

GAHC010096412021



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

Case No. : WP(C)/3157/2021

SATYA NARAYAN BHARALI
S/O LATE HIRESWAR BHARALI, R/O VILL. SOTAI CINATOLI GAON, P.O.
SOTAI, DIST. JORHAT, ASSAM, PIN 785616

VERSUS

THE COMMISSIONER AND SECRETARY DEPARTMENT OF ELEMENTARY
EDUCATION AND 7 ORS
DEPTT. OF ELEMENTARY EDUCATION, GOVT. OF ASSAM, DISPUR, GHY 06

2:THE STATE LEVEL SCRUTINY COMMITTEE

REPRESENTED BY THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GHY 19
KAMRUP (M)
ASSAM.

3:THE DIST. SCRUTINY COMMITTEE

JORHAT DIST. REPRESENTED BY THE DEPUTY COMMISSIONER JORHAT
DIST.

4:THE DIST. ELEMENTARY EDUCATION OFFICER

JORHAT DIST.

5:THE BLOCK ELEMENTARY EDUCATION OFFICER

TITABOR
DIST. JORHAT

6:SONARAM BORA

TUTOR
JADABPUR CHAH BAGICHA ME SCHOOL
VILL. JADABPUR CHAH BAGICHA
P.O. TITABOR BLOCK TITABOR
DIST. JORHAT
ASSAM
PIN 785616

7:NIORADA BORAH

TUTOR
JADABPUR CHAH BAGICHA ME SCHOOL
VILL. JADABPUR CHAH BAGICHA
P.O. TITABOR
BLOCK TITABOR
DIST. JORHAT
ASSAM
PIN 785616

8:SARBA SIKSHA ABHIJAN
ASSAM REPRESENTED BY MISSION DIRECTOR
SARBA SIKSHA ABHIJAN
ASSAM
KAHILIPARA
GHY-78101

Advocate for the Petitioner : MR. B K DAS,

Advocate for the Respondent : GA, ASSAM, MR. B CHOUDHURY (SC, SSA), MRS. K DEVI (r-7), MS. B. BANIA (r-7), MS S A KHALIFA (r-7), B. M. KALITA (r-7), SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

10/09/2024

Heard Mr. B K Das, learned counsel for the petitioner and Mr. P K Borah, learned Standing counsel, Elementary Education Department for the State respondent Nos. 1, 2, 4 & 5. Also heard Mr. B Deuri, learned Government Advocate, Assam for the respondent No. 3; Ms. K Devi, learned counsel for the private respondent No. 7 and Mr. H Baruah, learned counsel appearing on behalf

of Mr. B Choudhury, learned Standing counsel, SSA, Assam for the respondent No. 8. Respondent No.6 did not appear in the matter.

2. The contention of the petitioner herein is that with effect from January, 1994, since its venture stage, he is serving at Jadabpur Chah Bagicha M.E. School, Jadabpur, Titabor under the Central Jorhat Education Block, District-Jorhat and was teaching the subject of English to the students of said venture Upper Primary School.

3. The petitioner is aggrieved, as the State respondents while considering for provincialisation of the services of the teaching staff of said Jadabpur Chah Bagicha M.E. School under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (hereinafter referred to as the 2017 Act) disregarding his seniority and better claim, appointed the respondent Nos. 6 and 7 as Tutors under the said Act.

4. It is also submitted by the petitioner that the respondent No. 6 though appointed by the State respondents as Tutor but he had already retired from service on attaining the age of superannuation at the age of 60 years and that pursuant to the order of the State Government in the Elementary Education Department vide No. EPD-16/Provn-UP(Act.2017)/2021/3583 and as per the provisions of said 2017 Act and the consequential order issued by the Director of Elementary Education, Assam vide No. EPD-16/Provn-UP(Act.2017)/2021/3583 dated 05.02.2021, the respondent No. 7 had joined as a Tutor in the Base School, namely, 415 No. Sotai Bosti Bonua Lower Primary School.

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

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.

6. The Director of Elementary Education, Assam (DEE, in short), respondent No. 2 filed a detail affidavit in the matter also stating that the petitioner filed a complaint before the Chief Minister's Vigilance Cell, Assam stating that the authorities concerned in the District of Jorhat provincialised the services of venture school teachers of Jorhat District under the 2017 Act on

extraneous consideration.

7. With regard to that, a detail enquiry was made by the District Elementary Education Officer (DEEO, in short), Jorhat, wherein it was found that the petitioner remained absent from his duty for a very long period and he did not attend said Jadabpur Chah Bagicha M.E. School since 2015 and that his name was at serial No. 5 in the list submitted by the School Managing Committee (SMC, in short) for provincialisation of services of teachers serving in the said M.E. School. After getting the said report from the DEEO, Jorhat, the DEE, Assam vide No. EPD/3/2022/78 dated 27.06.2022 issued an order stating that the allegation made by the petitioner regarding the recommendation of the teachers against Upper Primary Schools for provincialisation of services as per 2017 Act under Jorhat District is not justifiable and it does not hold any ground as there was no substantial proof in that regard. Said order dated 27.06.2022 of the DEE, Assam was also communicated to the petitioner.

8. Further, the Deputy Commissioner, Jorhat on the basis of the report of the Additional Deputy Commissioner (Education) Jorhat District by its communication dated 08.06.2022 also informed the Secretary, Government of Assam in the Elementary Education Department that there was no evidence regarding allegation of taking bribe as been alleged by the petitioner and that the petitioner/complainant did not mention about it in his statement recorded before the Enquiry Officer. Moreover, the ADC (Education) Jorhat in his report also stated that the President of the School Managing Committee (SMC) of said Jadabpur Chah Bagicha M.E. School as well as its In-charge Headmaster informed that the petitioner/complainant remained absent from his duty in the school for last several years and that his name figured at serial No. 5 in the format submitted by the SMC of the school for provincialisation of services of the teachers of the said school.

9. The Director of Elementary Education, Assam in its affidavit submitted that as per the requirement of 2017 Act, the District Scrutiny Committee (DSC), Jorhat after verification recommended the names of the respondent No. 6 & 7 for provincialisation of their services as Tutors under the said 2017 Act from the said Jadabpur Chah Bagicha M.E. School and the said proposal of the DSC, Jorhat was forwarded by the DEEO, Jorhat to the State Level Scrutiny Committee (SLSC) where the name of the petitioner figured under non-recommended list of teachers for provincialisation against the said M.E. School. The proposal of the DEEO, Jorhat as been recommended by the DSC, Jorhat relating to respondent Nos. 6 & 7 for provincialisation of

their services under the 2017 Act was accordingly placed before the SLSC and after verification the SLSC accordingly recommended the names of the respondent Nos. 6 & 7 for provincialisation of their services as Tutors under the said 2017 Act. Thereafter, the said recommendation of the SLSC was placed before the Government in the year 2019. Further, on constitution of a Joint Committee by the Government in its Education Department under the Chairmanship of Sri R.C. Jain, retired IAS cum Chairman, SEBA, the said proposal of the SLSC was placed before the constituted Joint committee for its examination as to whether their services can be provincialised or not. After verification of the records and documents of the school and the teachers under the provisions of said 2017 Act and on the recommendation of the names of the respondent No. 6 & 7 by the SLSC as well as the Joint Committee for provincialisation of their services as Tutors under the said 2017 Act against Jadabpur Chah Bagicha M.E. School, the Government in the Education Department gave its approval on that. Thereafter, the DEE, Assam provincialised the services of the respondent Nos. 6 & 7 vide Notification dated 05.02.2021 as Tutors.

10. It is further stated that since the DSC, Jorhat did not recommend the name of the petitioner for provincialisation of his service as been submitted by the DEEO, Jorhat, therefore, the SLSC as well as the Joint Committee could not recommend the name of the petitioner for provincialisation of his service as per the said 2017 Act.

11. The DEE, Assam in its affidavit specifically stated that the DSC, Jorhat recommended the name of the respondent No. 7 Hindi Teacher of Jadabpur Chah Bagicha M.E. School as the Language Teacher of the said school though it is an Assamese medium school of Jorhat District.

12. Section 14 of the said 2017 Act provides for forum of an Appellate Authority stipulating that – *The State Level Scrutiny Committee shall be the appellate authority against any recommendation of the District Scrutiny Committee and the State Government in the concerned Administrative Department shall be the Appellate Authority against any recommendation of the State Level Scrutiny Committee.*

13. In the case in hand, it is seen that while provincialising the services of one Language Teacher and one Social Studies Teacher relating to said Jadabpur Chah Bagicha M.E. School, Jorhat, the post of Science Teacher have been kept vacant. Further, though the respondent No. 6 was appointed as a Tutor in said Jadabpur Chah Bagicha M.E. School, but he retired from service prior to issuance of his provincialisation order as Tutor, considering his date of birth as 31.12.1960

as been recorded in the UDISE of 2016-2017 of the said ME School. The respondent No. 6 attained the age of superannuation at 60 years on 31.12.2020.

14. The Writ Court is not the proper Court to record the evidence and to look after each and every document in evidence so as to verify as to whether the petitioner remained absent in said Jadabpur Chah Bagicha M.E. School from the year 2015 or that he joined in service in the said school during its venture stage on 01.01.1994 and was serving in it as its Language Teacher continuously. This can be considered only by a fact-finding authority. For such reasons, a statutory provision has been made by way of Section 14 in said 2017 Act.

15. For the reasons above, after hearing the learned counsels for the parties and considering entire facts of the case, the petitioner is directed to approach the authorities concerned in the State Government in its Education (Elementary) Department by filing an appeal for redressal of his grievances as been provided under Section 14 of said 2017 Act.

16. In the event of such approach by the petitioner stating all his grievances before the authority concerned in the State Government in its Education (Elementary) Department as been provided under the said 2017 Act, the said authority within a period of 4 (four) months from the date of receipt of such appeal from the petitioner along with a certified copy of this order, shall pass a Speaking Order on such appeal of the petitioner, verifying the relevant records in original including the attendance register, initial appointment order of the petitioner vis-a-vis respondent Nos. 6 & 7, the records of UDISE relating to the said Jadabpur Chah Bagicha M.E. School prior to the recommendation by the District Scrutiny Committee, Jorhat; the records of the said School considered by the DSC, Jorhat as been placed before it, the concerned/relevant records of the SLSC etc., if so required giving an opportunity of hearing to the petitioner as well as the respondent 7 and the DEEO, Jorhat.

17. If the authority concerned in the State Government in its Education (Elementary) Department after such verification comes to the conclusion that disregarding the seniority and better claim of the petitioner, the respondent No. 7 was illegally considered as a Language Teacher of said Jadabpur Chah Bagicha M.E. School and his service was provincialised as a Tutor under the 2017 Act, the authorities concerned shall do the needful in accordance with law.

18. The petitioner shall submit his appeals along with a certified copy of this order before the

Secretary in the Education (Elementary) Department, Assam as per the requirement of Section 14 of said 2017 Act on or before 27.09.2024, obtaining necessary acknowledgment from the said authority in that regard.

19. Till such decision of the authority concerned in the State Government in its Education (Elementary) Department, the service of the respondent No. 7 being provincialised from said Jadabpur Chah Bagicha M.E. School, Jorhat under the said 2017 Act and appointed as Tutor vide order No. EPD-16/Provn-UP(Act.2017)/ 2021/3583 dated 05.02.2021 issued by the Director of Elementary Education, Assam shall remain in force as he had already joined as a Tutor in the Base School, i.e., 415 No. Sotai Bosti Bonua Lower Primary School. However, such provincialisation of the respondent No. 7 as Tutor pursuant to the Order of the DEE, Assam dated 05.02.2021, noted above shall be subject to the outcome of the appeal to be preferred by the petitioner, as directed above.

20. Accordingly, the interim order passed earlier on 23.07.2021 in this proceeding stands vacated.

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

JUDGE

Comparing Assistant