

GAHC010071142024



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

Case No. : WP(C)/1952/2024

MD. ZIAUR RAHMAN SON OF LATE- AHER ALI,
PERMANENT RESIDENT OF VILL- ROWMARI,
P.O.- ROWMARIBILL, P.S.- DHING, DISTRICT- MORIGAON,
ASSAM, PIN- 782123.

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REPRESENTED BY THE SECRETARY,
TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION (SECONDARY) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

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

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE MORIGAON
TO BE REPRESENTED BY ITS CHAIRMAN- CUM- THE DEPUTY
COMMISSIONER MORIGAON DISTRICT ASSAM.

4:THE INSPECTOR OF SCHOOLS MORIGAON DISTRICT CIRCLE
MORIGAON ASSAM

Advocate for the Petitioner : MR. N ISLAM

Advocate for the Respondent : SC, SEC. EDU.

:::BEFORE:::
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 29.04.2024

Date of Judgment: 29.04.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. T. N. Srinivasan, learned counsel for the petitioner. Also heard Ms. P. Das, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1, 2 & 4; and Mr. B. Deuri, learned Government Advocate, appearing on behalf of respondent No. 3.

2. As consented to by the learned counsels appearing for the parties; the matter is taken up for final consideration and disposal.

3. The petitioner by way of instituting the present writ petition, has presented a challenge to an order, dated 14.12.2023, issued by the Secretary to the Government of Assam, Department of School Education, rejecting the claim of the petitioner for provincialization of his services as a Post Graduate Teacher (3rd post in the Department of Education) in Nagabandha Junior College, Morigaon.

4. As projected in the writ petition that the petitioner on being found to be suitable, was appointed by the Managing Committee of Nagabandha Junior College, Morigaon (presently Nagabandha Senior Secondary School) as a Lecturer in the Department of Education by way of adopting a resolution in its meeting held on 08.11.2008. The petitioner, accordingly, his services as a Lecturer in the said school on 11.11.2008.

5. It is contended by the petitioner in the writ petition that on enactment of

the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the cases of serving eligible teachers of the said school were submitted by the Principal of the school before the departmental authorities for provincialization of their services. Accordingly, the case of the petitioner and other teachers of the said school came to be placed before the jurisdictional District Level Scrutiny Committee(DLSC) for verification of their service particulars.

6. Upon the process of verification as mandated in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, having been concluded; the jurisdictional District Level Scrutiny Committee (DLSC) proceeded to recommend the names of the serving Lecturers in the said school found eligible for provincialization of their services. In the recommendations so made, the name of the petitioner was also included as a Lecturer and he was so recommended to be eligible for provincialization of his services as a Teacher. Thereafter, on conclusion of the process so involved; the Director, Secondary Education Department, Assam, vide order, dated 04.02.2021, proceeded to provincialize the services of the Lecturers working in the said school as Teachers/Tutors. The provincialization as effected vide the order, dated 04.02.2021, of the teachers so found to be eligible, was so effected w.e.f. 01.01.2021. However, the name of the petitioner was not included in the said list and accordingly, he was left out from the purview of provincialization of his services.

7. The petitioner, in the writ petition, has brought on record, a

communication, dated 11.02.2021, issued by the Inspector of Schools, Morigaon District Circle, Morigaon, to the Director, Secondary Education Department, Assam, wherein, upon an enquiry been conducted; reports came to be submitted in respect of the teachers involved in the matter in the inquiry including the petitioner, herein. In respect of the petitioner, it was provided that the petitioner had joined the said school on 11.11.2008 and he fulfilled the other requisite criterias and accordingly, his name was required to be considered for provincialization of his services in accordance with the Government norms. However, no steps having been taken, thereafter, in the matter; the petitioner was constrained to approach this Court by way of filing a writ petition being WP(c)7103/2021, praying for provincialization of his services. This Court, vide order, dated 24.11.2022, noticing the issues as arising in the matter, was pleased to direct the petitioner, herein, to submit an appeal before the appellate authority under the provisions of Section 14 of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. The appellate authority was further directed that in the event of filing any such appeal, to give the same its due consideration and dispose of the same by way of a speaking order. Thereafter, the petitioner, in terms of the directions passed by this Court vide order, dated 24.11.2022, in WP(c)7103/2021, proceeded to submit an appeal in the matter on 19.05.2023, and therein, raised contentions towards justifying his claim for having his services provincialized in the said school. The Secretary to the Government of Assam, Department of School Education, thereafter, on consideration of the appeal preferred by the petitioner, proceeded to reject the case of the petitioner on the ground that the petitioner although was afforded an opportunity of hearing on 3(three) occasions, he having failed to appear before the appellate

authority on the dates so fixed; his claim for provincialization of his services, cannot be considered for non-fulfillment of the eligibility criterias as mentioned in the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. Further, it was held that the case of the petitioner being placed by the jurisdictional District Level Scrutiny Committee(DLSC) in the list of teachers not found eligible for provincialization of their services, given the enrollment status of students in the said school; the State Level Scrutiny Committee(SLSC) was not in a position to further consider the case of the petitioner, on the ground of not having satisfied the mandated eligibility criterias.

8. A perusal of the said order, dated 14.12.2023, does not disclose any material being brought on record to justify that the petitioner had not fulfilled the eligibility criterias as mentioned under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. The grounds that have been assigned in the said order, dated 14.12.2023, is that the petitioner's case not having been recommended by the District Level Scrutiny Committee(DLSC), Morigaon, and the jurisdictional District Level Scrutiny Committee(DLSC) having forwarded the name of the petitioner in the list of teachers found not eligible for provincialization of their services due to non-availability of the required number of enrollment of students in the said school; the State Level Scrutiny Committee(SLSC) could not recommend the name of the petitioner, herein. The further ground assigned in the said order, dated 14.12.2023, is that the petitioner although being granted opportunity for appearing before the appellate authority for a hearing, he failed to appear before the said appellate authority.

9. With regard to the ground assigned in the said order, dated 14.12.2023, that the petitioner although being afforded an opportunity of hearing on 3(three) occasions, he failed to appear before the appellate authority concerned; this Court is of the considered view that the said ground could not have been a ground for rejecting the appeal of the petitioner in-as-much as the appellate authority ought to have taken into consideration, the materials as requisite for the purpose of arriving at a conclusion as to whether the services of the petitioner was entitled to be considered for provincialization of his services. The order, dated 14.12.2023, does not reflect that the appellate authority had, at any point of time, brought on record, such materials requisite for the purpose of making the considerations as mandated in the matter.

10. With regard to the other ground as incorporated in the order, dated 14.12.2023, for the purpose of rejecting the claim of the petitioner that the petitioner's name was forwarded by the jurisdictional District Level Scrutiny Committee(DLSC) in the list of employees not found eligible on account of non-availability of the requisite enrollment of students in the said school; this Court notices that the said reasoning, was so incorporated in the order, dated 14.12.2023, without there being any material brought on record, to justify such a conclusion so drawn.

11. At this stage, it is to be noted that the petitioner, has, in the present proceedings, brought on record, a statement with regard to enrollment of students in the said school issued by the Principal of the school and therein, has demonstrated that in the school, in question, during the relevant point of time,

there was requisite number of students enrolled which would mandate the provincialization of the services of the petitioner as the 3rd teacher in the Department of Education.

12. This Court, having directed the appellate authority to give a due and proper consideration to the appeal as preferred by the petitioner before the appellate authority under the provisions of Section 14 of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the said consideration should be of a meaningful one and not one, based on surmises and conjectures.

13. In view of the above conclusions; this Court is of the considered view that the order, dated 14.12.2023, cannot be sustained and the same, accordingly, is hereby set aside.

14. Having set aside the order, dated 14.12.2023; the appeal, as preferred by the petitioner in the matter, is now directed to be considered, afresh, by the appellate authority i.e. the Secretary to the Government of Assam, Department of School Education.

15. The petitioner, for the purpose of bringing on record, materials to substantiate his claim for provincialization of his services as a 3rd teacher in the Department of Education in the said school; is permitted to file an additional representation in continuation of his appeal, dated 09.05.2023, and therein,

bring on record, the enrollment status of the students as available in the school, in question, during the period relevant to be taken into consideration for the purpose of provincialization of his services. The petitioner, shall, bring on record, materials to justify that the provisions of Section 3(1)(ix) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, is satisfied in his case.

16. The appellate authority, on receipt of such representation from the petitioner, shall require the State Level Scrutiny Committee(SLSC) to verify the contentions so made by the petitioner in his appeal, dated 09.05.2023, and also in the said representation, and after verifying the contentions so made and upon ascertaining the status of enrollment of the students in the said school as mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, proceed to submit its recommendations in the matter.

17. The appellate authority, shall, thereafter, on receipt of the recommendations of the State Level Scrutiny Committee(SLSC), proceed to dispose of the appeal as preferred by the petitioner in the matter on giving its due consideration and after affording an opportunity of hearing to the petitioner in the matter.

18. The order that would be now passed towards disposing of the appeal as preferred by the petitioner, shall be a reasoned one and the same shall be issued to the petitioner in the form of a speaking order.

19. In the event, the case of the petitioner is found to be eligible for being provincialized, either, as a teacher, or, as a tutor, in the said school; necessary steps as would be now mandated in the matter would be so directed to be taken by the authorities and orders towards provincializing the services of the petitioner be so issued with retrospective effect i.e. w.e.f. 01.01.2021, with all consequential benefits, maintaining parity with the date on which other teachers in the school were so provincialized in their services.

20. In the event, on consideration of the matter; the appellate authority i.e. the Secretary to the Government of Assam, Department of School Education, is of the considered view that the petitioner is not eligible to have his services provincialized in the said school, the appellate authority shall issue a speaking order in this connection and therein, by incorporating the reasons as to why the case of the petitioner was not entitled for provincialization of his services; communicate the same to the petitioner, herein.

21. The petitioner, shall, submit a certified copy of this order along with the representation now permitted to be submitted by him in the matter in terms of the directions passed hereinabove before the Secretary to the Government of Assam, Secondary Education Department, for taking the matter forward.

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

JUDGE

Comparing Assistant