

GAHC010074792023



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

Case No. : WP(C)/2426/2023

PARTHA PRATIM GHOSH
S/O- PRODIP CHANDRA GHOSE,
1ST ASSISTANT TEACHER,
SARBAMANGOLA VENTURE LOWER PRIMARY SCHOOL,
IRONGMARA, CACHAR,
R/O- VILL- PURBASHA COMPLEX,
PANCHAYAT ROAD, SILCHAR,
DIST.- CACHAR, ASSAM,
PIN- 788005.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION (ELEMENTARY),
DISPUR, GUWAHATI-6.

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

3:THE DEPUTY COMMISSIONER
CACHAR CUM CHAIRPERSON
DISTRICT SCRUTINY COMMITTEE
CACHAR
ASSAM.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
CACHAR

ASSAM
CUM MEMBER SECRETARY

DISTRICT SCRUTINY COMMITTEE

CACHAR
ASSAM.

5:THE DEPUTY INSPECTOR OF SCHOOLS
SILCHAR
CACHAR
ASSAM
PIN- 788001.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
NARSINGPUR EDUCATION BLOCK
NARSINGPUR
DIST.- CACHAR

ASSAM

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

05.02.2024

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. P. K. Borah, learned Standing Counsel, Elementary Education Department and Mrs. D. Das Barman, Additional Senior Government Advocate, Assam.

The petitioner by way of instituting the present proceeding has challenged the order dated 06.02.2023 passed by the Director of Elementary Education, Assam rejecting his claim for Provincialisation of his services in Sarba Mangala Venture Lower Primary School on the ground that the name of the petitioner does not figure in the DISE data

up to the years 2014-15.

The petitioner was initially appointed as 2nd Assistant Teacher by the School Managing Committed of Sarba Mangala Venture Lower Primary School on 10.09.2010. The petitioner accordingly joined his services in the said school w.e.f. 11.09.2010. On the death of the incumbent in the post of Head teacher of the school, the School Managing Committee of the school proceeded to upgrade the services of Smt. Anita Devnath who was the 1st Assistant Teacher in the school as the Head teacher of the school and the petitioner's services was upgraded as the 1st teacher of the school.

The cases of the petitioner and said Anita Devnath working in the school were processed for provincialisation of their services under the provision of the Assam Education (provincialisation of services of teachers and re-organization of educational institutions) Act, 2017. The jurisdictional District Scrutiny Committee on consideration of their cases on 03.04.2018, recommended the names of both the petitioners and said Anita Devnath for provincialisation of their services. The matter was thereafter processed and on conclusion of such processing, the services of Anita Devnath came to be provincialised vide an order dated 05.02.2021 issued by the Director of Elementary Education, Assam w.e.f. 01.01.2001. However, the benefit of such Provincialisation of services was not extended to the petitioner.

Being aggrieved, the petitioner approached this Court by way of instituting WP(C) 682/2022 praying for a direction for provincialisation of his services. This Court vide order dated 04.02.2022 on due consideration of the matter was pleased to dispose of the writ petition directing the Director of Elementary Education, Assam to call for the records and on examination of the same if it is found that the petitioner is entitled for being provincialised as the second teacher of the school to pass a reasoned order for provincialisation of his services. This Court also provided that in the event the petitioner is not found entitled to such Provincialisation of his services, liberty was

given to the Director of Elementary Education, Assam to pass any appropriate order.

The Director of Elementary Education, Assam in terms of the directions passed by this Court vide order dated 04.02.2022 proceeded vide order dated 06.02.2023 to hold that as per the decision arrived at by the "Joint Committee" in its meeting held on 24.07.2020, the name of the petitioner not figuring in the DISE data maintained in the school up to 2014-15, his claim for provincialisation cannot be considered. It was also highlighted in the said order that the case of the petitioner was also not recommended by the SLSC on the same grounds. A perusal of the order dated 06.02.2023 would reveal that the case of the petitioner for provincialisation of his services was duly recommended by the jurisdictional Divisional Scrutiny Committee and the matter was thereafter placed before the State Level Scrutiny Committee. On conclusion of the process, only the name of Anita Devnath for Provincialisation of her services came to be recommended. The matter on being placed before the Government it came to be placed again before the "Joint Committee" and the case of the petitioner was rejected on the ground that his name not captured in the DISE data up to the year 2014-15.

At the outset it is to be noticed that the Act of 2017 provides for a two tier consideration of the cases of teachers of schools found eligible for provincialisation of their services. Section 13 of the Act of 2017 mandates that the cases of serving teachers of venture educational institutions is to be considered by the jurisdictional District Scrutiny Committee initially and thereafter the recommendations of the jurisdictional District Scrutiny Committee is to be examined by the State level Scrutiny Committee. Under the provisions of the Act of 2017 there is no committee prescribed called the: "Joint Committee" for the purpose of consideration of cases of eligible serving Teachers of Venture Educational Institutions for provincialisation of their services. The "Joint Committee" as constituted by the Government is contrary to the provisions of the Act, 2017. The order dated 06.02.2023 being based on the decision of such : "Joint Committee" and such committee not envisaged in the Act of 2017, the

decision as arrived at in the order dated 06.02.2023 stands vitiated and the same cannot be sustained.

