

GAHC010072932024



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

Case No. : WP(C)/2059/2024

NABENDU BHATTACHARJEE
ASSAMESE LINGUISTIC TEACHER, SISTER NIVEDITA GIRLS HIGH
SCHOOL, LANKA, DIST.- NAGAON, ASSAM, PIN- 782446.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, DEPT. OF
EDUCATION, DISPUR, ASSAM- 781006.

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

3:INSPECTOR OF SCHOOL
NAGAON DISTRICT
P.O. AND DIST.- NAGAON
ASSAM
PIN- 782001.

4:THE HEADMASTER
SISTER NIVEDITA GIRLS HIGH SCHOOL
P.O.- LANKA
DIST.- NAGAON
ASSAM
PIN- 782446.

5:DEPUTY COMMISSIONER
NAGAON
PIN- 782001

Advocate for the Petitioner : MR M CHANDA
Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 26.04.2024

Heard Mr. S. Choudhury, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department, appearing on behalf of Respondents No. 1, 2 & 3; and Mr. G. Pegu, learned Addl. Senior Government Advocate, appearing on behalf of Respondent No. 5. However, none appears on behalf of respondent No. 4.

2. As agreed to by the learned counsels appearing for the parties; this writ petition is taken-up for final consideration and disposal.

3. The petitioner, herein, has raised a grievance with regard to the order, dated 17.10.2023, issued by the Director, Secondary Education Department, Assam, rejecting the claim of the petitioner for provincialization of his services in Sister Nivedita Girls' High School, Nagaon, on the ground that the name of the petitioner is not captured in the U-DISE Code as maintained for the said school.

4. As projected in the writ petition, the petitioner was appointed as an Assamese Language Teacher in Sister Nivedita Girls' High School, Nagaon, by the Secretary of the Managing Committee of the said school vide appointment letter, dated 25.03.1991. The petitioner, in terms of the said appointment letter as issued to him, joined his services in the said school on 01.04.1991. It is to be noted that the initial appointment of the petitioner as effected vide the

appointment letter, dated 25.03.1991, was for a period of 90(ninety) days. It is contended that the Managing Committee of the said school had, thereafter, regularized the services of the petitioner w.e.f. 13.09.1992.

5. It is the further contention of the petitioner that upon enactment of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; the cases of the petitioner and other eligible serving teachers in the said school were submitted before the departmental authorities by the Headmaster of the school for provincialization of their services.

6. Upon completion of the process of scrutiny as mandated under the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; the services of the serving teachers of the said school, found to be eligible, came to be provincialized w.e.f. 01.01.2013. The services of the petitioner not being provincialized, he approached the departmental authorities praying for provincialization of his services by submitting representations.

7. During the pendency of the representations as preferred by the petitioner, this Court, on a challenge being presented; had set aside the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011. Before setting aside of the said Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, the case of the petitioner for provincialization of his services was not taken to its logical conclusion. Thereafter, on enactment of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and cases of the petitioner not considered

thereunder for provincialization of his services; the petitioner approached this Court by way of instituting a writ petition being WP(c)5529/2017. This Court, vide order, dated 24.02.2021, noticing the prayer of the petitioner for having his considered for provincialization of his services under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; proceeded to dispose of the said writ petition being WP(c)5529/2017, with a direction to the Deputy Commissioner, Hojai, to forward the recommendations of the jurisdictional District Scrutiny Committee(DSC) in favour of the petitioner to the State Level Scrutiny Committee(SLSC). Accordingly, the Minutes of the jurisdictional District Scrutiny Committee(DSC) came to be placed before the Director, Secondary Education Department, Assam, for further consideration.

8. On receipt of the said recommendations made by the District Scrutiny Committee(DSC) in favour of the petitioner, herein; the Director, Secondary Education Department, Assam, proceeded to consider the same and thereafter, placed the same before the State Level Scrutiny Committee(SLSC). On receipt of the report of the State Level Scrutiny Committee(SLSC); the Director, Secondary Education Department, Assam, vide an order, dated, 17.10.2023, proceeded to consider the matter and on such consideration, proceed to reject the case of the petitioner, herein, on the ground that his name does not figure in the U-DISE Code as maintained for the said school. It was contended in the in the said order, dated 17.10.2023, that the said data being necessary to verify as to whether the teacher concerned was working continuously for 6 years in the said school in terms of the provisions of Section 4(2)(iii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational

Institutions) Act, 2017; in absence of the same; it was held that the petitioner's case for provincialization of his services, cannot be accepted.

9. It was also noticed in the said order, dated 17.10.2023, that the name of the petitioner was forwarded by the District Scrutiny Committee(DSC) in the list of employees who were not found eligible to be considered for provincialization of their services due to non-availability of the required enrollment of the students and it contended that it was on the said ground that the State Level Scrutiny Committee(SLSC) did not consider the case of the petitioner for provincialization of his services.

10. At this stage, it is to be noted that the Headmaster of the said school, vide a communication, dated 22.12.2022, had intimated the Inspector of Schools, Nagaon, that the petitioner, herein, was serving in the school, in question, w.e.f. 01.04.1991 continuously but his name in the U-DISE Code was captured only upto 2013-2014 and thereafter, on account of the fact that the services of the petitioner was not provincialized under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; the then Headmaster of the said school did not enroll the name of the petitioner in the U-DISE Data with effect from 2014-2015 till 2019-2020. Thereafter, the name of the petitioner was duly enrolled in the U-DISE Code w.e.f. 2020-2021.

11. A perusal of the said order, dated 17.10.2023, reveals that the case of the petitioner for provincialization of his services was not considered, firstly, on the ground that the name of the petitioner was not recommended for such

provincialization by the District Scrutiny Committee(DSC), and secondly, on the ground that the name of the petitioner did not figure in the U-DISE Code as maintained for the school, in question.

12. As regards the second ground assigned in the said order, 17.10.2023, is concerned; this Court notices that the petitioner, herein, is working in a High School and in terms of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the names of the teachers working in the "Venture High School" or "Venture Higher Secondary School" are not required to be captured in the DISE Code or U-DISE Code. The definition of "Venture High School" and "Venture Higher Secondary School" can be seen in Section 2(x) and 2(y) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, which are reproduced hereinbelow:-

"2.(x) 'Venture High School' means High School imparting education up to class X and established by the people of the locality prior to 1.1.2006 which has received permission from the State Government and recognition from the Board of Secondary Education, Assam on or before 1.1.2006 and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far;

(y) 'Venture Higher Secondary School' means a Higher Secondary School imparting education up to Class XII and established by the people of the locality prior to 1.1.2006 which has received permission from the State Government on or before 01.01.2006 and whereof the services of teachers have not been provincialised under any Act earlier enacted by the State legislature so far."

13. This Court further, at this stage, finds it relevant to take note of two other definitions, i.e. definition of "Venture M.E. School" including "Venture M.E. Madrassa and "Venture Lower Primary School" or "Venture L.P. School", which have been defined in Section 2(za) and 2(zb) of the Assam Education

(Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. The said definitions, being relevant, are also quoted hereinbelow:-

“2(za) ‘Venture ME School’ including ‘Venture ME Madrassa’ means an Upper Primary School imparting education from class VI up to class VII and established by the people of the locality prior to 1.1.2006 which has received recognition from the competent authority on or before 01.01.2006 and captured in the DISE Code up to 2009-10 and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far: Provided that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialisation of services of any employee of the institution;

2(zb) ‘Venture Lower Primary School’ or ‘Venture LP School’ means a School imparting education up to Class V and established by the people of the locality prior to 1.1.2006 whose name figure in the DISE Code up to 2009-10 and prior to that and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far: Provided that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialisation of services of any employee of the institution.”

14. From the above extracted definitions, it transpire that Section 2(x) defines “Venture High School” to mean such School imparting education up to Class-X and established by the people of the locality prior to 01.01.2006, which has received permission from the State Government and recognition from the Board of Secondary Education, Assam on or before 01.01.2006 and whereof the services of the teachers have not been provincialised under any Act enacted by the State Legislature so far. The definition of “Venture Higher Secondary School” as would be seen from Section 2(y) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, is similar to “Venture High School”. However, the difference in the definitions between “Venture High School” and the “Venture Higher Secondary School” is that in “Venture High School”, the School imparts education up to Class-X whereas in the “Venture Higher Secondary School”, the School imparts

education up to Class-XII. Further, in "Venture Higher Secondary School" only the permission from the State Government on or before 01.01.2006, is required.

15. From the definitions of "Venture High School", "Venture Higher Secondary School", "Venture M.E. School" and a "Venture Lower Primary School", as quoted hereinabove, it is evident that it is only in respect of the "Venture M.E. School" and a "Venture Lower Primary School", the requirement of the names of the teachers being captured in the DISE Code upto 2009-10 has been mandated. In respect of a "Venture High School" or a "Venture Higher Secondary School", as defined under Section 2(x) and 2(y) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; such prescription is admittedly absent and accordingly, it can be construed that the requirement of a DISE Code is only applicable in case of a "Venture Primary School" or a "Venture Upper Primary School".

16. This Court, while disposing of WP(C)4594/2022 vide order dated 18.07.2022, had categorically held that in respect of a "Venture Higher Secondary School," there can be no requirement of the names of the teachers therein to be captured in the DISE Code or the U-DISE Code. The said reasoning would also apply with equal force to a "Venture High School".

17. In view of the conclusions as reached by this Court hereinabove, with regard to the necessity of the names of the teachers working in a "Venture High School" to be captured in the DISE Code or U-DISE Code, it is seen that the conclusions as reached by the Director, Secondary Education Department,

Assam, vide order, dated 17.10.2023, in this connection; is clearly contrary to the position as noted hereinabove by this Court.

