

GAHC010125792021



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

Case No. : WP(C)/4160/2021

DHANADA DIHINGIA BARUAH
W/O SRI C.K BARUAH
RESIDENT OF HOUSE NO. 1 NAMGHAR PATH MILIJULI BYLANE,
PANJABARI, DIST KAMRUP (M) GUWAHATI 781037

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SECONDARY EDUCATION, DISPUR GUWAHATI 06

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GUWAHATI 19

3:THE INSPECTOR OF SCHOOLS KAMRUP (M)
PANBAZAR GUWAHATI 781001

4:THE PRINCIPAL
KARMASHREE HITESWAR SAIKIA SENIOR SECONDARY SCHOOL
PANJABARI GUWAHATI 781022

5:THE PRESIDENT GOVERNING BODY
KARMASHREE HITESWAR SAIKIA SENIOR SECONDARY SCHOOL
PANJABARI GUWAHATI 781022

6:NIKUNJA BARUAH R/O- CITIZEN APARTMENT H. NO. 1 B
OLD CHACHAL ROAD NEAR NAGALAND HOUSE
KHANAPARA GUWAHATI ASSAM PIN- 781022

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : SC, SEC. EDU.

:::BEFORE:::
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 01.04.2024
Date of Judgment & order: 01.04.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Goswami, learned counsel for the petitioner. Also heard Mr. Bedanta Kaushik, Secondary Education Department, appearing on behalf of the official respondents.

2. As consented to by the learned counsel appearing for the parties; this writ petition is taken-up for final consideration and disposal.

3. The petitioner by way of instituting the present proceedings; has presented a challenge to an order, dated 04.02.2021, on the ground that the respondent No. 6 who has been provincialized as a teacher in the subject of Logic and Philosophy w.e.f. 01.01.2021, in the school, in question, had already retired from her services on attaining the age of superannuation w.e.f. 01.03.2020 and accordingly, the petitioner prays that her case against the said post of Logic and Philosophy subject, be considered for provincialization of her services.

4. The facts requisite to be considered for adjudication of the issue arising in the present proceedings is noticed hereinbelow:

The petitioner had joined her services in Karmashree Hiteswar Saikia Senior Secondary School on 01.06.2001, as a teacher in the subject of Logic and Philosophy. The said subject was granted concurrence by the Government on 15.02.2005. It is contended in the present proceedings that the petitioner fulfills all requisite criteria for being considered for provincialization of her services in the said school.

It is projected in the writ petition that upon enactment of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the cases of the serving teachers of the said school were taken-up for consideration by the authorities and thereafter, vide the order, dated 04.02.2021, the services of the eligible teachers of the said school were provincialized w.e.f. 01.01.2021 and Bagarbari High School was identified as the Base School, requiring the provincialized teachers to join therein. In the list of the teachers provincialized vide the order, dated 04.02.2021; the name of the respondent No. 6 figures and accordingly, her services also stood provincialized w.e.f. 01.01.2021.

However, it is to be noted that the respondent No. 6 had retired from her services on 01.03.2020 on attaining the age of superannuation. Accordingly, the petitioner staked her claim for being considered for provincialization of her services against the said post of Logic and Philosophy and the same not having evoked any positive response from the respondent authorities; the present proceedings has been filed.

5. It is seen from the materials available on record that after the issuance of the order, dated 04.02.2021, provincializing the services of eligible teachers of the said school w.e.f. 01.01.2021 and also provincializing the services of the respondent No. 6 w.e.f. 01.01.2021; the Principal of the school vide the communication, dated 20.08.2020, had informed the Director, Secondary Education Department, that although a post of teacher in Logic and Philosophy was sanctioned for the said school and the services of the said respondent No. 6 provincialized against the same but the respondent No. 6 having already retired on 01.03.2020 on attaining the age of superannuation; it was requested that the services of the petitioner be provincialized against the said sanctioned post of teacher in the subject of Logic and Philosophy in the school, in question.

6. The Additional Secretary to the Government of Assam vide his communication, dated 21.09.2020, while forwarding the representation of the petitioner, herein, to the Director, Secondary Education Department, had required the latter to examine the matter and take steps as per the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

7. It is also to be noted that as of 2017, the enrollment status of the students against the subject of Logic and Philosophy in the said school, was around 119 students.

8. When the process for consideration of the eligible teachers of the said school was initiated under the said Assam Education (Provincialization of

Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the Principal of the school, in question, had submitted the list of particulars of the teachers working therein and the name of the petitioner, herein, figured at Serial No. 12 in the said list, and it was shown that the petitioner was serving as a teacher in the school since 01.06.2001 and the subject Logic and Philosophy had the enrollment as per the mandate of the said Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

9. It is also seen that vide a resolution, dated 18.08.2020, the Governing Body of the school had resolved to allow the petitioner, herein, to hold the first post of teacher in Logic and Philosophy subject in place of the respondent No. 6.

10. The Director, Secondary Education Department, Assam, has filed an affidavit-in-opposition in the matter and had contended therein that in terms of the directions passed by the Additional Secretary to the Government of Assam, Secondary Education Department, vide the communication, dated 21.10.2021, steps were being taken by the authorities to place the case of the petitioner for consideration towards provincialization of her services before the State Level Scrutiny Committee(SLSC) in its next meeting. The Director, Secondary Education Department, Assam, has filed an additional affidavit in the matter and therein, had contended that the case of the petitioner was placed before the State Level Scrutiny Committee(SLSC) and the State Level Scrutiny Committee (SLSC) upon consideration of her case in terms of the provisions of the said Assam Education (Provincialization of Services of Teachers and Re-organization

of Educational Institutions) Act, 2017; proceeded to hold that the petitioner was not eligible for provincialization of her services in terms of Section 3(1)(ix) and 21(I) of the said Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

11. It was further contended by the Director of Secondary Education Department, Assam, that the post of teacher in Logic and Philosophy subject as sanctioned to the said school could not be utilized on account of the fact that the respondent No. 6, herein, had retired on attaining the age of superannuation prior to the sanction of the said post to the school in question, however, the services of the petitioner cannot be provincialized against the said post in-as-much as the post was sanctioned as personal to the respondent No. 6 in terms of the provisions of Section 21(I) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

12. The Director, Secondary Education Department, Assam, further proceeded to contend that the State Level Scrutiny Committee(SLSC) did not recommend the case of the petitioner for provincialization of her services against the second post of Logic and Philosophy as the total enrollment in the year 2016 for the subject of Logic and Philosophy was only 59 students in the school and as per the provisions of Section 3(1)(ix) of the said Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; for sanction of an additional post, there has to be enrollment in excess of 80 students against the concerned subject in the school in question.

13. The case of the petitioner is that her services is required to be considered for provincialization against the post of teacher for the subject of Logic and Philosophy as sanctioned by the Government to the said school. The provisions of Section 21(I) of the said Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, would have no application in the case on hand in-as-much as the post so sanctioned against the subject of Logic and Philosophy was never utilized in the school in-as-much as before the sanction of the said post; the respondent No. 6 for whom the said post was sanctioned, had already retired from her services on attaining the age of superannuation. Accordingly, the contentions raised by the Director, Secondary Education Department, Assam, in this connection, as well as the conclusions reached by the State Level Scrutiny Committee (SLSC) with regard to the case of the petitioner and as reflected in the additional affidavit filed by the Director, Secondary Education Department, Assam, in the matter; does not merit acceptance by this Court.

14. A perusal of the additional affidavit filed by the Director, Secondary Education Department, Assam, would go to reveal that the State Level Scrutiny Committee(SLSC) have misdirected itself in the matter and the consideration as was made in the case of the petitioner was on a presumption that the petitioner's services were being sought to be provincialized as the second teacher in the said school against the Logic and Philosophy subject whereas in view of the developments taking place in the matter; the case of the petitioner was to be considered as the first teacher against the post of Logic and Philosophy subject in the said school.

15. In view of the above position; this Court is of the considered view that a vested right has accrued to the petitioner, herein, to have her services considered for provincialization in terms of the said Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, against the post of Logic and Philosophy sanctioned to the said school by the Government against the subject of Logic and Philosophy. The said post although sanctioned, having not been utilized for the purpose of provincializing the services of the respondent No. 6 on account of the fact that she had retired from her services on attaining the age of superannuation much prior to the date of effect given to the order, dated 04.02.2021, i.e. 01.01.2021.

16. It is reiterated that the respondent No. 6 had retired from her services on attaining the age of superannuation on 01.03.2020. Accordingly, the case of the petitioner is now required to be considered by the respondent authorities for provincialization of her services in the said school against the Logic and Philosophy subject w.e.f. 01.01.2021 as was done in respect of other teachers whose names is included in the order, dated 04.02.2021 against the post already sanctioned for the said subject.

17. At this stage; this Court would examine the contention of the Director of Secondary Education Department, Assam, to the effect that the case of the petitioner could not be considered against the second post Teacher in the subject of Logic and Philosophy as the total enrolment of students in the said subject was only 59 in the year 2016 and provisions of Section 3(1)(ix) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, having mandated that the minimum

students appearing in the “last final examination” of the highest class of the said school for the particular subject must exceed 80(eighty) for an additional post, accordingly, in 2016, only 59 students having appeared for the “last final examination”; an additional post was not mandated for the subject Logic and Philosophy in the said school.

18. At the outset, it is to be noted that the meaning required to be assigned to the term “last final examination” as appearing in the provisions of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, is required to be understood. Provisions of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, which mandates that at least 10 students must have appeared in the “last final examination” in any subject in case of a Venture Higher Secondary School or a Venture Junior College, is clear from the decision of this Court in the case of Jashimuddin Choudhury v. State of Assam & ors., vide judgment & order, dated 19.09.2023, passed in WP(c)730/2023. This Court on examination of the said term, had come to a conclusion that the expression “last final examination” as used in Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, would mean the HSLC examination of 2017 or the HS examination of 2017 in-as-much as the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, had come into effect only from 12.05.2017 and the said Higher Secondary Examination of 2017 had already been concluded by then. It is to be noted that the Higher Secondary School examination for the year 2017 was held between February, 2017 and March,

2017.

19. As held by this Court in the case of Jashimuddin Choudhury(supra); the term “last final examination” insofar as it concerns the Higher Secondary School examination conducted by the Assam Higher Secondary Education Council, is the Higher Secondary School examination of 2017. From the records, it is seen that as of 2017, the enrollment status of the students in the school was more than 100, to be specific, there was 119 students enrolled as of 2017 in the Logic and Philosophy subject in the said school.

20. Accordingly, as of 2017, more than 80(eighty) students having appeared for the Higher Secondary School Examination of 2017; there was a necessity as per the provisions of Section 3(ix) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, to sanction an additional post of teacher/tutor against the subject of Logic and Philosophy in the school in question and the services of the petitioner was required to be provincialized against the said post vide the said order, dated 04.02.2021, along with the other serving teachers of the school whose services came to be provincialized. As such, the contention of the Director of Secondary Education Department, Assam, that the case of the petitioner was not liable to be considered along with the other serving teachers in the school on the ground of low enrollment of students in the school in the subject of Logic and Philosophy, is not acceptable.

21. In that view of the matter, the following directions are hereby issued:-

(i). In view of the facts as existing in the matter, the provincialization as effected in the case of the respondent No. 6, vide the order, dated 04.02.2021, stands interfered with.

(ii). The Director, Secondary Education Department, Assam, shall now place the case of the petitioner before the State Level Scrutiny Committee (SLSC) and will inform the State Level Scrutiny Committee (SLSC) that the case of the petitioner, herein, is to be considered for provincialization of her services against the first post in the subject of Logic and Philosophy and also that a post against the said subject sanctioned to the school w.e.f. 01.01.2021, is available.

(iii). The State Level Scrutiny Committee(SLSC) shall, thereafter, examine the case of the petitioner and upon verification of the requisite particulars as mandated to be so verified, shall proceed to make its recommendations in the matter with regard to the provincialization of the services of the petitioner.

(iv). On receipt of the recommendations from the State Level Scrutiny Committee(SLSC); the Director, Secondary Education Department, Assam, shall proceed to have the same approved from the Government and shall also inform the Government in the Secondary Education Department that the post for the subject Logic and Philosophy has already been sanctioned to the said school and the case of the petitioner be considered against the said post.

(v). On receipt of requisite approval in this connection from the Government; the Director, Secondary Education Department, Assam, shall issue orders towards provincializing the services of the petitioner, herein, w.e.f. 01.01.2021, with all consequential benefits of pay, seniority, etc..

(vi). The arrears of pay as now becoming due to the petitioner w.e.f. 01.01.2021 on provincialization of her services, shall be released to the petitioner.

22. The above directions shall now be complied by the Director, Secondary Education Department, Assam, as well as by the State Level Scrutiny Committee(SLSC), within a period of 3(three) months from the date of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant