

GAHC010268862022



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

Case No. : WP(C)/41/2023

BIREN NATH
S/O- LT. RABI RAM NATH,
VILLAGE- BARANI PATHAR,
P.O.- GHAHIGAON, P.S.- GOHPUR,
PIN- 784170,
DISTRICT- BISWANATH, ASSAM.

VERSUS

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

2:THE DIRECTOR TO THE GOVERNMENT OF ASSAM
SECONDARY EDUCATION DEPARTMENT
KAHILIPARA
GUWAHATI- 781019.

3:THE INSPECTOR OF SCHOOLS
SONITPUR DISTRICT CIRCLE
TEZPUR
DISTRICT- SONITPUR

ASSAM
PIN- 784001.

4:THE STATE LEVEL SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN

OFFICE OF THE DIRECTOR TO THE GOVERNMENT OF ASSAM

SECONDARY EDUCATION DEPARTMENT

KAHILIPARA
GUWAHATI- 781019.

5:THE HEAD MASTER
TETON PUKHURI HIGHER SECONDARY SCHOOL

GOHPUR ASSAM
PIN- 784171

Advocate for the Petitioner : MR. M MALAKAR

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

06.01.2023.

Heard Mr. M Malakar, learned counsel for the petitioner and Mr. U Sarma, learned Standing counsel, Secondary Education Department, Assam for the respondent Nos. 1 to 4.

2. Teton Pukhuri Higher Secondary School, District-Sonitpur that was established on 14.11.1996 was initially a High School. On being informed by the Inspector of Schools, Sonitpur by its letter dated 27.12.2005, Higher Secondary Classes in Arts stream were opened in that H.S. School.

3. Pursuant to the decision of the Managing Committee of the said school, the petitioner was appointed as a Subject Teacher of Advance Assamese in that H.S. School and from 29.06.2010, the petitioner is serving in that capacity, since the said Teton Pukhuri Higher Secondary School, Sonitpur was in venture stage.

4. While the process for provincialisation of teaching staff of the said Teton Pukhuri Higher Secondary School, District-Sonitpur was taken up under the provisions of Assam Education (Provincialisation of Services of Teachers and Re-organization of

Educational Institutions) Act, 2017; the District Scrutiny Committee (Secondary Education), Sonitpur recommended the name of the petitioner for provincialisation of his service under the said 2017 Act, that was forwarded by the Inspector of Schools, Sonitpur to the Director of Secondary Education Assam vide Memo No. PB/V.Prov/HSS/HS/HM/Sr.Sec.School/17/432 dated 22.03.2018. But the State Level Scrutiny Committee without any reason did not consider provincialisation of his service and the Director of Secondary Education Assam by order under Memo No. PC/Sec/Prov/242/2021/163 dated 30.11.2021 provincialised services of five other Post Graduate Teachers of the said higher secondary school w.e.f. 30.11.2021 under the said 2017 Act.

5. Through R.T.I. the petitioner came to know that his case was left out from provincialisation under the said 2017 Act as he was not found eligible since there was no DISE against him.

6. It is placed before the Court that by order dated 18.05.2022 passed in WP(C) No. 3185/2022 (Juba Kumar Kutum -Vs- the State of Assam and 5 Ors.) a Coordinate Bench of this Court have held that under the provisions of said 2017 Act there is no requirement of the names to be included in the DISE Code for the purpose of provincialisation in respect of a High/Higher Secondary School.

7. Section 14 of said 2017 Act provides for Appellate Authority which reads as follows-

“Appellate Authority:-

The State Level Scrutiny Committee shall be the appellate authority against any recommendation of the District Scrutiny Committee and the State Government in the concerned administrative department shall be the Appellate Authority against any recommendation of the State Level Scrutiny Committee.”

8. The Hon'ble Supreme Court in the case of *Commissioner of Income Tax and Another -Vs- Chhabil Dass Agarwal* reported in (2014) 1 SCC 603 have held that “when a statutory forum is created by law for redressal of grievances, writ petition should not be entertained ignoring said statutory provision”.

9. As there is a statutory provision of appeal under the said 2017 Act, the

petitioner is directed to prefer an appeal forthwith, before the Secretary, Department of School Education (Secondary), Assam under Section 14 of said 2017 Act stating his grievances, along with the certified copy of this order, a copy of this writ petition including the Annexures appended thereto, obtaining necessary acknowledgment from the said authority in that regard.

10. In the event of filing such appeal by the petitioner before the Secretary, Department of School Education (Secondary), Assam as directed above, the concerned appellate authority shall dispose of the said appeal of the petitioner within a period of 60 (sixty) days from the date of its receipt with a reasoned order in accordance with law and following the provisions of the said 2017 Act, after verification of the relevant records, documents from Teton Pukhuri Higher Secondary School of District-Sonitpur and by giving an opportunity of hearing to the petitioner, intimating him about the outcome of his said appeal.

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

JUDGE

Comparing Assistant