

GAHC010270152022



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

Case No. : WP(C)/159/2023

NUR HUSSAIN PRODHANI
S/O- LT. GULZAR ALI PRODHANI, VILL- BANIAMARI, P.O. SAHEBGANJ, P.S.
GOLAKGANJ, DIST.- DHUBRI, ASSAM, PIN- 783331

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, ELEMENTARY EDUCATION
DEPTT., DISPUR, GHY-06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM-CUM-CHAIRMAN OF STATE LEVEL SCRUTINY COMMITTEE
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DY. COMMISSIONER-CUM-CHAIRMAN OF DISTRICT SCRUTINY
COMMITTEE
(ELE. EDUCATION)
DHUBRI
P.O. AND P.S. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
P.O. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
GOLAKGANJ
P.O. GOLAKGANJ
DIST.- DHUBRI
ASSAM
PIN- 78333

Advocate for the Petitioner : MR. M R KHANDAKAR

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

18/01/2023

Heard Mr. M R Khandakar, learned counsel for the petitioner and Mr. B Kaushik, learned Standing counsel, Elementary Education Department for the respondent Nos. 1 to 5.

2. It is contended by the petitioner that he was appointed as a Headmaster in Shikaritari M.E. Madrassa on 04.08.1992 during its venture stage and since then, he has been teaching language subject to the students of the said Madrassa.

3. While considering the case of the teaching staff of the said M.E. Madrassa for provincialisation under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017* amended in 2018, the District Scrutiny Committee for Elementary Education, Dhubri initially did not recommend his name and illegally recommended the name of one Aklima Khatun, who joined on 29.09.2007 as Language Teacher in the said venture M.E. Madrassa. However, the respondent authorities on 04.02.2021 provincialised the services of two teachers of the said M.E. Madrassa, namely, Sibendra Nath Roy as Science and Mathematics Tutor and one Rahul Amin Shikary as Social Science Tutor and the post of Language Tutor was not provincialised.

4. Being aggrieved, the petitioner preferred a writ petition being WP(C) No. 5692/2021 and the Court by order dated 29.10.2021 disposed of the said WP(C) No. 5692/2021 directing the District

Scrutiny Committee, Dhubri to consider the claim of the petitioner.

5. Pursuant to the same, the District Scrutiny Committee in its meeting held on 16.11.2021 approved the name of the petitioner for provincialisation of his service against a vacant post which is yet to be provincialised.

6. Accordingly, the District Elementary Education Officer, Dhubri on 24.12.2021 submitted the necessary proposal before the Director of Elementary Education, Assam, the Chairman of the State Level Selection Committee for provincialisation of service of the petitioner as per the decision of the District Scrutiny Committee, Dhubri dated 16.11.2021.

7. As nothing was done, the petitioner again approached this Court preferring WP(C) No. 2041/2022 that was disposed of by this Court on 25.03.2022 directing the Director of Elementary Education, Assam cum Chairman of the State Level Scrutiny Committee to consider the matter and pass a reasoned order on the claim of the petitioner for provincialisation by taking note of the recommendation made by the District Scrutiny Committee, Dhubri in its meeting held on 16.11.2021 as well as the order dated 05.01.2022 passed earlier in the said proceeding.

8. However, the Director of Elementary Education, Assam by the impugned order under No. EPD/H/233/2022/43 dated 07.11.2022 rejected the claim of the petitioner for provincialisation of his service as a Language Tutor in said Shikaritari M.E. Madrassa, District-Dhubri.

9. Petitioner being aggrieved with the said rejection order of the Director of Elementary Education, Assam dated 07.11.2022, noted above, has preferred this writ petition stating that the DEE, Assam have committed illegality in rejecting the claim of the petitioner for provincialisation of his service under the said 2017 Act in spite of the recommendation of the District Scrutiny Committee, Dhubri and thereby did not provincialise the post of Language Teacher favouring the petitioner in spite of such recommendation of the District Scrutiny Committee, Dhubri violating the provisions of Section 3(1)(xi) of the said 2017 Act and the norms and standards stipulated in the schedule of the Right of Children to Free and Compulsory Education Act, 2009.

10. Section 3(1)(xi) of the said 2017 Act reads as follows:-

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 standard 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).

11. Section 14 of the said 2017 Act relates to "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."

12. 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 held that "when a statutory forum is created by law for redressal of grievances, writ petition should not be entertained ignoring said statutory provision".

13. It is submitted by the petitioner that he is 58 years old and unless his case is considered, he will retire from service soon without getting any fruit of provincialisation during his long service career.

14. After hearing the learned counsels for the parties and considering the entire aspects of the matter, the petitioner is directed to submit a statutory appeal before the Secretary in the Department of School (Elementary) Education, Assam as provided under Section 14 of said 2017 Act forthwith along with a certified copy of this order and a copy of this writ petition including the Annexures appended thereto, obtaining necessary acknowledgment from the said authority in that regard.

15. In the event of filing such statutory appeal by the petitioner, as directed above, the Secretary in the Department of School (Elementary) Education, Assam on verification of the relevant records obtained from the concerned State Level Scrutiny Committee; the District Elementary Education Officer, Dhubri; Block Elementary Education Officer, Dhubri, District Scrutiny Committee, Dhubri and other concerned authorities, shall dispose of the said statutory appeal of the petitioner, with a reasoned order, within a period of 90 days, after giving an opportunity of hearing to the petitioner, intimating him about the outcome of the said appeal.

16. However, in the event, the petitioner is found to be eligible for provincialisation following the provisions of the said 2017 Act, the respondent authorities shall provincialise the service of the

petitioner from the date of provincialisation of the other teachers of the said Shikaritari M.E. Madrassa, giving him all such financial and other service benefits as applicable under the law.

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

JUDGE

Comparing Assistant