

GAHC010073152024



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

Case No. : WP(C)/2030/2024

SMTI. TAGAR SAIKIA BORAH
W/O- SRI DEBEN SAIKIA, VILL.- GOGAMUKH NAGAON, P.O. AND P.S.
GOGAMUKH, DIST. DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
SCHOOL EDUCATION DEPARTMENT (SECONDARY), DISPUR, GUWAHATI-
6.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS
LAKHIMPUR DISTRICT CIRCLE
LAKHIMPUR
DIST.LAKHIMPUR
PIN- 787001.

4:THE DISTRICT SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN
C/O- OFFICE OF THE DEPUTY COMMISSIONER
DIST. LAKHIMPUR
ASSAM
PIN- 787001

Advocate for the Petitioner : MR. S K SINGHA

Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 22.04.2024

Heard Mr. S. K. Singha, learned counsel for the petitioner. Also heard Ms. P. Das, learned standing counsel, Secondary Education Department, appearing on behalf of Respondents No. 1, 2 & 3; and Ms. Deepanjalee Das Barman, learned Addl. Senior Government Advocate, appearing 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 by way of instituting this present proceedings, has presented a challenge to a speaking order, dated 08.08.2023, issued by the Director, Secondary Education Department, Assam, by which, the claim of the petitioner for provincialization of her services under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, came to be rejected on the ground that the case of the petitioner was not so recommended for provincialization by the District Level Scrutiny Committee(DLSC) in terms of the provisions of Section 2(h) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

4. The facts as requisite for consideration of the issues as arising in the present proceedings is noticed as under:

The petitioner, herein, was initially appointed as an Assistant Teacher (Sanskrit) in Bhati Medak Koneng High School, Lakhimpur, on 15.05.2010 and accordingly, the petitioner had joined his services in the said school on 17.05.2010. The school, at the relevant point of time, was in its venture stage. Upon enactment of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, it is contended that the names of the serving teachers of the said school was taken-up for consideration of their respective cases for provincialization of their services.

The name of the petitioner not being included in the list of eligible teachers as forwarded for the purpose of consideration of their respective cases for provincialization; the petitioner had approached this Court by way of instituting a writ petition being WP(c)5026/2014, praying for a direction upon the respondent authorities for inclusion of her name amongst the eligible serving teachers for placing before the jurisdictional District Level Scrutiny Committee(DLSC). This Court, vide order, dated 25.09.2014, was pleased to dispose of the said writ petition by directing the Director, Secondary Education Department, Assam, to place the case of the petitioner before the jurisdictional District Level Scrutiny Committee(DLSC) within a period of 2(two) weeks from the date of receipt of the order and the District Level Scrutiny Committee(DLSC) was directed to consider the case of the petitioner and arrive at its conclusion thereof.

5. It is contended by the petitioner in the writ petition that in terms of the directions passed by this Court; the respondent No. 2, herein, had directed the jurisdictional Inspector of Schools to place the case of the petitioner before the

concerned District Level Scrutiny Committee(DLSC). Thereafter, it is contended that the case of the petitioner was placed before the jurisdictional District Level Scrutiny Committee(DLSC) and a hearing was also held in the matter and the name of the petitioner was recommended against the post of Classical Teacher(Sanskrit) of the school, in question. In spite of the said position; the name of the petitioner was not provincialized under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, and vide a speaking order, dated 27.10.2015, the case of the petitioner was rejected holding that her name being not included in the staff pattern as submitted initially of the serving teachers of the said school; the case of the petitioner cannot be provincialized. The petitioner, being aggrieved, assailed the said speaking order, dated 27.10.2015, had approached this Court by instituting a writ petition being WP(c)7217/2015. This Court, vide order, dated 24.06.2016, on consideration of the matter, was pleased to dispose of the said writ petition by interfering with the speaking order, dated 27.10.2015, and remanding the matter back to the respondent No. 2, herein, for a fresh consideration by making a further inquiry into the matter as may be called for.

6. It is, thereafter, contended that the case of the petitioner was considered by the respondent No. 2 i.e. Director, Secondary Education Department, Assam, and by holding that on the day, the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, had come into force; there was no enrollment of students in the subject of Sanskrit, proceeded to reject the case of the petitioner for provincialization of her services in exercise of the powers as vested on the respondent No. 2 under the provisions of Section 10(4) of the said Assam Venture Educational Institutions (Provincialization of Services) Act,

2011.

