

GAHC010125992021



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

PRINCIPAL SEAT: GUWAHATI

WP(c)4689/2021

Ms. Malati Bepari, aged about 58 years, daughter of Shri Narayan Chandra Bepari,
Resident of village Kiamari part-4, PO Kaimari, PS Golakganj, District
Dhubri, Assam.

..... Petitioner

-Versus-

1. The State of Assam represented by the Secretary & Commissioner to the Government of Assam, Education(Elementary) Department, Dispur, Guwahati-781006.
2. The Secretary to the Government of Assam, Education(Elementary) Department, Dispur, Guwahati-781006.
3. The High Power Committee represented by Secretary to the Government of Assam, Education(Elementary) Department, Dispur, Guwahati-781006.
4. The Director of Elementary Education Department, Kahilipara, Guwahati-781006.
5. The District Elementary Education Officer(DEEO), Dhubri, PO & District Dhubri, PIN 783301.
6. The Block Elementary, Agomani, PO Agomoni, District Dhubri, Assam.

..... Respondents

By Advocates:

For the petitioner: Mr. A. R. Bhuiyan

For the respondents: Mr. P.K. Borah, SC, Elementary Education Department

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

Date of hearing : 21.03.2024
Date of Judgment & order: 21.03.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. A. R. Bhuiyan, learned counsel, appearing on behalf of the petitioner. Also heard Mr. P. K. Borah, learned standing counsel, Elementary Education Department, appearing on behalf of all the official respondents.

2. The petitioner by way of instituting the present proceedings, has raised a grievance pertaining to non-provincialization of her services as an Assistant Teacher in Kairamari M.E. Madrassa. The petitioner has also presented a challenge to an order, dated 18.01.2021, by which her case for provincialization was rejected by the High Powered Committee(HPC) on the ground, she was an Additional Teacher in the said school.

3. The brief facts requisite for adjudication of the issues arising in the present proceedings, is noticed hereinbelow:

The petitioner was appointed by the School Managing Committee(SMC) of the said school on 04.02.1996. The said school was established on 05.02.1971 and was granted recognition on 01.04.1975 and w.e.f. 23.02.1980, the school came to be provincialized. However, the benefit of such provincialization was not extended to the teachers working in the said school and the said provincialization came to be kept in abeyance on account of certain disputes

arising with regard to the functioning of the said school. It was on the provincialization of the said school being kept in abeyance; the School Managing Committee(SMC) of the said school proceeded to make appointments against the post of Assistant Teachers in the said school as per the need. Accordingly, the petitioner was appointed as an Additional Teacher on 04.02.1996. The appointments as effected in the said school came to be approved by the jurisdictional District Elementary Education Officer(DEEO) vide his order, dated 06.10.2004. On completion of the inquiry, as ordered in the matter and on basing on the report thereof; the Government of Assam in the Elementary Education Department, was pleased in the year 2008, to vacate the kept in abeyance order. Accordingly, the provincialization of the said school as effected in the year 1980, came to be revived. On revival of the provincialization order, the services of the Headmaster, 2(two) Assistant Teachers, 1(one) Arabic Teacher and 1(one) non-teaching staff serving in the said school came to be provincialized.

It is to be noted here that other than the Headmaster working in the said school and whose name finds mention in the approval order, dated 06.10.2004; all the other teachers whose services came to be provincialized were so appointed after the said school was provincialized and the said order was kept in abeyance. The services of the petitioner not being provincialized; she approached the authorities for consideration of her case and on not receiving a positive response, the petitioner instituted WP(c)4351/2010 before this Court. This Court vide order, dated 24.08.2011, on finding that the petitioner to be a dropped teacher, disposed of the said writ petition, directing that the case of the petitioner be considered in terms of the decision of this Court in the case of

Tapan Chandra Das v. State of Assam & ors., reported in **2008(3) GLT 234**.

Accordingly, the case of the petitioner, as mandated, was placed before the High Powered Committee(HPC) as constituted by the Government. The High Powered Committee(HPC) in its meeting held on 22.12.2014, considered the case of the petitioner. However, on such consideration being made; the case of the petitioner was not recommended on the ground that the petitioner having joined the school in the year 1996 and the school being provincialized in the year 1980; the case of the petitioner was held to not fall within the purview of the directions as in the case of ***Tapan Chandra Das***(supra).

