

GAHC010002672021



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

Case No. : WP(C)/174/2021

BIPIN GOGOI
S/O- SHRI DANESWAR GOGOI, VILL- SANTIPUR KONWAR, P.O.
RAMYAPUR, DIST.- DHEMAJI (ASSAM), PIN- 787110

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GHY-6

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-6

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHEMAJI
P.O. AND DIST.- DHEMAJI
ASSAM
PIN NO. 787057

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
DHEMAJI
P.O. AND DIST.- DHEMAJI
ASSAM
PIN- 78705

Advocate for the Petitioner : MR. D BHUYAN

Advocate for the Respondent : SC, ELEM. EDU

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

ORDER

Date : 18.03.2024

Heard Mr. D. Bhuyan, learned counsel for the petitioner. Also heard Mr. S.G. Baruah, learned counsel for the respondents No.7 and 8, Mr. B. Kaushik, learned standing counsel, Elementary Education Department and Mr. B. Gogoi, learned standing counsel for the Finance Department.

2. The petitioner by way of instituting the present writ petition has raised a grievance with regard to non-issuance of orders towards provincialisation of his service after he was found eligible for such provincialisation under the provision of Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (in short, “Act of 2011”).

3. The petitioner was appointed as an Assistant Teacher (Science) in Lakhipur Na-Pam Girls’ M.E. School, by the Managing Committee of the school. The said school at the time of appointment of the petitioner therein was in the venture stage. Upon implementation of the Act of 2011, the case of the petitioner and other serving teachers of the school were taken up for consideration for provincialisation of their services. On such consideration being made, services of the teachers of the said school, found eligible for provincialisation of their services came to be provincialised w.e.f. 01.01.2013, however such benefit of provincialisation of his service was not extended to the petitioner. Although, the name of the petitioner was again forwarded for provincialisation of his services as a Science teacher, his name however did not figure in the orders subsequently issued towards provincialisation of services of teachers left out during the earlier exercise undertaken in this connection.

The entreaties made by the petitioner before the authorities for provincialisation of his

services having not evoked any response, he has instituted the present proceedings.

4. It is seen that although the name of the petitioner was found eligible for provincialisation of his service, his case for such provincialisation did not attain finality during the period the Act of 2011 was in force. The petitioner had also not raised any dispute with regard to dropping of his name as Science Teacher from the purview of provincialisation of his service under the Act of 2011, during the period, the Act of 2011 was holding the field.

5. After the Act of 2011 was set aside and quashed by this Court, the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act of 2017 (in short, “Act of 2017”) came to be enacted.

6. The consideration as made in the case of the petitioner for provincialisation of his services under the provision of the Act of 2011 having not been concluded, before the Act was set aside and quashed by this Court, it would not be permissible for this Court to issue directions to the respondent authorities to provincialise the services of the petitioner w.e.f. 01.01.2013 by applying the provisions of the Act of 2011. However, a right is vested in the petitioner to have his case for provincialisation of his services under the said Act of 2017 and the respondent authorities are duty bound to extend to the petitioner a due consideration of his case for provincialisation of his services under the provision of the Act of 2017.

7. In view of the above position, the Director of Elementary Education, Assam is hereby directed to place the case of the petitioner before the jurisdictional District Scrutiny Committee (DSLSC) for scrutiny of his particulars. The recommendation of the DSLSC if in favour of the petitioner be placed before the State Level Scrutiny Committee and thereafter basing on the recommendation that may be made in the matter by the State Level Scrutiny Committee, to process the case of the petitioner for provincialisation of his service strictly in accordance with the provision of the Act of 2017. It is provided that in the event any of the said committee's comes to a conclusion that the petitioner is not eligible for having his services provincialised, the Director of Elementary Education, Assam shall communicate such decision to the petitioner by issuing a speaking order incorporating the reasons for

which his case was not so recommended.

8. The exercise as required to be carried out in terms of the above direction be initiated and completed by the Director of Elementary Education, Assam within a period of three months from the date of receipt of the certified copy of this order.

9. The petitioner shall furnish the certified copy of this order along with the representation before the Director of Elementary Education, Assam for taking the matter forward.

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

JUDGE

Comparing Assistant