7. The petitioner, thereafter, approached the respondent authorities and not getting a favourable response in the matter; had approached this Court again by way of instituting a writ petition being WP(c)533/2023, raising a grievance with regard to non-provincialization of her services. The said writ petition was withdrawn by the petitioner, herein, with liberty to approach the respondent authorities by way of filing an appeal under Section 14 of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. Accordingly, the appeal was filed by the petitioner on 10.05.2023 and thereafter, on consideration of the same; the speaking order, dated 08.08.2023, has been issued by the Director, Secondary Education Department, Assam, rejecting the case of the petitioner on the ground that the condition as provided under Section 2(h) of the said Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, was not fulfilled in the case of the petitioner and accordingly, her case for provincialization of her services could not be taken-up.

8. A perusal of the materials available on record, reveals that initially the case of the petitioner was processed for provincialization of her services under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, but, on account of the decisions as taken in the matter upon processing of her case, the petitioner was not favoured with an order of provincialization of her services under the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011.

9. The materials as brought on record also does not reveal as to whether the case of the petitioner after the enactment of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, was placed before the jurisdictional District Level Scrutiny Committee(DLSC). However, on a perusal of the speaking order, dated 08.08.2023, it is revealed that the case of the petitioner for provincialization of her services under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, was rejected on the ground that the case of the petitioner was not scrutinized by the jurisdictional District Level Scrutiny Committee(DLSC).

10. The above being the position, it is not understood as to how the case of the petitioner without being placed before the District Level Scrutiny Committee(DLSC), could have been considered by the Director, Secondary Education Department, Assam. In the event, it was found that the case of the petitioner was not placed before the District Level Scrutiny Committee(DLSC); the Director, Secondary Education Department, Assam, ought to have issued appropriate directions requiring the jurisdictional Inspector of Schools to place the case of the petitioner before the concerned District Level Scrutiny Committee(DLSC) and thereafter, proceeded in the matter in terms of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

11. Be that as it may, the case of the petitioner having not considered in the manner as mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational

Institutions) Act, 2017; this Court is of the considered view that following directions are called for in the matter:

- (i).** The petitioner shall within a period of 30(thirty) days from today; submit a detailed representation before the Director, Secondary Education Department, Assam, staking a claim for provincialization of her services under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.
- (ii).** The petitioner, in her said representation, shall, in addition to submitting her service particulars, also submit particulars pertaining to the enrollment of students in Sanskrit subject in the said school in compliance with the provisions of Section 4(2)(iv) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.
- (iii).** The Director, Secondary Education Department, Assam, on receipt of such representation from the petitioner, herein; shall, given the fact that the petitioner is praying for provincialization of her services as a Teacher/Tutor in the subject of Sanskrit, verify, after consulting with the contemporaneous records, as to whether the petitioner satisfies the provisions of Section 4(2)(iv) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

- (iv).** In the event, it is found that the petitioner satisfies the provisions of Section 4(2)(iv) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the Director, Secondary Education Department, Assam, shall require the Inspector of Schools, Lakhimpur, to place the case of the petitioner before the jurisdictional District Level Scrutiny Committee(DLSC) along with all requisite particulars and thereafter, process the matter further strictly in terms of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.
- (v).** in the event, it is found that the petitioner does not satisfy the requirements as mandated under the provisions of Section 4(2)(iv) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the Director, Secondary Education Department, Assam, would not be required to consider the case of the petitioner any further. However, the materials as considered for arriving at such conclusion and the decision so arrived thereon, shall be communicated to the petitioner by way of issuance of a speaking order.
- (vi).** The exercise as now required to be carried-out in terms of the directions as passed by this Court hereinabove, shall be so initiated and completed within a period of 3(three) months from the date of receipt of a certified copy of this order.

(vii). The petitioner, while submitting the representation along with the requisite particulars, as directed hereinabove; shall also furnish a certified copy of this order to the Director, Secondary Education Department, Assam, for taking the matter forward.

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

JUDGE

Comparing Assistant