The petitioner having joined his services only on 10.09.2010 it is now required to be examined as to whether the petitioner is entitled to have his service provincialised under the Act of 2017. In this connection it is relevant to note the provisions of Section 4(2)(iii) of the said Act of 2017:

“4. Teachers and/or tutors to be Government servants (1).....

(2) The teachers and/or tutors to be provincialised under this Act:.....

(iii) must have rendered at least six years continuous service as on 01.01.2017 from the date of joining in the concerned Venture Educational Institution which must be on 31.12.2020 or prior to that date;”

In terms of the provisions of Section 4(2)(iii) a serving teacher of a venture educational institution must have rendered at least 6 (six) years of continuous service as on 01.01.2017 from the date of joining therein and further such joining must have so occasioned on or before 31.12.2020. The petitioner having joined his service on 10.09.2020 fulfils the requirement of Section 4(2)(iii) of the said Act of 2017 and he is entitled to have his case considered for provincialisation of his services subject to fulfilling the other requisite criterias. It is to be noted here at this stage that the name of the school of the petitioner was captured in the DISE data and a DISE code was also authorized to such school even prior to 2009-10.

The name of the petitioner as revealed from the records of the present proceedings is captured in the DISE data only w.e.f. the year 2016-17 and accordingly a doubt would arise as to whether the petitioner was in continuous of service in the school since the date of his initial appointment i.e. w.e.f. 10.09.2010. The respondent authorities more particularly the Director of Elementary Education, Assam basing on the decisions arrived at in the matter by the State Level Scrutiny Committee and the Joint

Committee proceeded to hold that the name of the petitioner not being available in the DISE data up to the year 2014-15, his claim for provincialisation of his services cannot be considered. Only on the ground of non capturing of the name of the petitioner in the DISE data for the relevant period of time, his case could not have been rejected. The bodies empowered under the Act of 2017 were required to cause a verification of all particulars as may be requisite for the purpose of provincialisation of a serving teacher in a Venture Educational Institution and cannot base its decision solely on the DISE data only. The contemporaneous records are also required to be duly evaluated before coming to a conclusion in the matter.

The said position is further fortified from the Provisions of Section 13(11)(12) of the Act of 2017.

“13. District Scrutiny Committee and State Level Scrutiny Committee :_

(11) The State Level Scrutiny Committee shall have to cause physical verification of all institution and will also inspect all documents and records produced before it and call for such other records and documents as may be required for the purpose of causing verification.

(12) When there arises difference in between the recommendation of the District Scrutiny Committee and the Physical verification report caused by the State Level Scrutiny Committee, the matter shall be placed before the State Level Scrutiny Committee and the decision of the State Level Scrutiny Committee shall be final”

In terms of Section 13(11) of the Act of 2017, the State Level Scrutiny Committee is to carry out a physical verification of the institution and also cause an inspection of all relevant documents and records as may be required for the purpose of arriving at its decision with regard to the case of a serving teacher of a Venture Educational Institution being considered by it for provincialisation of his/her services. Such exercise would also bring with its fold a verification to ascertain as to whether such employee was in continuous service in the said venture educational institution w.e.f. the date of his/her such appointment therein. The said procedure as contemplated under Section 13(11) of the said Act of 2017 has admittedly not been followed in the

case of the petitioner and his claim for provincialisation of his services came to be rejected solely on the ground that his name did not figure in the DISE data till the year 2014-15. The procedure as mandated under the provision of the Act of 2017 having not been followed in the matter, this Court is of the view that the conclusion as reached in the order dated 06.02.2022 stands vitiated and the same is required to be interfered with.

The order dated 06.02.2022 accordingly stands interfered with.

In view of the interference made with the order dated 06.02.2022, the matter now stands remanded to the Director of Elementary Education, Assam who shall now place the case of the petitioner before the SLSC to consider the recommendation as made by the jurisdictional DSC in case of the petitioner and the SLSC would be required to exercise its power under the provisions of Section 13(11) of the said Act, 2017, and evaluate the case of the petitioner for provincialisation of his services keeping in view the observation made in this connection herein above and thereafter make its recommendations in the matter. The State Level Scrutiny Committee shall complete the process verification as required by this Court within a period of sixty days from the date of receipt of a certified copy of the order. The Director of Elementary Education, Assam shall on receipt of the recommendation of the SLSC, communicate to the petitioner the same and take further action as may now be required to be taken in the matter.

At this stage, it is to be noted that the reference in the impugned order dated 06.02.2023 to a "Joint Committee" which had also considered the case of the petitioner is a committee not contemplated under the provisions of the said Act of 2017 and accordingly the exercise as required to be now done in terms of the directions passed by this Court hereinabove, shall be so carried out solely by the State Level Scrutiny Committee and not by any other Committee not contemplated under the provisions of the Act of 2017.

The petitioner is required to submit a certified copy of this order before the Director of Elementary Education, Assam along with a forwarding for taking the matter forward.

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

JUDGE

Comparing Assistant