

GAHC010111442022



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

Case No. : WP(C)/3854/2022

ZINNATUN NEHAR
HEAD MISTRESS, PUB AMLOKHI, A.S , AHMEDIA L.P SCHOOL,
W/O- TAZ UDDIN AHMED,
VILL- BATRADABA BARBHETI, P.O- BARBHETI,
DIST- NAGAON, ASSAM, PIN-782002

VERSUS

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

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

3:THE MISSION DIRECTOR
SSA
ASSAM
KAHILIPARA
GUWAHATI- 19.

4:THE DEPUTY COMMISSIONER
P.O
P.S AND DIST- NAGAON
ASSAM
PIN-782001

5:THE DISTRICT MISSION COORDINATOR

- CUM- DISTRICT ELEMENTARY EDUCATION OFFICER
NAGAON
P.O
P.S AND DIST- NAGAON
ASSAM
PIN-782001

6:THE SUB- INSPECTOR (S.I)
OF SCHOOLS
BATADRAVA CIRCLE
DIST- NAGAON
ASSA

Advocate for the Petitioner : MR. Z HAMMAD,

Advocate for the Respondent : GA, ASSAM, SC, SSA,SC, ELEM. EDU

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

ORDER

30.09.2024

Heard Mr. Z. Hammad, learned counsel for the petitioner; Mr. P.N. Sarma, learned counsel for the respondent Nos. 1, 2 & 6; Mr. B. Choudhury, learned counsel for the respondent Nos. 3 & 5; and Ms. B. Deka, learned counsel for the respondent No. 4.

2. In this petition, under Article 226 of the Constitution of India, the petitioner, namely, Zinnatun Nehar has prayed for issuance of direction to the respondent authorities, especially the respondent No. 2, the Director of Elementary Education, Assam for provincialisation of the service of the petitioner, on the basis of the students/teachers ratio, in the line of Notification dated 04.02.2021, issued in favour of Md. Abdul Aziz, Assistant Teacher of Pub Amlokhi A.S. Ahmedia L.P. School, Batadrava, Barbheti, Nagaon.

3. The grievance of the petitioner, being sought to be addressed in this petition, is adumbrated here in below:-

"The petitioner, at first, was appointed as Assistant Teacher in Pub Amlokhi A.S. Ahmedia L.P. School, Nagaon, vide Resolution No. 2, dated 15.03.1999, by the Executive Committee of the said school. Subsequently, she was appointed as Headmistress in the said school; vide Resolution No. 1, dated 01.03.2000, owing to leaving of the post voluntarily by the earlier Headmistress. Thereafter, on 12.05.2005 the S.I. of Schools, Batadrava Circle, Nagaon, prepared an Inspection Report and reflected the name of the petitioner therein as Head Mistress along with three other teachers and found total 107 numbers of student and also the infrastructures. It is the contention of the petitioner that her name finds mentioned in the DISE code for the year 2009 – 2010, having code No. 18100100115. Thereafter, her name also finds mentioned in the year 2010-2011 and thereafter also in the year 2019 – 2020, and her name has been reflected as Headmistress of the said school. As her name find mentioned right from the year 2009 – 2010, in the list the Teachers/Tutors of the said school, the same was sent to the District Level Scrutiny Committee (DLSC) for further necessary action, so as to provincialise the posts of Teachers/Tutors. Thereafter, the said committee had prepared the list of Teachers/Tutors on the basis of teachers and students ratio and recommended the name of all the teaching staff including the Assistant Teacher of the said school for provincialisation. In the said list the name of the petitioner is reflected in serial No.1. The DLSC then forwarded the same to the State Level Scrutiny Committee (SLSC) for further necessary action, so as to provincilaise the posts of Teachers/Tutors.

But, unfortunately only one post/person's service, namely, Abdul Aziz, Assistant Teacher of the said school was provincialised. Though the teachers/students ratio requires two numbers of post, only the post of Assistant Teacher was provincialised on the basis of Notification dated 04.02.2021, issued by the respondent No.2, the Director of Elementary Education, Assam. Though the District Level Scrutiny Committee had forwarded the list of Teachers/Tutors to the higher authorities, including the name of the petitioner, for being rendering her

service for a long period, since 1999, yet she has been deprived of her legitimate claim and benefit of provincialisation of her service in the said Pub Amlokhi A.S. Ahmedia L.P. School, Nagaon.”

4. Mr. Hammad, learned counsel for the petitioner submits that though the name of the present petitioner, who was serving as the Headmistress in the said Pub Amlokhi A.S. Ahmedia L.P. School, along with one Abdul Aziz, who was serving as Assistant Teacher, was forwarded by the DLSC to the SLSC for further necessary action, yet only the service of the Assistant Teacher of the said school was provincialised leaving behind the present petitioner. Mr. Hammad further submits that altogether 72 numbers of students are there in the said school and so far students/teachers ratio is concerned, as many as 3 numbers of Teachers are required in the said school. But, despite, forwarding of 2 names of teachers, including the petitioner, by the DLSC, the SLSC has approved only the service of the Assistant Teacher viz. Abdul Aziz, leaving behind the name of the petitioner, even after rendering service since the year 1999. Mr. Hammad referring to page No. 30 of the writ petition, submits that total number of students from class I to Class V, for the year 2017, submits that altogether 72 students were there in that year and that the DISE code of the school has been shown in the Annexure – 7, for the academic year 2009 – 2010, where the name of the petitioner find mentioned at serial No. 1 and also her name finds mentioned in the DISE code for the academic year 2019 – 2020. Mr. Hammad also submits that the service of the petitioner has not been provincialised without any justifiable reason, whereas the name of the Assistant Teacher of the said school whose name was forwarded along with her was provincialised and as such, the right of the petitioner is violated and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Sarma, learned counsel for the respondent Nos. 1, 2 & 6 submits that he has received the para-wise comments from the respondent No. 2, wherein it has been indicated that as per Provincialisation of Services Act, 2017, three parameters are considered and these are:-

(i) Whether the name of school appeared in DISE Data for the year 2009 or before;

- (ii) Whether the name of incumbent appeared in DISE Data for the year 2011 and afterward; and
- (iii) Enrollment position of the school during 2016 – 2017 and 2017 – 2018 and as the data furnishes by Sarva Shiksha Abhiyan (SSA) in respect of the proposal received from the concerned DEO for provincialisation of service as per Provincialisation of Services Act, 2017.

5.1 Mr. Sarma also submits that the service of the petitioner could not be provincialised on account of non-appearance of her name and her school in the DISE Data of National University of Educational Planning and Administration (NUEPA), New Delhi, up to 2012 – 2013. Mr. Sarma further submits that the SLSC has scrutinized all the proposition and found that as per record forwarded by the SSA, the name of the petitioner, Zinnatun Nehar of Pub Amlokhi A.S. Ahmedia L.P. School, Nagaon does not appear in DISE Data of NUEPA, New Delhi up to 2012 – 2013. Therefore, the State Level Scrutiny Committee as well as the joint committee recommended only the service of Md. Abdul Aziz for provincialisation against Pub Amlokhi A.S. Ahmedia L.P. School, Nagaon. As such, Mr. Sarma has submitted that there is no merit in this petition and accordingly, it is contended to dismiss the same.

6. In reply to the submission of Mr. Sarma, Mr. Hammad, learned counsel for the petitioner submits that as per Annexure – 7, at page No. 27 of the writ petition, the DISE code and the name of Pub Amlokhi A.S. Ahmedia L.P. School, Nagaon is reflected and the code is 18100100115 for the academic year 2009 – 2010, where the name of the petitioner is also reflected at serial No. 1 and thereafter, also her name appeared in the DISE code for the year 2019 – 2020. Mr. Hammad further submits that the Annexure – 9 reflects the number of students for the year 2017 as 72 and as such, the petitioner has been able to fulfill all the aforementioned 3 requirements, as pointed by Mr. Sarma herein above, and therefore, Mr. Hammad contended to allow the petition.

7. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as documents placed on record and also

perused the para-wise comments received from Director of Elementary Education, Kahilipara, which was placed before the court at the time of hearing.

8. It appears from the para-wise comments that at the time of provincialisation of service, the SLSC had considered three parameters, those are:-

- (i) Name of School in DISE Data for the year 2009 or before;
- (ii) Name of Teacher in the DISE Data for the year 2011 and afterward; and
- (iii) Enrollment position of the school during 2016 – 2017 and 2017 – 2018;

9. Further, it appears from the record specially from Annexure – 7 of the writ petition, which is the DISE Data for the academic year 2009 – 2010, of Pub Amlokhi A.S. Ahmedia L.P. School, Nagaon and in the said data the name of the petitioner finds at serial No. 1 and the name of Assistant Teacher, Md. Abdul Aziz is shown at Sl.No.2. The year of her joining service is also reflected as 1999, besides showing that she has been working in the said school since 1999. Also, it appears from the Annexure – 8 that the name of the petitioner find mentioned in the DISE Data for the year 2019 – 2020. It also appears that the enrollment position of the said School, during the year 2016 – 2017 was 104 and 72 respectively.

10. Thus, it appears that the petitioner has been able to fulfill all the 3 requirements of for provincialisation of service of the petitioner by the State Level Scrutiny Committee. But, despite fulfilling all the requirements her service was not provincialised.

11. Notably, the documents relied upon by the petitioner is not disputed by the learned Standing Counsel for the respondent authorities. Besides, no counter affidavit is also filed by any of the respondent.

12. Thus, I find substance in the submission of Mr. Hammad, learned counsel for the petitioner, that despite fulfilling of all the three criteria by the petitioner, the respondent authorities had not provincialised the service of the petitioner.

13. Another aspect of the matter, that should not lost sight of, is the provincialisation of

service of Assistant Teacher of the same School, whose name also finds mentioned in the same DISE Data - Annexure – 8, for the academic year 2019 – 2020, of Pub Amlokhi A.S. Ahmedia School, Nagaon wherein the name of the Assistant Teacher, Md. Abdul Aziz is shown at third column. His name also appeared in the Annexure – 8 along with the name of the petitioner in the DISE Data for the year 2019 – 2020. It also appears that the same enrollment position of the said School, during the year 2016 – 2017 was 104 and 72 respectively, which was considered in his case and his service was provincialised but the petitioner, who had been working as Headmistress since 1999, has not been provincialised. On such count, the action of the respondent authorities seems to be actuated by mala-fides as because on the basis of same data, service of a person who is junior to the petitioner was provincialised and the petitioner, who has been rendering her service since 1999 has not been provincialised.

14. In the result, I find sufficient substance in the submission of Mr. Hammad, learned counsel for the petitioner and accordingly the same stands accepted. There being merit in this petition and accordingly, the same stands **allowed**.

15. It is provided that the respondent No. 2 shall consider the provincialisation of service of the petitioner, namely, Zinnatun Nehar, Headmistress of Pub Amlokhi A.S. Ahmedia L.P. School, Batadrava, Barbheti, Nagaon, within a period of 2(two) months from the date of receipt of a certified copy of this order.

16. The petitioner shall obtain a certified copy of this order and shall place before the respondent No. 2. On receipt of the same, the respondent No. 2 shall provincialise the service of the petitioner, if otherwise, she is found to be not suitable for the said post.

Sd/- Robin Phukan
JUDGE

Comparing Assistant