The said decision of the High Powered Committee(HPC) was intimated to the petitioner by the Commissioner and Secretary to the Government of Assam, Elementary Education Department, vide an order, dated 15.12.2015. The petitioner, thereafter, instituted WP(c)290/2016, assailing the said order, dated 15.12.2015, and this Court, vide order, dated 15.11.2019, on considering the issues arising in the matter and holding that the grounds as assigned by the High Powered Committee(HPC) for rejecting the case of the petitioner being perverse; required the petitioner to submit a detail representation before the High Powered Committee(HPC) and the said High Powered Committee(HPC) was required to review its decision insofar as it concerns the case of the petitioner. The decision of the High Powered Committee(HPC) as well as the order, dated 15.12.2015, came to be interfered with by this Court. The petitioner, thereafter, submitted a detailed representation before the High Powered Committee(HPC) and prayed for provincialization/regularization of her case. The said representation on being considered by the High Powered Committee (HPC) in its meeting held on 09.12.2019, came to be rejected. The

Secretary to the Government of Assam, Elementary Education Department, thereafter, vide order, dated 18.01.2021, intimated the said aspect of the matter to the petitioner. Accordingly, the present proceedings has been instituted by the petitioner.

4. I have heard the learned counsels appearing for the parties and perused the materials available on record.

5. It is not in dispute that the petitioner was appointed on 04.02.1996 as an Additional Teacher in the said school by the School Managing Committee(SMC) and at the relevant point of time; the said school was not a provincialized school in-as-much as the order of provincialization issued in respect of the said school, was kept in abeyance. Thereafter, on revival of the order of provincialization of the said school; the services of the serving teachers in the said school, came to be provincialized.

6. On examining the approval order, dated 06.10.2004, issued by the District Elementary Education Officer(DEEO), it is seen that other than the person who was working as the Headmaster of the school, all other teaching and non-teaching staff in the said school, were appointed after 1980. It is seen that the services of the serving teachers of the school were so provincialized, with effect from the date of their initial joining in the said school.

The petitioner herein, on not being extended with the benefit of

provincialization of her services; projecting herself to be a dropped teacher and covered by the decision of this Court in ***Tapan Chandra Das***(supra), had instituted WP(c)4351/2010 before this Court.

7. It is to be noted that the teachers serving in various venture schools whose services were not provincialized at the time of provincialization of their said schools, was denoted as dropped teachers and thereafter, in terms of a policy adopted by the Government in this connection for provincialization of services of such teachers and published vide an Office Memorandum, dated 13.01.2003, the petitioner claimed the said benefit. The High Powered Committee(HPC) as constituted for the purpose of considering the cases of dropped teachers; considered the case of the petitioner and rejected her case on the ground that the petitioner had joined her services in the said school after the school came to be provincialized. The said decision was communicated to the petitioner vide the order, dated 15.12.2015.

The said decision on the face of it, is clearly perverse in-as-much as the petitioner at the time of her joining in her services, could not have been held to have joined in a provincialized school in-as-much as the provincialization as effected of the said school was kept in abeyance by the Government and it remained in abeyance during the period, the petitioner was so appointed. Thereafter, the petitioner again approached this Court by way of instituting WP(c)290/2016, assailing the order, dated 15.12.2015.

This Court having held the decision of the High Powered Committee(HPC)

as noted hereinabove, to be not in terms of the factual situation as existing in the said school, proceeded to remand the matter back to the High Powered Committee(HPC) for a review of its earlier decision.

8. The petitioner, thereafter, had submitted a detailed representation before the High Powered Committee(HPC) and had prayed therein, for issuance of requisite orders towards provincialization of her services. The said representation of the petitioner came to be disposed of vide an order, dated 18.01.2021. On perusal of the said order, dated 18.01.2021, it is revealed that the case of the petitioner was now rejected by the High Powered Committee(HPC) only on the ground that she was initially appointed as an Additional Teacher in the said school.

9. The said order, dated 18.01.2021, also reveals that the High Powered Committee(HPC) had also opined that the Government having struck down all previous Acts prior to 2016 pertaining to provincialization of the services of the teachers of venture schools, the case of the petitioner could not be considered. The said grounds as assigned by the High Powered Committee(HPC) in the said order, dated 18.01.2021, is now required to be considered by this Court.

10. The first ground as assigned by the High Powered Committee(HPC) towards rejection of the case of the petitioner for provincialization of her services that she being an Additional Teacher of the said school, was not entitled for having her services provincialized; in the facts and circumstances of the present case, cannot be sustained.

11. The appointment of the petitioner was so necessitated on account of the fact that there was a necessity of a graduate teacher in the school and recognizing such necessity; the School Managing Committee(SMC) had proceeded to appoint her as a Teacher in the said school. The nomenclature as assigned to the petitioner on her such appointment of being an Additional Teacher, is of no consequence in-as-much as the said designation given by the School Managing Committee(SMC) when the said school was at its venture stage, cannot be held to mean that the petitioner was an excess teacher.

12. A perusal of the materials brought on record does not reveal that the appointment of the petitioner in the said school was in excess of the requisite number of teachers mandated to be appointed in the said school. Further, it is not the contention of either the High Powered Committee(HPC) and/or the respondent authorities that the petitioner's appointment as effected on 04.02.1996 was in excess of the required number of teachers mandated to be available in the said school.

13. The petitioner could not have been denoted to be an Additional Teacher, also on the ground that the authorities while provincializing the services of the serving teachers in the said school, had only sanctioned a limited number of posts of teachers for effecting such provincialization. It is to meet such a situation that where there are more number of teachers working in a school than the number of posts as sanctioned, that the Government had adopted a policy as available in the Office Memorandum, dated 13.01.2003, and accordingly, the rejection of the case of the petitioner on the ground that she

was an Additional Teacher of the said school, is clearly perverse and therefore, cannot be accepted by this Court.

14. The second ground as assigned by the High Powered Committee(HPC) towards the rejection of the case of the petitioner, that provincialization of her services, cannot be considered in-as-much as the Government had struck down all previous Acts prior to 2016 in WP(c)3190/2012. The said conclusion reveals clear non-application of mind in the matter by the said High Powered Committee(HPC) in-as-much as the interference as made by this Court in WP(c)3190/2012 is to the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011.

15. The interference as made with the said Assam Venture Educational Institutions(Provincialization of Services) Act, 2011, does not in any manner render the policy as contained in the said Office Memorandum, dated 13.01.2003, redundant, and the said Office Memorandum continues to hold its field in-as-much as it is limited to the dropped teachers whose schools were provincialized under the provincialization Act existing prior to coming into force of the Assam Venture Educational Institutions(Provincialization of Services) Act, 2011. Accordingly, the second ground as assigned for rejection of the case of the petitioner by the High Powered Committee(HPC), also does not merit acceptance.

16. Mr. Bhuiyan, learned counsel for the petitioner, has referred to a decision of this Court rendered in the case of Smti. Nabanita Mandal v. State of Assam &

ors., vide order, dated 02.02.2024 [WP(c)6013/2023], and has prayed that the petitioner, herein, is entitled to same directions from this Court.

17. On perusal of the decision of this Court rendered in the case of Nabanita Mandal(supra); it is seen that the said petitioner was also appointed in the same school but was so appointed much prior to the date of appointment of the petitioner, herein. Further, the respondent authorities, on appreciating the services rendered by the said petitioner, had provincialized her services against a sanctioned post with a prospective effect. However, on an approach being made by the said petitioner; the matter was processed and the Director, Elementary Education Department, Assam, had forwarded the case of the petitioner therein, to the Government for regularization of the services of the said petitioner with effect from the date of her initial joining. The said process not having been taken to its logical conclusion; the petitioner had instituted the said proceedings before this Court.

18. The directions as passed by this Court in the case of Nabanita Mandal(supra), is solely based on the facts as available in the said case and the same cannot be extended to the case of the petitioner, herein, in the present proceedings. It is also to be noted that the petitioner, herein, on her own volition, had approached this Court by way of instituting proceedings claiming for consideration of her case for provincialization of her services as a dropped teacher. Accordingly, the considerations as made in the present proceedings, is made by reckoning the directions passed by this Court in the earlier proceedings instituted by the petitioner, herein.

19. In view of the said conclusions, the decision as arrived at by the High Powered Committee(HPC) with respect to the claim of the petitioner; is clearly without any substance and accordingly, the same cannot be sustained. The order, dated 18.01.2021, is accordingly, hereby set aside.

20. In view of the fact that the order, dated 18.01.2021, has been interfered with by this Court, on arriving at a conclusion that the grounds as assigned for rejecting the case of the petitioner therein, are clearly not sustainable; the matter now stands remanded back to the Director, Elementary Education Department, Assam, who would now place the case of the petitioner again before the High Powered Committee(HPC) and/or any other committee presently in existence for considering the case of the petitioner for provincialization in accordance with the decisions of this Court relating to provincialization/regularization services of dropped teachers as well as the policy as contained in the Office Memorandum, dated 13.01.2003.

21. The High Powered Committee(HPC) shall strictly consider the case of the petitioner in terms of the said Office Memorandum, dated 13.01.2003, and the decision of this Court rendered in the case of ***Tapan Chandra Das***(supra).

22. In the event, the High Powered Committee(HPC) recommends the name of the petitioner for provincialization of her services on consideration of her case strictly by appreciating the factual position available with regard to the services rendered by the petitioner in the said school, such provincialization shall be effected with effect from the date, the other similarly situated dropped teachers

came to be regularized in their services in pursuance to the Office Memorandum, dated 13.01.2003.

23. The other service benefits of the petitioner shall also be extended to her strictly applying the provisions applicable in this connection, as on the date, the other similarly situated dropped teachers were regularized in their services.

24. The above exercise shall be initiated and completed by the Director, Elementary Education Department, Assam, within a period of 2(two) months from the date of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant