

GAHC010043582022



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

Case No. : WP(C)/1641/2022

MONOWAR HUSSAIN
HINDI TEACHER, PANI KHETI M.E. MADRASSA, (DISE CODE NO.
18030409902) BALIJANA EDUCATION BLOCK, GOALPARA, S/O AKSED ALI,
R/O BATABARI, P.O.-MARKULA, DIST-GOALPARA, ASSAM, PIN-783120

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY, GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-19

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

3:THE DISTRICT SCRUTINY COMMITTEE FOR ELEMENTARY EDUCATION
GOALPARA
REPRESENTED BY ITS CHAIRMAN
GOALPARA
ASSAM

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
GOALPARA
ASSAM

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
BALIJANA
GOALPARA
ASSAM

6:ABDUS SOBHAN MIAH
ASSTT. TEACHER
PANIKHETI M.E MADRASSA
P.O-RAMHARIR CHAR
DIST.- GOALPARA
ASSAM
PIN- 783101

Advocate for the Petitioner : MR J ISLAM

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 18.04.2024

Heard Mr. J. Islam, learned counsel appearing for the petitioner. Also heard Mr. P. Bora, learned Standing counsel, Elementary Education Department appearing on behalf of the respondent Nos. 1, 2, 3, 4 and 5. None has entered appearance on behalf of the respondent Nos. 6.

As consented to by the learned counsel for the parties, the present writ petition is taken up for final consideration and disposal.

The petitioner by way of instituting the present proceedings has prayed for a direction upon the respondent authorities for provincializing his services as a language teacher/tutor in Pani Kheti M.E. Madrassa. The petitioner herein was initially appointed as a Hindi Teacher by the Managing Committee of Pani Kheti M.E. Madrassa on 05.01.1995. The petitioner had joined his services on 09.01.1995 in terms of the order of appointment dated 05.01.1995. At the time when the petitioner was so appointed in the said school, the school was in its venture stage. It is contended by the petitioner herein that the petitioner had

received the financial assistance as provided by the Government to venture educational institutions from time to time. It is projected in the writ petition that upon enactment of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (for short "Act of 2017"), the case of the eligible serving teachers of the school in question including the petitioner herein was considered by the District Scrutiny Committee and upon verification of the service particulars of the serving teachers in the said school, the District Scrutiny Committee proceeded to recommend the name of the respondent No.6 herein against the post of language teacher. The name of the petitioner was recommended as an additional teacher in the said school. Thereafter, on further scrutiny being made in terms of the said Act of 2017, the services of the respondent No.6 along with two other serving teachers of the school in question came to be provincialized.

It is the specific case of the petitioner that the respondent No.6 retired from his services on reaching the age of superannuation in the month of January, 2020 and accordingly, the services of the respondent No.6 was not provincialized. Being aggrieved by the denial of the benefit of provincialization of services in his case under the provisions of the said Act of 2017, the petitioner had submitted an appeal under Section 14 of the said Act of 2017 before the Director, Elementary Education, Assam and the said appeal is presently pending disposal.

On a perusal of the provisions of Section 14 of the said Act of 2017, it is revealed that against any recommendation made by the State Level Scrutiny Committee, it is the State Government in the concerned Administrative Department who shall be the Appellate Authority. In the case on hand, the services of the eligible teachers of the said school including that of the

respondent No.6 came to be provincialized only after their cases were so recommended by the State Level Scrutiny Committee and accordingly, in terms of the provisions of Section 14 of the said Act of 2017, an appeal in the matter would lie before the State Government in the concerned Administrative Department and not before the Director of Elementary Education, Assam.

In view of the provisions of Section 14 of the said Act of 2017, the petitioner is hereby directed to submit a fresh appeal before the Secretary to the Government of Assam, Department of School Education highlighting his grievances and staking a claim for provincialization of the services within a period of 30 (thirty) days from today along with a certified copy of this order. In the event, the petitioner submits an appeal within a period of 30 (thirty) days from today, the Secretary to the Government of Assam, Department of School Education shall consider the same strictly in accordance with the provisions of the Act of 2017. It is to be noted that while considering the appeal as preferred by the petitioner in the matter and upon verification of the necessary records, it is found that the respondent No.6 had retired from his services on attaining the age of superannuation before the effect of such provincialization could be extended to him, the Appellate Authority shall consider the case of the petitioner and/or any other eligible teacher in the school for provincialization against the vacant post of language teacher created for the school in question and presently lying vacant.

The exercise now required to be carried out by the Appellate Authority shall be so initiated and concluded within a period of 3 (three) months from the date of receipt of the representation along with a certified copy of this order from the petitioner herein. On conclusion of the exercise as now required, the Secretary to the Government of Assam, Department of School Education shall issue a

Speaking Order and communicate the same to the petitioner herein.

With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant