

GAHC010120042023



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

Case No. : WA/201/2023

ISMAIL ALI SK
S/O- SEKENDAR ALI SK., R/O VILL.- PAGALGANJ, P.O. - PAGLAGANJ, P.S.-
GOLAKGANJ, DIST.- DHUBRI, ASSAM, PIN- 783334.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
DEPTT. OF SCHOOL EDUCATION, DISPUR, GHY- 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
CUM MEMBER SECRETARY
DISTRICT LEVEL SCRUTINY COMMITTEE
DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301.

4:THE DEPUTY COMMISSIONER
DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301.

5:THE DEPUTY INSPECTOR OF SCHOOLS
DHUBRI
DIST.- DHUBRI

ASSAM
PIN- 783301.

6:THE SCHOOL MANAGING COMMITTEE
OF BALASHI L.P. SCHOOL
REP. BY ITS PRESIDENT
VILL.- PAGLAGANJ
P.O.- PAGLAHAT
DIST.- DHUBRI
ASSAM
PIN- 783334.

7:THE HEADMASTER-CUM-MEMBER SECY.
MOHAMMED ALI
VILL.- PAGLAGANJ
P.O.- PAGLAHAT
DIST.- DHUBRI
ASSAM
PIN- 783334.

8:SALEHA KHATUN
W/O- SAKIRUDDIN HOQUE
VILL.- PAGLAGANJ
P.O.- PAGLAHAT
DIST.- DHUBRI
ASSAM
PIN- 783334

Advocate for the Petitioner : MS. R CHOUDHURY, MRS. S ROY

Advocate for the Respondent : GA, ASSAM, MR. M DUTTA,MR. M ISLAM,MR. N UDDIN,FOR
CAVEATOR,SC, ELEM. EDU

Linked Case : WA/202/2023

ISMAIL ALI SK
S/O- SEKENDAR ALI SK.
R/O VILL.- PAGALGANJ
P.O. - PAGLAGANJ
P.S.- GOLAKGANJ
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Advocate for : MS. R CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 8 ORS.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of Hearing: 19-11-2024

Date of Judgment: 27-11-2024

JUDGMENT & ORDER (CAV)

(N. Unni Krishnan Nair. J)

Heard Ms. R. S. Choudhury, learned counsel appearing for the appellant in the above noted Writ Appeals. Also heard Mr. R. Majumdar, learned Standing Counsel Education (Elementary) Department appearing for the respondent nos. 1, 2, 3, 5 & 7 in the Writ Appeal No. 201/2023 and for respondent nos. 1, 2, 3, 5, 6 & 8 in Writ Appeal No. 202/2023; Ms. R. B. Bora, learned Junior Government Advocate appearing for the respondent no. 4 in both the appeals as well as Mr. M. Dutta, learned counsel appears for respondent no. 8 in Writ Appeal No. 201/2023 and for respondent no. 9 in Writ Appeal No. 202/2023.

2. The present Intra Court Appeals were so instituted assailing a common Judgment and Order dated 11.05.2023, passed by the learned Single Judge in WP(C)/5209/2016

and WP(C)/1177/2015.

3. For the sake of convenience, the parties are denoted in the present order in terms of their placement in WA No. 202/2023.

4. The issue involved before the Writ Court is with regard to the claim for provincialisation of services of the appellant, herein, and the respondent no. 9.

5. WP(C)/1177/2015 was so instituted by the appellant, herein, presenting a challenge to a communication dated 29.01.2015, by which the Deputy Director of Elementary Education, Assam had held that the cases of both the appellant and the respondent no. 9 cannot be considered for provincialisation of their services, for the reasons assigned therein, in terms of the provisions of "Assam Venture Educational Institutions (Provincialisation of Services) Act of 2011".

6. The appellant, herein, had instituted WP(C)/5209/2016 assailing an order dated 24.08.2016, by which the Director of Elementary Education, Assam, had proceeded to provincialise the services of the respondent no. 9 herein, as an Assistant Teacher in Balashi L.P. School.

7. The facts requisite for adjudication of the issues arising in the above noted writ appeals is noted herein below from WA/202/2023.

8. The respondent no. 9 was appointed as Head Teacher by the School Management Committee of Balashi L.P. School on 10.10.1991; however, she was released from the post of Head Teacher on 22.12.1996 and allowed to continue as an Assistant Teacher in the said school. Thereafter, the appellant was appointed as a Teacher in the said school by the School Managing Committee on 05.06.1997. It is to be noted that at the time of appointment of the appellant as well as the respondent no. 9, the school was in its venture stage.

9. The respondent no. 9 while performing her duties as an Assistant Teacher in Balashi L.P. School, in terms of an engagement made in her case to work as an

Anganwadi Helper in Balashi Gaon L.P. School Anganwadi Centre, also discharged duties as a Anganwadi Helper w.e.f. 25.02.2002 in the said Anganwadi Centre. The respondent no. 9 accordingly, continued to serve in both the institutions and she had functioned as a Anganwadi Helper w.e.f. 25.02.2002 to 24.05.2011. The respondent no. 9 had thereafter, submitted her resignation from the post of Anganwadi Helper on 27.06.2011. The fact that the respondent no. 9 was working in two different institutions at the same time having come to the notice of the authorities of the Elementary Education Department, directions came to be issued to the School Managing Committee by the jurisdictional District Elementary Education Officer to take action against the respondent no. 9 for such act on her part. The School Managing Committee, acting under the directions of the Departmental authorities, proceeded to issue show-cause notices to the respondent no. 9 and on receipt of her reply thereto, the School Managing Committee, in its meeting held on 12.11.2012, proceeded to adopt resolutions towards promoting the appellant herein from the post of 2nd Assistant Teacher to 1st Assistant Teacher and the respondent no. 9 was so degraded from the post of 1st Assistant Teacher to 2nd Assistant Teacher, with further stipulation that she be appointed w.e.f. 27.06.2011 i.e. w.e.f. the date she had resigned from her engagement as Anganwadi Helper in the said Anganwadi Centre.

10. Being aggrieved by the said resolutions adopted by the School Managing Committee, in its meeting held on 12.11.2012, the respondent no. 9, as petitioner, had instituted WP(C)/361/2013 before this Court. This Court, vide order dated 12.12.2013, was pleased to dispose of the writ petition by providing that the District Elementary Education Officer, Dhubri, shall refer the matter to the District Level Redressal Committee towards resolving the dispute as has been raised in the writ petition.

11. In the meanwhile, under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, Balashi L.P. School having been found to be eligible for consideration of the cases of the serving teachers in the school

for provincialisation of their services, the cases of the teachers working in the school, including the appellant and the respondent no. 9, came to be taken up for such consideration. In pursuance to the consideration so made, the Director of Elementary Education, Assam, vide order dated 19.12.2013, proceeded to provincialise only the services of one Mohammed Ali Sheikh, who was working in the said school as its Head Teacher at the relevant point of time. However, the second post allotted to the said school was kept vacant. The appellant and the respondent no. 9 thereafter, had submitted applications praying for provincialisation of their respective services. The prayers so made were considered by the Director of Elementary Education, Assam and vide communication dated 29.01.2015, issued by the Deputy Director of Elementary Education, Assam, in reference to the writ petition being WP(C)/361/2013 instituted by the respondent no. 9, it was held that the respondent no. 9 was not eligible to be considered for provincialisation of her services as she was working in an Anganwadi Centre under the Social Welfare Department. In respect of the appellant herein, it was held that his case would not be permissible to be considered, inasmuch as, the School Managing Committee of the school had no power to promote or degrade any teaching or non-teaching staff after 01.01.2011, as per the provisions of the said Act of 2011. Being aggrieved by the communication dated 29.01.2015, the appellant herein had instituted WP(C)1177/2015, inter alia, praying for an interference with the said order dated 29.01.2015, to the extent, it restrains consideration of his case for provincialisation of his services.

12. It is seen from the records that although the communication dated 29.01.2015 was so issued in respect of WP(C)361/2013 and therein, the case of the respondent no. 9 was held to be not permissible to be considered for provincialisation of her services, the respondent authorities subsequently, proceeded to consider the case of the respondent no. 9 for provincialisation of her services and vide order dated 24.08.2016, the services of the respondent no. 9 came to be so provincialised w.e.f. 01.01.2013 in terms of the provisions of the said Act of 2011. Being aggrieved, the

appellant herein had instituted WP(C)/5209/2016, assailing the said order dated 24.08.2016.

13. The learned Single Judge, proceeded to take up the writ petitions being WP(C)/5209/2016 and WP(C)/1177/2015 for disposal and upon hearing the parties to the proceeding and on consideration of the materials coming on record, proceeded vide order dated 11.05.2023, to dismiss both the above noted writ petitions and thereby, rejected the claim of the appellant herein for provincialisation of his services.

14. Ms. R. S. Choudhury, learned counsel for the appellant has submitted that the respondent no. 9, on account of the services rendered by her in two different institutions had rendered herself ineligible to be so considered for provincialisation of her services as a Teacher in Balashi L.P. School under the provisions of the Act of 2011. The learned counsel for the appellant has further submitted that the departmental authorities having already concluded vide communication dated 29.01.2015 that the respondent no. 9 was not eligible to have her services considered for provincialisation under the provisions of the said Act of 2011, on account of the services rendered by her at the same time in two different institutions, it was not open for the departmental authorities to subsequently hold the respondent no. 9 to be eligible for provincialisation. The learned counsel for the appellant has accordingly, submitted that the order dated 24.08.2016, issued towards provincialising the services of the respondent no. 9, cannot be sustained and would call for an interference from this Court.

15. Insofar as the claim of the appellant for provincialisation of his services is concerned, the learned counsel for the appellant has submitted that given the dates of initial engagement of both the appellant and the respondent no. 9 in Balashi L.P. School, the respondent no. 9 is senior to the appellant herein, however, she having been held to be ineligible for being considered for provincialisation of her services, the appellant herein, who has been serving in the said school w.e.f. 05.06.1997 is the next

senior teacher available in the school and accordingly, his case was required to be so considered for provincialisation of his services under the said Act of 2011.

16. Per contra, Mr. M. Dutta, learned counsel for the respondent no. 9 has submitted that the services rendered by the respondent no. 9 both as an Anganwadi Helper in Balashi Gaon L.P. School Anganwadi Centre and as an Teacher in Balashi L.P. School, were on voluntary basis. No remuneration was due to the respondent no. 9 on account of the services rendered by her in the said L.P. School during the period 25.02.2002 till 24.05.2011 and she, during the said period had only received an honorarium on account of her services as an Anganwadi Helper. Mr. Dutta, has further submitted that the services rendered by the respondent no. 9 in the Balashi L.P. School was in no way hampered on account of the services rendered by her during the period 25.02.2002 till 24.05.2011 as an Anganwadi Helper, inasmuch as, the timing of operation of the Anganwadi Centre and the School did not overlap. Accordingly, Mr. Dutta, learned counsel has submitted that the respondent authorities having noticed the said position and thereafter, found the respondent no. 9 to be eligible to have her services provincialised as a Teacher in Balashi L.P. School proceeded to issue the order dated 24.08.2016 and accordingly, the said order dated 24.08.2016 in the facts and circumstances involved, would not call for any interference.

17. We have heard the learned counsel for the parties and also perused the materials available on record.

18. The issue arising in the present proceeding is as to whether the respondent no. 9 was eligible to have her case considered for provincialisation of her services, under the provisions of the said Act of 2011. A further issue would arise as to whether, in the event, the respondent no. 9 is held to be not eligible to have her services considered for provincialisation under the Act of 2011, whether the appellant herein, can be held to be eligible to have his services so considered for provincialisation under the Act of 2011.

19. Section 2 (h) of the said Act of 2011 defines the term "Employees" to mean and include all serving employees both teaching and non-teaching of Venture Educational Institutions who have been appointed by the concerned Venture Educational Institutions before the 1st day of January, 2011 and whose services are being or would be provincialised under the Act.

20. It is an admitted position that the respondent no. 9 was appointed as a Teacher in Balashi L.P. School by the School Managing Committee on 10.10.1991 as a Head Teacher and thereafter, she was permitted to continue to serve in the school w.e.f. 22.12.1996 as an Assistant Teacher. On the other hand, the appellant herein was so appointed in the said school only on 04.06.1997. Given the dates of appointment of the appellant and the respondent no. 9, it is the respondent no. 9 who is senior to the appellant in the said school. However, it is seen that the appellant w.e.f. 25.02.2002 till 24.05.2011 had also discharged duties as an Anganwadi Helper in 71 No. Balashi Gaon Anganwadi Centre.

21. On a pointed query made by this Court, to the counsel for the respondent no. 9 as to whether the respondent no. 9 had discharged her duties as an Anganwadi Helper with due permission from the school authorities and/or the authorities of the Elementary Education Department, the counsel for the respondent no. 9 has not been able to place on record any material to clarify the position. Accordingly, it is to be held that the services rendered by the respondent no. 9 as an Anganwadi Helper in the said Anganwadi Centre was an unilateral act on her part.

22. The provisions of the said Act of 2011 having defined the "Employees" to mean a serving employee both teaching and non-teaching, appointed in the concerned educational institutions and it is on account of such service rendered by such employee in a Venture educational institution that his/her case would be permissible to be so considered under the provisions of the Act of 2011 for provincialisation of his/her service. The services rendered by the respondent no. 9 as an Anganwadi

Helper w.e.f. 25.02.2002 to 24.05.2011, which falls within the period reckoned under the provisions of the Act of 2011 for the purpose of provincialisation of employees of Venture educational institutions, we are of the considered view that on account of such service rendered by the respondent no. 9 as an Anganwadi Helper, admittedly, in an institution not falling under the Elementary Education Department but, so controlled then by the Social Welfare Department and there being no permission received by the respondent no. 9 for the purpose, the said service rendered by the respondent no. 9 as an Anganwadi Helper, has rendered her ineligible for having her services considered for provincialisation as an Assistant Teacher in Balashi L.P. School under the provisions of the said Act of 2011. It is also noticed that the departmental authorities had also accepted the said position in the communication dated 29.01.2015.

23. Having concluded that the respondent no. 9 was not eligible for having her case considered for provincialisation of her services, we would now consider the further issue as to whether the appellant would be entitled to a direction for having his case considered for provincialisation of his services under the said Act of 2011.

24. As noticed hereinabove, after the respondent no. 9, it is the appellant who is the senior most Assistant Teacher in the said school. The case of the appellant was held by the Departmental authorities vide the communication dated 29.01.2015, to be not eligible for provincialisation of his services, in view of the fact that he was upgraded by the School Managing Committee to the 1st post of Assistant Teacher by a resolution adopted by the School Managing Committee, in its meeting held on 22.11.2012. Having considered the said resolution dated 22.11.2012; we are of the considered view that in the facts and circumstances involved in the present matter, the said resolution is of no consequence, inasmuch as, the respondent no. 9 having been held to be ineligible for having her case considered for provincialisation, there being a necessity of provincialising the services of one more teacher in the said school, under the provisions of the said Act of 2011, the appellant herein, was eligible to have his

case so considered for provincialisation of his services against the vacant post in the said school.

25. Having concluded that the appellant was eligible to have his case considered for provincialisation of his services under the regime of the said Act of 2011, we also take notice of the fact that the services of the appellant was not provincialised under the said Act of 2011 and accordingly, no right can be said to have accrued to the appellant to have his services provincialised under the Act of 2011. The said Act of 2011 was subsequently, set aside by this Court. The said Act of 2011 having been set aside by this Court, the Government had enacted the "Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017". Accordingly, the services of the appellant would now be permissible to be so considered for provincialisation only under the provisions of the said Act of 2017.

26. In view of the conclusions reached hereinabove, we are of the considered view that the conclusions reached by the learned Single Judge in the order dated 11.05.2023, passed in WP(C)/5209/2016 and WP(C)/1177/2015; would call for an interference and accordingly, the same is set aside.

27. Having interfered with the said order dated 11.05.2023, we pass the following directions:-

- (1) The provincialisation of the services of the respondent no. 9 effected vide order dated 24.08.2016, stand set aside, however, it is provided that if any pay and allowances were so drawn by the respondent no. 9 in terms of the order dated 24.08.2016, the same shall not be recovered.
- (2) The appellant herein is held to be eligible to have his case considered for provincialisation of his services against the post of teacher available in the said school, however, the case of the appellant for such provincialisation shall be so made, strictly, in terms of the provisions of the "Assam Education (Provincialisation of Services of Teachers and Re-organisation

of Educational Institutions) Act, 2017”.

- (3) The appellant is given liberty to approach the respondent authorities, more particularly, the Director of Elementary Education, Assam, praying for consideration of his case for provincialisation of his services under the said Act of 2017 and in the event of such application being made, the Director of Elementary Education, Assam, shall have the case of the appellant considered for provincialisation of his services, strictly, in accordance with the provisions of the said Act of 2017 and pass appropriate order(s) in the matter within a period of 6(six) months from the date of receipt of the representation of the appellant along with a certified copy of this order.

28. With the above observations and directions, the writ appeals stand disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant