

GAHC010111022023



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

Case No. : WP(C)/3005/2023

BAHAR UDDIN BARBHUIYA
S/O- LATE MAHBAT ALI BARBHUIYA,
VILLAGE AND P.O. RAJYESWARPUR PART-III,
P.S. LALA, DIST.- HAILAKANDI, ASSAM, PIN- 788163.

..... *Petitioner*

-VERSUS -

1.THE STATE OF ASSAM,
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM,
EDUCATION (ELEMENTARY) DEPTT., DISPUR, GHY-06,

2:THE DIRECTOR OF ELEMENTARY EDUCATION, ASSAM,
KAHILIPARA, GHY-19.

3:THE COMMISSIONER OF FINANCE, ASSAM, DISPUR, GHY-6.

4:THE STATE LEVEL SCRUTINY COMMITTEE FOR ELEMENTARY
EDUCATION, REP. BY ITS CHAIRMAN-CUM-THE DIRECTOR OF
ELEMENTARY EDUCATION, ASSAM, KAHILIPARA, GHY-19.

5:THE DISTRICT LEVEL SCRUTINY COMMITTEE FOR ELEMENTARY
EDUCATION, REP. BY ITS CHAIRMAN-CUM-DEPUTY COMMISSIONER
HAILAKANDI, PIN- 788151.

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER,
HAILAKANDI, PIN- 788151.

7:THE BLOCK ELEMENTARY EDUCATION OFFICER, LALA,
DIST.- HAILAKANDI, PIN- 788163.

8:ASSAM SARBA SIKSHA ABHIJAN MISSION (SSA)
REP. BY THE MISSION DIRECTION, SSA, KAHILIPARA, GHY-1.

..... *Respondents*

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. J. Abedin, Advocate.
: Ms. S. Das, Advocate.

For the Respondents : Mr. P.K. Borah, Standing Counsel, Education (Elementary)
Department for respondent Nos.1, 2, 4, 5, 6 & 7.
: Mr. B. Gogoi, Standing Counsel, Finance Department and
SSA, Assam for respondent Nos.3 and 8.

Date of Hearing : 08.04.2024 & 29.04.2024.

Date of Judgment : 29.04.2024.

JUDGMENT & ORDER (ORAL)

Heard Mr. J. Abedin, learned counsel along with Ms. S. Das, learned counsel appearing for the petitioner. Also heard Mr. P.K. Borah, learned Standing Counsel, Education (Elementary) Department appearing for the respondent Nos.1, 2, 4, 5, 6 & 7 and Mr. B. Gogoi, learned Standing Counsel, Finance Department and SSA, Assam appearing for the respondent Nos.3 and 8 respectively.

2. The petitioner has, by way of instituting the present proceedings, presented a challenge to an order dated 06.09.2022, issued by the Director, Elementary Education, Assam by which the claim of the petitioner for provincialisation of services in Rajyeswarpur M.E. Madrass was rejected on the ground that the name of the petitioner did not appear in the DISE data maintained for the school up to the year 2012-2013.

3. As projected in the writ petition, the petitioner was appointed by the Managing Committee of Rajyeswarpur M.E. Madrass on 30.10.2005. The petitioner joined his services on the same day. The said school, at the relevant point of time, was in its venture stage.

4. It is contended in the writ petition that with effect from the year 2006-2007, the DISE Code was allotted to the said school. However, for reasons not known, only the names of two teachers working in the said school came to be captured in the said DISE data. The petitioner contends to have approached the authorities on repeated occasions praying for inclusion of his name in the DISE data. However, the same was not considered. Ultimately, the request of the petitioner was accepted and his name was so included in the DISE data with effect from the year 2014-2015.

5. Upon the enactment of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (in short, the Act of 2017), the school of the petitioner having been found to satisfy the eligibility criterias for having the services of the teachers serving therein provincialised, the case of the petitioner and other serving teachers were considered by the jurisdictional District Scrutiny Committee. The said Committee, upon verification of the particulars of the petitioner and other serving teachers, proceeded to recommend the names of the petitioner and other two teachers, namely, Azir Uddin Laskar and Noor Ahmed Mazarbhuiya to be eligible for being considered for provincialisation of their services.

6. It is to be noted that the name of the petitioner herein was so recommended as a Science Teacher. Thereafter, the recommendation as made by the District Scrutiny Committee came to be placed before the State Level Scrutiny Committee. It is contended that the State Level Scrutiny Committee,

upon making due scrutiny as required, proceeded to recommend the names of Azir Uddin Laskar and Nur Ahmed Mazarbhuiya, serving teachers of the said school for provincialisation of their services. However, the name of the petitioner was so dropped therein. In terms of the recommendation as made by the State Level Scrutiny Committee and after further processing as mandated in the matter, the Director of Elementary Education, Assam vide the order dated 05.02.2021 proceeded to provincialise the services of the said two teachers with effect from 01.01.2021.

7. The petitioner, being aggrieved by denial of the benefits of provincialisation of his services, approached this Court by way of instituting WP(C) No.2155/2021. This Court vide order an order dated 21.03.2022, upon considering the issues as arising in the matter, was pleased to dispose of the writ petition directing the Director of Elementary Education, Assam to call for the records of the Rajyeswarpur M.E. Madrassa, Hailakandi and upon examining the same to arrive at a conclusion as to whether the petitioner has any legal right to be provincialised as a Science Teacher of the school under the provisions of the Act of 2017.

8. It is in pursuance to the directions as passed by this Court vide order dated 21.03.2022, passed in WP(C) No.2155/2021, that the case of the petitioner was taken up for consideration and the order impugned in the present proceedings, i.e. order dated 06.09.2022, came to be passed.

A perusal of the order dated 06.09.2022 brings home the fact that the District Scrutiny Committee, Hailakandi had recommended the name of the petitioner herein along with two other teachers. Thereafter, the case of the petitioner was so considered by the State Level Scrutiny Committee as well as by a Joint Committee as constituted in the matter and upon a revelation being

made that the name of the petitioner is not captured in the DISE data of the school till the year 2012-2013, it was contended that the State Level Scrutiny Committee was not in a position to recommend the name of the petitioner herein for provincialisation of his services under the Act of 2017. Accordingly, the claim of the petitioner came to be rejected.

The only ground on which the case of the petitioner herein was not considered for provincialisation of his services was on account of non-capturing of his name in the DISE data as maintained for the school till the year 2012-2013.

9. The petitioner has also brought on record an enquiry report submitted by the District Elementary Education Officer, Hailakandi, wherein the name of the petitioner has been found to be mentioned as a Science Teacher and serving in the said school from 01.11.2005. However, the said enquiry report was not taken into consideration while passing the order dated 06.09.2022.

10. In view of the above position, this Court is of the view that the case of the petitioner having been duly recommended by the District Scrutiny Committee, the State Level Scrutiny Committee ought not to have rejected the case of the petitioner on the ground of absence of his name in the DISE data as maintained in the school, when it is the categorical stand of the petitioner herein that the school authorities had not captured the name of the petitioner in the DISE data and only the names of the other two teachers working and senior to him in the school were so captured. The case of the petitioner was not considered for provincialisation of his services only on the ground that in the absence of the name of the petitioner in the DISE data as maintained for the school in question, it was not possible for the authorities to come to a definite conclusion as to whether the petitioner had the requisite length of service as

mandated under the provisions of Section 4(2)(iii) of the said Act of 2017. However, the DISE data cannot be the sole fact for determining as to whether a teacher is serving in the said school or not and the said aspect has to be determined by the authorities concerned on perusal of the relevant contemporaneous record as maintained in the school. Contemplating such a situation, the provisions of Section 13(11) the Act of 2017 vests power upon the State Level Scrutiny Committee to cause a physical verification of the institution concerned and to inspect all relevant records produced before it or that may be called for the purpose of causing verification of the service particulars of the teachers. The State Level Scrutiny Committee is not to just endorse the findings and/or recommendations as made by the District Scrutiny Committee but is, under the provisions of the Act of 2017, required to arrive at an its own independent conclusions with regard to the service particulars of the persons as placed before it for provincialisation of their respective services.

11. In view of the above position, the Director of Elementary Education, Assam is now required to again place the case of the petitioner before the State Level Scrutiny committee with all the requisite particulars, including the enquiry report as stated to have been submitted in the matter by the District Elementary Education Officer, Hailakandi on 13.07.2010, and thereafter, require the Committee to consider the case of the petitioner for provincialisation of his services. The State Level Scrutiny Committee, on the case of the petitioner being placed before it, shall proceed to exercise the powers vested on it under the provisions of Section 13(11) of the said Act of 2017 and thereafter, shall arrive at a conclusion with regard the continuous nature of the service rendered by the petitioner in the said school as well as on the other aspects as may be relevant.

12. On such scrutiny of the materials being made available before the State Level Scrutiny Committee, if it is found that the petitioner satisfies the requirement of the provisions of the Section 4(2)(iii) of the Act of 2017, the State Level Scrutiny Committee shall proceed to make appropriate recommendations in favour of the petitioner towards provincialisation of his services.

13. The Director of Elementary Education, Assam shall thereafter, basing on such recommendations as may be made in the matter by the State Level Scrutiny Committee, take the matter forward and issue orders on conclusion of the process as mandated, towards provincialising the services of the petitioner.

In the event, basing on the material as may be placed before the State Level Scrutiny Committee, the State Level Scrutiny Committee is of the view that the continuous nature of the services of the petitioner is not determinable, the said Committee shall record the said findings and on such findings being recorded, the Director shall issue a speaking order communicating to the petitioner the reasons for which his case for provincialisation of his services is not found to be acceptable.

In such an eventuality, the petitioner is at liberty to approach the jurisdictional Educational Tribunal for establishing the fact that he is eligible to have his services provincialised under the provisions of the Act of 2017.

14. The steps as now required to be taken in the matter by the Director of Elementary Education, Assam shall be so taken and concluded by the State authorities within a period of 3(three) months from the date of receipt of a certified copy of this order.

15. The petitioner is hereby directed to submit a representation along with

a certified copy of this order before the Director of Elementary Education, Assam for taking the matter forward.

16. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant