

GAHC010072132023



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

Case No. : WA/322/2023

AFIKAN NESSA
W/O ABDUR ROUF R/O VIL. BAGARIBARI P.O. NAGABANDHAR PS.
MIKIRBHETA DIST. MORIGAON HEAD MISTREES BAGRIBARI M.E.
MADRASSA MORIGAON PIN 782106

VERSUS

THE STATE OF ASSAM AND 5 ORS. H
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM,
EDUCATIONDEPTT., DISPUR, GHY-06

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
MORIGAON DISTRICT
PIN- 782105

4:THE STATE LEVEL HIGH POWER COMMITTEE
REP. BY THE SENIOR MOST SECRETARY TO THE GOVT. OF ASSAM
EDUCATION DEPTT.
GHY-06

5:THE DISTRICT SCRUTINY COMMITTEE
REP. BY ITS CHAIRMAN CUM DY. COMMISSIONER
MORIGAON DISTRICT
PIN- 782105

6:KHANDAKAR RUSTOM AHMED
S/O- LT. ASIMUDDIN

VILL- BAGARIBARI
P.O. NAGABANDHA
P.S. MIKIRBHETA
DIST.- MORIGAON
PIN- 782106
ASSA

For petitioner/appellant(s) : Mr. B.J. Ghosh, Advocate
Mr. H. Rahman, Advocate

For respondent(s) : Mr. R. Mazumder,
Standing Counsel,
Elementary Education
Mr. A. Deka, Advocate

BEFORE
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE

15.07.2024

(Vijay Bishnoi, CJ)

This writ appeal is filed by the appellant being aggrieved with the order dated 01.02.2023 passed by the learned Single Judge in WP(C) 3978/2021.

The respondent No.6 herein had approached the writ court being aggrieved with the provincialisation of the appellant as a Language Teacher in Bagaribari M.E. Madrassa.

The claim of the respondent No.6 before the learned Single Judge was that the provincialisation of the appellant as a Language Teacher is illegal and the service of the respondent No.6 was supposed to be provincialsied as a Language Teacher on the basis of his seniority.

The learned Single Judge has refused to grant any relief to the respondent No.6 but has relegated the petitioner to approach the appellate authority in view of Section 14 of Assam Education (Provincialisation of Services of Teachers and Re-organization of Education Institutions) Act 2017 (in short, 'Act of 2017'). While issuing such a direction, the learned Single Judge has further ordered that till a decision is taken by the appellate authority, the provincialisation of the appellant shall not be given effect.

The learned counsel for the appellant has submitted that the said direction of the learned Single Judge of not giving effect to the provincialisation of the appellant is illegal and contrary to law. It is submitted that once the learned Single Judge has refused to entertain the writ petition filed on behalf of the respondent No.6 and has relegated him to the appellate authority, the direction of not giving effect to the provincialisation of the appellant was not warranted. It is therefore prayed that the said direction issued by the learned Single Judge may kindly be set aside.

Per-contra, learned counsel appearing for the respondent No.6 has supported the impugned judgment.

Having heard the learned counsel for both the parties and after going through the materials available on record, this Court is of the view that once the learned Single Judge has refused to grant any relief to the respondent No.6 in the writ petition filed by him and has relegated him to the appellate authority under the Act of 2017, the further direction of not giving effect to the provincialisation of the appellant was not at all warranted.

In such circumstance, the direction given by the learned Single Judge of not giving effect to the provincialisation of the appellant is set aside.

At this stage, it is informed that the respondent No.6 has already approached the appellate authority as per the liberty given by the learned Single Judge and the appeal filed by the respondent No.6 is pending consideration.

In such circumstance, it is directed that the appellate authority shall consider and dispose of the appeal filed on behalf of the respondent No.6, after providing opportunity of hearing to all the concerned within a period of two months from the date of production of a certified copy of this order.

With the above observation, this writ appeal is disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant