

GAHC010110032023



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

Case No. : WP(C)/2979/2023

OMAR ALI SHEIKH
S/O- LT. BAHAR ALI SHEIKH,
VILL. GUTIPARA PT. III,
P.O.- GUTIPARA, P.S.- BILASIPARA,
DIST.- DHUBRI, ASSAM,
PIN 783349.

VERSUS

THE STATE OF ASSAM AND 5 ORS
TO BE REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF
ASSAM, SCHOOL DEPARTMENT, DISPUR,
GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION ASSAM
KAHILIPARA GUWAHATI-

3:THE STATE LEVEL SCRUTINY COMMITTEE
SECONDARY EDUCATION DEPARTMENT
KAHILIPARA
GUWAHATI-19.

4:THE DISTRICT SCRUTINY COMMITTEE
DHUBRI DISTRICT
TO BE REPRESENTED BY ITS CHAIRMAN-CUM-THE DEPUTY
COMMISSIONER
DHUBRI
P.O. AND DIST.- DHUBRI
ASSAM
PIN- 783301.

5:THE INSPECTOR OF SCHOOLS DDC DHUBRI
P.O. AND DIST.- DHUBRI ASSAM PIN- 783301.

6:THE BALIRCHAR HIGH SCHOOL BALIRCHAR
P.O.- NAYER ALGA DIST.- DHUBRI ASSAM PIN - 783348.
TO BE REPRESENTED BY THE SECRETARY/ HEADMASTER OF THE ABOVE
SCHOOL

Advocate for the Petitioner : MR. R ISLAM

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 03.05.2024

Heard Mr. R. Islam, 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 & 5; and Mr. B. Deuri, learned Government Advocate, appearing on behalf of respondent No. 4. However, none has appeared on behalf of respondent No. 6.

2. The petitioner, in the present proceeding, has assailed the action on the part of the respondent authorities in not provincializing his services as a tutor in Balirchara High School after his case for the same, was recommended by both the District Level Scrutiny Committee (DLSC) as well as the State Level Scrutiny Committee(SLSC).

3. The petitioner, in the writ petition, has projected that he was appointed as an Assistant Teacher in the said school by the Headmaster of the school on 12.09.1990. The petitioner, in terms of the said order of appointment; joined his services in the said school on 15.09.1990 and has been teaching the students therein, thereafter.

4. Upon the enactment of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the case of the petitioner and other serving teachers of the said school were taken-up for consideration by the departmental authorities and on the submission of the particulars of the serving teachers in the school, in question; their cases came to be placed before the jurisdictional District Level Scrutiny Committee (DLSC). The jurisdictional District Level Scrutiny Committee(DLSC) on verification of the particulars of the serving teachers in the said school including the petitioner, herein, proceeded to recommend the name of the petitioner for provincialization of his services. Thereafter, the cases of the petitioner and other eligible teachers so recommended by the jurisdictional District Level Scrutiny Committee(DLSC) came to be placed before the State Level Scrutiny Committee(SLSC). The State Level Scrutiny Committee(SLSC) on verification of the recommendations of the District Level Scrutiny Committee (DLSC) and also on scrutiny of the service particulars of the eligible teachers; proceeded to recommend the names of the teachers so found eligible for provincialization of their services in the said school. The name of the petitioner was also so recommended by the State Level Scrutiny Committee(SLSC) for provincialization of his services. However, as revealed from the records while making a recommendation in favour of the petitioner whose name is "Omar Ali Sheikh"; his name was recommended as "Amor Ali Sk.". Thereafter, as per the materials available on record; the Director, Secondary Education Department, Assam, had placed a proposal before the Government of Assam in the Department of School Education, for sanction of posts in favour of the teachers working in the said school for provincialization of their services.

5. It is contended by the petitioner in the writ petition that the Government of Assam in the Department of School Education, had, thereafter, placed the name of the petitioner before a Joint Committee as constituted in the matter for verification of the particulars of teachers found eligible for provincialization of their services. The name of the petitioner which was wrongly projected by the State Level Scrutiny Committee(SLSC) in its recommendations having not been found to be captured in the DISE Data as maintained for the said school; the Joint Committee, on such consideration, required the case of the petitioner to be sent for a proper verification at the field level by an independent authority for ascertaining the genuineness of the claim as made by the petitioner, herein.

6. It is further projected in the writ petition that thereafter, the case of the petitioner was so considered and it was revealed that his name was duly captured in the DISE Data for the relevant period of time and further on account of a mistake occurring in the name of the petitioner; his case for provincialization of his services is required to be so considered.

7. The case of the petitioner not having been taken forward thereafter; the present proceeding has been instituted by the petitioner, herein.

8. On noticing that the case of the petitioner was recommended by the State Level Scrutiny Committee (SLSC) and thereafter, his case for provincialization of his services basing on such recommendations made, were not taken forward admittedly on account of the opinion as rendered in the matter by a Committee called the Joint Committee constituted by the Government; this Court had required the respondent authorities to place before this Court material to justify

the setting up of a Joint Committee for examining proposals for provincialization of serving teachers in "Venture Educational Institutions" after the same was so scrutinized and recommended by the jurisdictional District Level Scrutiny Committee (DLSC) and the State Level Scrutiny Committee (SLSC). Such a query was so raised on account of the fact that the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, do not envisage constitution of a Committee called the Joint Committee for verification of the particulars of serving teachers of "Venture Educational Institutions" for the purpose of provincialization of their services.

9. The Secretary to the Government of Assam, Department of School Education, had brought on record, a communication, dated 06.04.2024, wherein, it was contended that the said Committee was so constituted with personnel from various departments including the Finance Department and was with a view to eliminate any errors that would have crept in the proposals as made with regard to the serving teachers of "Venture Educational Institutions" for provincialization of their services.

10. This Court, in view of the provisions of Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, holds that the said Committee is not a Committee envisaged under the provisions of the Act of 2017, thereof. However, in view of the fact that in the present proceeding, admittedly, the case of the petitioner not having been so recommended for provincialization of his services on account of the fact that his name was projected in the recommendations of the State Level Scrutiny Committee (SLSC) erroneously; the issue as to whether the inclusion of a Joint

Committee in the process of scrutiny/verification of the particulars of serving teachers of "Venture Educational Institutions" would be mandated, is not being examined in the present proceeding and the same would be so examined in an appropriate proceeding in future.

11. In the case on hand; admittedly, the petitioner had been so recommended for provincialization of his services by the jurisdictional District Level Scrutiny Committee (DLSC) as well as by the State Level Scrutiny Committee (SLSC), and the name of the petitioner having been wrongly projected in the recommendations as made in the matter by the State Level Scrutiny Committee (SLSC); his case for provincialization of his services could not be taken to its logical conclusion. As such, it is seen that a right has accrued to the petitioner for having his services provincialized.

12. There being no other reason discernible from the records of the matter for denying to the petitioner, herein, his due benefits pertaining to provincialization of his services; this Court is of the considered view that the petitioner is entitled to have his services provincialized in the said school. However, noticing that certain queries were raised with regard to eligibility of the petitioner, herein; this Court now directs the Director, Secondary Education Department, Assam, to place the case of the petitioner before the State Level Scrutiny Committee(SLSC), by apprising the said Committee of the fact that in its earlier recommendations as made in respect of the said school; the case of the petitioner was so recommended, however, on account of an error occasioning in the name of the petitioner; his services for such provincialization could not be taken to its logical conclusion.

13. The State Level Scrutiny Committee(SLSC) now would re-consider its recommendations as made in its earlier meeting pertaining to the said school and thereafter, on verifying the service particulars of the petitioner as well as in exercise of its powers conferred 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 ascertain the continuous nature of service of the petitioner in the said school and also to ascertain if he satisfies the provisions of Section 4(2)(iii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and thereafter; proceed to make fresh recommendations in favour of the petitioner.

14. The Director, Secondary Education Department, Assam, now would basing on the recommendations as made by the State Level Scrutiny Committee (SLSC) with regard to the case of the petitioner, proceed to take further steps in the matter as may be mandated. In the event, the case of the petitioner is so favourably recommended by the State Level Scrutiny Committee(SLSC); the Director, Secondary Education Department, Assam, as mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, shall submit a proposal in this connection to the Secretary to the Government of Assam, Department of School Education, for the purpose of creation of a post for provincializing the services of the petitioner, herein.

15. The Secretary to the Government of Assam, Department of School Education, on receipt of such proposal from the Director, Secondary Education

Department, Assam; shall, upon examining the recommendations of the State Level Scrutiny Committee(SLSC), proceed to accord sanction for creation of such post as may now be mandated for the purpose of provincializing the services of the petitioner.

16. It is provided that the Secretary to the Government of Assam, Department of School Education, while examining the recommendations as made in the matter by the State Level Scrutiny Committee(SLSC), shall not place the same before any other Committee not envisaged under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

17. In the event, it is found that there exists any error in the recommendations as made by the State Level Scrutiny Committee(SLSC); the Secretary to the Government of Assam, Department of School Education, shall after recording such error as found by him; remit the matter back to the State Level Scrutiny Committee(SLSC) for a fresh consideration as may be mandated in the matter.

18. On conclusion of the process as indicated hereinabove; the Director, Secondary Education Department, Assam, shall issue appropriate orders towards provincializing the services of the petitioner as a teacher/tutor in the said school.

19. The services of the petitioner shall be so provincialized with retrospective effect i.e. w.e.f. 01.02.2021, when the other teachers in the said school were so

provincialized in their services and the same shall be with all consequential benefits of seniority, pay, etc..

20. The petitioner would be entitled to his pay and allowances w.e.f. 01.02.2021 and the same would now be computed and release to the petitioner by the Director, Secondary Education Department, Assam.

21. The exercise as now required to be carried-out in terms of the directions passed by this Court hereinabove, shall be so initiated and concluded 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.

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

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

JUDGE

Comparing Assistant