

GAHC010283882023



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

Case No. : WP(C)/7441/2023

BIRINCHI DAS
S/O- LATE RATNESWAR DAS,
VILLAGE AND P.O- MOUTUPURI,
P.S- HOWLY, DIST- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE PRINCIPAL SECRETARY, EDUCATION DEPARTMENT,
GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI- 781006.

2:THE SECRETARY
TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF SCHOOL EDUCATION
DISPUR
GUWAHATI-781006

3:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19

4:THE INSPECTOR OF SCHOOLS

BARPETA DISTRICT CIRCLE
BARPET

Advocate for the Petitioner : MR J CHUTIYA

Advocate for the Respondent : SC, SEC. EDU.

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

ORDER

Date : 21.12.2023

The petitioner by way of the present proceeding has raised the grievance with regard to the action taken on the part of the respondent authorities in not taking forward his case for provincialization on the ground that his name is not reflected in the DISE data maintained for Higher Secondary and Senior Secondary Schools.

2. The petitioner was appointed as a lecturer in Assamese in Howly Junior College, (presently Howly Senior Secondary School) on 30.07.2010. The petitioner contends that the cases of eligible teachers of Howly Senior Secondary School, including the petitioner, were taken up for consideration for provincialization under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (in short Act of 2017) and their services were provincialised. However the case of the petitioner for such provincialization was not considered favorably although the District Scrutiny Committee had recommended his case for such provincialization against the second post of teacher in MIL-Assamese.

3. It is the case of the petitioner that the respondents have refused to consider the case of the petitioner only on the ground that his name did not figure in the DISE data stated to be available for the school in question.

4. The provision of the Act of 2017 requires the particulars of a school to be captured in the DISE data and a DISE code assigned only in case of a Venture Lower Primary School or Upper Primary School, whereas such requirement is not mentioned for a Venture Higher Secondary School. However the respondents have not considered the case of the petitioner as his name did not figure in the DISE data.

5. The Coordinate Bench of this Court in WP(C) 1353/2022 and other connected writ petitions, vide judgment and order dated 12.04.2023, had dealt with the said issue and

concluded as follows:-

“16. Therefore, a conjoint reading of the provisions referred to hereinabove in respect to the Act of 2017 there is no requirement for the names of the teachers working in the “Venture High School” as well as “Venture Higher Secondary School” as defined in Section 2 (x) and 2 (y) of the Act of 2017 to have their names captured in the DISE Code as is otherwise required in the case of a teachers/tutors whose services are to be provincialised in respect of “Venture ME School” and “Venture Lower Primary School” as well as “Venture Upper Primary School” as defined in Sections 2 (za), 2 (zb) and 2 (zc) of the Act of 2017 wherein the names of such teachers or tutors are required to be captured in the DISE Code up to 2009-10.

17. In the backdrop of the above, let this Court take into consideration the case of the petitioners before this Court in the present batch of writ petitions. The 2023:GAU-AS:5625 learned counsel for the petitioners has submitted that the concerned respondent authorities have not processed the proposals for provincialisation of the services of the petitioners who are working in “Venture High Schools” and “Venture Higher Secondary Schools” on the ground that the petitioners’ names are not captured in the DISE Code. It is also the case of the petitioners that the concerned authorities have issued communication not to process such proposals of provincialisation of services of teachers/tutors whose names have not been captured in the DISE Code.

18. This Court, on the basis of the above analysis of the provisions of the Act of 2017, is of the opinion that the insistence of the respondent authorities of the names of petitioners who have been rendering services in “Venture High School” and “Venture Higher Secondary School” to be captured in the DISE Code of 2009-10 is contrary to the Act of 2017 as it is not the mandate of the Act of 2017 to fulfill such requirement in respect to such teachers and/or tutors working in “Venture High School” and “Venture Higher Secondary School” to have their names captured in the DISE Code upto 2009-10. Such insistence is arbitrary and contrary to the provisions of the Act of 2017 and accordingly interfered with.”

6. In view of the said position, this writ petition stands disposed of with a direction to the respondent authorities, more particularly, the Director of Secondary Education, Assam to consider the case of the petitioner for provincialization of his service as a teacher/tutor by having the recommendation made in case of the petitioner by the jurisdictional DSC scrutinized by the State Level Committee in terms of the provision of Section 13(10). It is provided that the State Level Committee in terms of the Section 13(11) shall be at liberty to carry out physical verification of the institution of the petitioner and call for such other record and documents as may be required for the purpose of verification. After verification of all such documents and records that may be produced before it also carrying out of physical verification of the

institution, the State Level Committee shall come to a conclusion with regard to the recommendation made by the District Scrutiny Committee in favour of the petitioner for Provincialisation of his service against the post of MIL Assamese in the said secondary school.

7. The State Level Committee or any other authority shall not insist upon the petitioner for producing a DISE code of the year 2009-10, or prior thereto, or thereafter.

8. The above exercise shall be completed within a period of six months from the date a certified copy is placed before the Director of Secondary Education, Assam.

9. The decision that would be arrived at in the matter shall be communicated to the petitioner in the form of speaking of a speaking order.

10. The writ petition accordingly stands disposed off.

JUDGE

Comparing Assistant