18. The Director, Secondary Education Department, Assam, vide the order, dated 17.10.2023, rejected the case of the petitioner for provincialization of his services on the ground that his name did find mention in the DISE Code or the U-DISE Code of the said school. The necessity of capturing the names of the teachers in the DISE Code or the U-DISE Code not being mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, for a "Venture High School"; the said finding as recorded by the Director, Secondary Education Department, Assam, in the order, dated 17.10.2023, is interfered with by this Court.

19. This brings this Court to consider the first ground as assigned by the Director, Secondary Education Department, Assam, in the order, dated 17.10.2023, to the extent that the case of the petitioner was not so considered in-as-much as his name was not recommended by the District Scrutiny Committee(DSC) for provincialization of his services and the name of the petitioner in the list so forwarded by the District Scrutiny Committee(DSC) was placed amongst the employees who were not found eligible for provincialization of their services due to non-availability of required enrollment of students in the school, in question.

20. In this connection, it is relevant to note that the State Level Scrutiny

Committee(SLSC) in terms of the responsibility as assigned to it under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; is not to endorse the recommendations made by the District Scrutiny Committee(DSC), but, in terms of Section 13(11) of the said Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the State Level Scrutiny Committee(SLSC) on receipt of the recommendations from the District Scrutiny Committee(DSC) is required to cause a physical verification of the institution concerned and thereafter, upon inspecting the documents and records as produced before it or as may be required to be produced before it, cause a due verification of the particulars of the teacher(s) concerned and thereafter, on arriving at an independent conclusion; proceed to make its recommendations in the matter.

21. The District Scrutiny Committee(DSC), as revealed from the findings recorded in the said order, dated 17.10.2023, had placed the case of the petitioner in the list of teachers not found eligible for provincialization of their services due to non-availability of required enrollment of the students; the said aspect was required to be further verified by the State Level Scrutiny Committee(SLSC) by exercising the powers as vested on it under the provisions of Section 13(11) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

22. The said course of action not having been resorted to in the matter by the State Level Scrutiny Committee(SLSC); the recommendations as made by it, in this connection; cannot be given any credence and accordingly, the same also

requires to be interfered with by this Court.

23. In view of the above position; the matter now stands remanded back to the Director, Secondary Education Department, Assam, with a direction to place the case of the petitioner before the State Level Scrutiny Committee(SLSC) along with all requisite particulars as may be mandated for the purpose of provincialization of the services of the petitioner, including the enrollment status of the students in the school, in question.

24. The Director, Secondary Education Department, Assam, while placing the case of the petitioner before the State Level Scrutiny Committee(SLSC), shall also inform the said Committee about the conclusions reached by this Court hereinabove to the effect that the teachers serving in a "Venture High School" or in a "Venture Higher Secondary School" are not mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, to have their names captured in the DISE Code or the U-DISE Code.

25. The State Level Scrutiny Committee(SLSC), on receipt of such proposal from the Director, Secondary Education Department, Assam, would now consider the materials as placed before it and also by exercising the powers vested on it under the provisions of Section 13(11) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; proceed to examine the contemporaneous records as maintained in the school, in question, to ascertain as to whether the petitioner,

herein, was in continuous service in the said school since the date of his initial appointment and more particularly, as to whether the petitioner, herein, satisfied the requirements of the provisions of Section 4(2)(iii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, which mandates that the teacher considered for provincialization of his/her services, must have rendered at least 6 years continuous services as on 01.01.2017.

26. Upon the scrutiny/verification of the particulars of the petitioner, herein, in terms of the directions passed by this Court hereinabove; the State Level Scrutiny Committee(SLSC) shall proceed to make its recommendations in the matter.

27. In the event, the State Level Scrutiny Committee(SLSC) recommends the case of the petitioner for provincialization of his services; the Director, Secondary Education Department, Assam, shall take further steps as is mandated in the matter, for issuance of order(s) towards provincializing the services of the petitioner, herein.

28. In the event, the State Level Scrutiny Committee(SLSC), upon making the scrutiny as mandated hereinabove, comes to the conclusion that the petitioner, herein, is not entitled for having his services provincialized; the Director, Secondary Education Department, Assam, shall, by incorporating the reasons as existing in the matter, issue a speaking order to the petitioner informing him that his services does not call to be so provincialized under the provisions of the

Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

29. The exercise as now required to be carried-out in terms of the directions passed by this Court hereinabove, shall be so initiated and completed by the Director, Secondary Education Department, Assam, within a period of 90(ninety) days from the date of receipt of a certified copy of this order.

30. The petitioner, herein, shall furnish a certified copy of this order along with a forwarding letter before the Director, Secondary Education Department, Assam, for taking the matter forward.

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

JUDGE

Comparing Assistant