

GAHC010084092023



2024:GAU-AS:13132

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

Case No. : Review.Pet./53/2023

GULNEHAR BEGUM

D/O- LATE SHAFIATULLAH AHMED, R/O- VILL- JHAGRARPUR, PART-I, P.O.
KHALILPUR, DIST.- DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPTT., DISPUR, GUWAHATI- 6.

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DIST.- DHUBRI
ASSAM
PIN- 781039

4:THE EXECUTIVE DIRECTOR
SARBA SIKSHA ABHIYAN MISSION ASSAM
KAHILIPARA
GUWAHATI- 781019

5:THE DISTRICT SCRUTINY COMMITTEE
DHUBRI
REP. BY ITS CHAIRMAN

DIST.- DHUBRI
ASSAM

6:SHRI AKTAR HUSSAIN SK.
S/O- LATE MOMIR ALI
R/O- VILL- AMBARIGAON
P.O. ALOMGANJ
DIST.- DHUBRI
ASSAM
PIN- 78333

Advocate for the Petitioner : MR. P K DEKA, MR J H LASKAR,MR. I H LASKAR,MR. R. KARIM,MR. P DAIMARY

Advocate for the Respondent : MR. B CHOUDHURY, SC, SSA R-4, MR. B GOGOI, SC, SSA,GA, ASSAM, R-5,MR. P N SHARMA, SC, EDUCATION DEPTT.,SC, SSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

30-05-2024

Heard Mr. P.K. Deka, learned counsel for the review petitioner/writ petitioner and Mr. P. N. Sarma, learned Standing Counsel, Education Department for the respondent Nos. 1 to 3. Also heard Mr. B. Gogoi, learned Standing Counsel, SSA, Assam for the respondent No.4 and Mr. P. Saikia, learned Government Advocate, Assam for the respondent No.5.

2) It is stated that with effect from March, 2004, the petitioner is serving as an Assistant Teacher in Biraj Mohan Kumudini Dutta M.E. School under Gauripur Education Block of Dhubri district since the said school was in venture stage. The said M.E. School was considered for provincialisation under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017*, as amended. The name of the petitioner was recommended by the District Scrutiny Committee for provincialisation of

her service as a Language Assistant Teacher (Assamese) under the said 2017 Act, relating to said M.E. School. But the State Level Scrutiny Committee did not consider her case for provincialisation of her service and recommended only three teachers from the said M.E. School for provincialisation.

3) Aggrieved with such action on the part of the State respondents in the Education Department, the petitioner filed writ petition, being WP(C) No. 1347/2023 stating that considering the number of enrollment of students in the said M.E. School, there is a requirement of one additional post of Assistant Teacher and therefore, her case should have been considered by the authorities in the Education Department for provincialisation of her service as provided under Section 3(1)(xi) of said 2017 Act.

4) Prior to filing of WP(C) No. 1347/2023, the petitioner also filed a writ petition, being WP(C) No. 4670/2021 with similar prayer. By an order dated 16.09.2021 said WP(C) No. 4670/2021 of the petitioner was disposed of remanding the matter to the State respondents in the Education Department to examine the case of the petitioner, particularly, the Director of Elementary Education, Assam as to whether, the said M.E. School is required to have an additional teacher considering the enrollment of students in it and in that circumstances, whether, case of the petitioner can be considered for provincialisation under the said 2017 Act, in addition to the three Teachers already provincialised.

5) Pursuant to the said order of the Court dated 16.09.2021 passed earlier in said WP(C) No. 4670/2021, the Director of Elementary Education, Assam on 19.11.2022 considered the case of the petitioner, but rejected her prayer and claim for provincialisation finding that the said M.E. School had less than 105 numbers of enrollment of students as there is a requirement of an Additional Teacher only if the enrollment is more than 105 students.

6) Aggrieved by the finding of the Director of Elementary Education, Assam dated 19.11.2022, the petitioner has preferred the second writ petition, WP(C) No. 1347/2023, noted above.

7) In WP(C) No. 1347/2023, the petitioner placed before the Court that as the District Scrutiny Committee recommended her case for provincialisation considering the number of

enrollment of students in the said M E School for years 2014-15 and 2015-16 at an average of 105.23 and therefore, the respondent authorities in the Education Department of the State committed illegality in rejecting her case for provincialisation as an Additional Teacher of the said M.E. School.

8) In said WP(C) No.1347/2023, the respondent authorities placed before the Court the order of the Director of Elementary Education, Assam dated 19.11.2022 to show that the said M.E. School during physical verification in the years 2016-17 and 2017-18 was found only with 86 and 79 numbers of enrollments, that are less than 105 enrollments, therefore, there was no requirement for an Additional Teacher in the said M.E. School at the relevant time of provincialisation.

9) The Court while disposing of said WP(C) No. 1347/2023 by its order dated 15.03.2023 indicated that the petitioner failed to place the number of enrollment of students in the said M.E. School as per "the data recorded in DISE Code of 2009-10 and before", requiring provincialisation of an Additional Teacher in the said School at the relevant point of time and considering the same, the Court by its said order dated 15.03.2023 uphold the order of the Director of Elementary Education, Assam dated 19.11.2022 relating to the rejection of the prayer of the petitioner for provincialisation of her service as an Additional Teacher in the said M.E. School.

10) The petitioner filed this review petition stating that the Court while passing the order dated 15.03.2023 in said WP(C) No. 1347/2023 committed illegality since the number of enrollment of students in the said M.E. School during the period from 2009-10 and prior to that had more than 105 number of students and therefore, the finding of the Court dated 15.03.2023 that the number of enrollment of students in the said M.E. School recorded as per DISE Data of 2009-10 does not envisages for any additional teacher in the said M. E. School at the relevant point of time as bad in law.

11) To specify to the numbers of enrollment of students in the said M.E. School during the period prior to 2009-10 and thereafter, till provincialisation of said M.E. School a report was called for from the Sarba Siksha Abhijan, Assam. The respondent SSA, Assam through its Mission Director on 08.04.2024 filed an affidavit specifying the enrollment of students from

the year 2006-07 till 2020-21 as Annexure-1 to the said affidavit. From the said report of the SSA, Assam, it can be seen that the concerned M.E. School had (i) 129 enrollment of students in the year 2006-07; (ii) 128 enrollment of students in the year 2007-08; (iii) 133 enrollment of students in the year 2008-09; (iv) 120 enrollment of students in the year 2009-10; (v) 91 enrollment of students in the year 2010-11; (vi) 102 enrollment of students in the year 2011-12; (vii) 107 enrollment of students in the year 2012-13; (viii) 101 enrollment of students in the year 2013-14; (ix) 101 enrollment of students in the year 2014-15; (x) 76 enrollment of students in the year 2015-16; (xi) 86 enrollment of students in the year 2016-17; (xii) 79 enrollment of students in the year 2017-18; (xiii) 107 enrollment of students in the year 2018-19; (xiv) 106 enrollment of students in the year 2019-20 and (xv) 101 enrollment of students in the year 2020-21. However, from the year 2021-22 onwards there is no DISE Data pertaining to the enrollment of students in the said School, as in the meanwhile, said Biraj Mohan Kumudini Dutta M.E. School has been amalgamated with the Base School, namely, Chilaray Academy M.E. School and the services of the three teachers, whose services were provincialised as Tutors under the said 2017 Act, has now been utilized in Chilaray Academy M.E. School, i.e, the concerned Base School.

12) The provisions of Section 3(1)(xi) as well as the provisions of Section 3(1)(xii) of the said 2017 Act were considered and stipulated in the order dated 15.03.2023, passed earlier by this Court in said WP(C) No. 1347/2023, which are reiterated here again: --

Section 3 (1) (xi) of said 2017 Act provides that –

“(xi) In case of Venture Upper Primary School there shall be minimum three teachers or tutors at least one teacher each for (a) Science and Mathematics (b) Social Studies and (c) Languages:

Provided that for additional posts it shall be considered in accordance with the norms and standard stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009)”.

Section 3 (1) (xii) of said 2017 Act provides that –

“(xii) The enrollment shall be verified with the data as per DISE Code 2009-10 or before as available in the records of the National University of Educational Planning and Administration, New Delhi. There shall be physical verification of students and checking of records of attendance of students of last three years.”

13) As per the provisions of Sections 19 and 25 of Right of Children to Free and

Compulsory Education Act, 2009 and the Schedule provided in the said 2009 Act for an M.E. School i.e., for Class-VI to Class-VIII School the requirement is: -

- “(1) At least one teacher per class so that there shall be at least one teacher each for –*
- (i) Science and Mathematics;*
 - (ii) Social Studies;*
 - (iii) Languages.*
- (2) At least one teacher for every thirty five children*
- (3) Where admission of children is above one hundred-*
- (i) a full time head-teacher;*
 - (ii) part time instructors for-*
 - (A) Art Education;*
 - (B) Health and Physical Education;*
 - (C) Work Education.”*

14) Since the requirement is that once Science and Mathematics Teacher, one Social Study Teacher and one Language Teacher, altogether 3 is must for such M.E. School for consideration and for provincialisation under the said 2017 Act. Accordingly, the three Teachers from the said M.E. School have already been considered for provincialisation and they were provincialised as Tutors.

15) As per the Schedule of said 2009 Act, there is also requirement of one teacher for every 35 children thereby 3 Teachers for 105 children in such M.E. School. No doubt, that the said M.E. School had more than 105 enrollments prior to 2009-10. But as required under Section 3(1)(xii) of the said 2017 Act, the enrollment of the said M.E. School was verified and the physical verification of students and checking of records of Attendance of the students of last 3 years. The 'last 3 years' as provided in Section 3(1)(xii) of said 2017 Act means the previous 3 years from the date of coming into effect of said 2017 Act. The said 2017 Act came into force w.e.f., 05.05.2017 except Section 4 and 8 as per the Notification of the State Government in the Education Department under No. PMA.375/2017/44 dated 12.05.2017.

16) Since on such physical verification of the last 3 years prior to 05.05.2017, the Committee found that the School had less than 105 number of enrollment of students, the Director of Elementary Education, Assam in its said order dated 19.11.2022 rejected the claim

of the petitioner for provincialisation of her service as an Additional Teacher i.e., that of the petitioner in said M.E. School.

17) The Court by order dated 10.05.2024, asked the State Government in the Education Department to clarify its stand and by communication No. E 488467/24 dated 29.05.2024, the Secretary to the Government of Assam in the Department of Education apprised that –

“with reference to the subject cited above, I am directed to inform you that as per clause 3(1)(xii) of Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 although data for enrollment is to be verified as per DISE code 2009-10 or before however, the relevant data which is considered for physical verification of students and checking of records of attendance of students as per the clause under the act is last three years. Here the last three years indicate three years before the date of coming into the effect of the Act of 2017. Further, the said three years from the date of coming into effect of the Act has been taken into consideration for all other cases of consideration under the Act, and therefore, the same policy would also be applicable in the present case and the enrollment has to meet the required benchmark of 105 students consecutively for the said three years in order to merit the provincialisation of an additional teacher. You are requested, kindly to appraise the Hon’ble High Court accordingly.”

18) The requirement of an Additional Teacher in a M.E. School as per the provisions of said 2017 Act relied upon two provisions – (i) Section 3(1)(xi) of 2017 Act, (ii) Section 3(1)(xii) of 2017 Act, i.e., the enrollment number should be verified with the Date as per the DISE Code of 2009-10 or before and the physical verification of students and checking of records of Attendance of students of the last three years.

19) Since on physical verification of students and checking of records of Attendance of the students of last three years of said Biraj Mohan Kumudini Dutta M.E. School along with the enrollment of the said M.E. School as per the DISE Code of 2009-10 and before, as there was less than 105 number of students in the said M.E. School in the years 2015-16; 2016-17 and 2017-18, this Court is of the view that there was no such illegality or infirmity in the order dated 19.11.2022 of the Director of Elementary Education, Assam in rejecting the case of the petitioner for provincialisation of her service as an Additional Teacher in said Biraj Mohan Kumudini Dutta M.E. School.

20) The petitioner failed to place any valid ground and/or reasons under the law for review of the order dated 15.03.2023 passed in WP(C) No. 1347/2023.

21) Accordingly, this review petition, being devoid of any merit, stands dismissed.

JUDGE

Comparing Assistant