-Governmental Educational Institutions as well as the dispute relating to discipline and claim for provincialization. The said order was made applicable for both Secondary and Higher Education Departments.

13. It is to be noted here that after setting aside of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, the Government had promulgated the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and therein also, under Section 19 sub-section(2); it was provided that the determination of claims for provincialization in respect of the services of teaching and non-teaching staff of Venture Educational Institutions, there shall be an Education Tribunal for each District and the District Judges and the Addl. District Judges of each District were designated as Education Tribunals.

14. In view of the peculiar situation arising in the present proceeding and the issues that have so arisen not being in a position to be decided without having evidences recorded to analyze the disputed question of facts existing the matter; I am of the considered view that the writ petitioner is required to institute appropriate proceeding before the jurisdictional Education Tribunal for redressing his claim for provincialization of his services as Hindi Teacher in the Paschim Banbhag Anchalik High School, Nalbari.

15. Accordingly, the instant writ petition is hereby disposed of, requiring the present petitioner to approach the jurisdictional Education Tribunal, raising his claim for provincialization of his services as a Hindi Teacher in Paschim Banbhag Anchalik High School, Nalbari. The petitioner, in the proceeding to be so instituted, shall also implead the Respondent No. 6, herein, as a party respondent along with the school authorities of Paschim Banbhag Anchalik High School, Nalbari.

In the event, any such proceeding is instituted by the petitioner before the jurisdictional Education Tribunal, the Tribunal concerned shall proceed to consider the rival claims of the petitioner and the Respondent No. 6 basing on the evidences adduced before it by them. On conclusion of the proceedings, the Education Tribunal shall come to a definite conclusion with regard to the claims made by the petitioner and the Respondent No. 6 and declare, if anyone of them is eligible for a declaration for having his services provincialised, and thereafter, would declare, who, amongst them, would be eligible for provincialization.

In the event, the Education Tribunal finds on the basis of the materials coming on record before it that neither the petitioner nor the private Respondent No. 6 is eligible for provincialization of his services; the Tribunal may also make such declaration in its final order.

16. The jurisdictional Education Tribunal for the purpose of coming to its conclusion in the matter, shall provide due and adequate opportunity to the petitioner, Respondent No. 6, school authorities of Paschim Banbhag Anchalik High School, Nalbari, as well as the departmental authorities of the Secondary Education Department. The Education Tribunal while arriving at its conclusion shall not be swayed by the observations made by this Court, either, in this order, or, in any orders passed in the proceedings preceding the present proceeding instituted by the petitioner and/or the Respondent No. 6 and shall arrive at its conclusion strictly in accordance with law basing on the materials adduced before it.

17. The order, dated 16.08.2023, impugned in the present proceeding, shall be subject to the declaration that would be finally passed by the jurisdictional Educational Tribunal.

18. With the above directions and observations, the instant writ petition stands disposed of. There shall be no order as to costs.

JUDGE

Comparing Assistant