

GAHC010126562021



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

Case No. : WP(C)/4014/2021

KHAGEN SAIKIA

**S/O SRI BHUGESWAR SAIKIA, R/O SOLLENGI, P.O.-ELLENGI SATRA, P.S.-
GOHPUR, PIN-784168, DIST- BISHWANATH, ASSAM**

VERSUS

THE STATE OF ASSAM AND 7 ORS.

**REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION DEPARTMENT, DISPUR,
GUWAHATI-6**

**2:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
SECONDARY EDUCATION DEPARTMENT DISPUR-6**

**3:THE DIRECTOR SECONDARY EDUCATION ASSAM
KAHILIPARA GUWAHATI-19**

**4:THE JOINT DIRECTOR SECONDARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-19**

5:THE INSPECTOR OF SCHOOLS BISWANATH DISTRICT ASSAM

**6:DISTRICT LEVEL SCRUTINY COMMITTEE OF VENTURE SECONDARY
SCHOOLS OF SONITPUR DISTRICT REPRESENTED BY ITS CHAIRMAN
DIST- BISWANATH ASSAM**

**7:THE MANAGING COMMITTEE MADHAV DEV HIGH SCHOOL
P.O.-GHAGRABASTI (GOHPUR) DIST-BISHWANATH ASSAM**

**8:THE HEADMASTER OF MADHAV HIGH SCHOOL
P.O.-GHAGRABASTI (GOHPUR) DIST- BISHWANATH ASSA**

Advocate for the Petitioner : MR P K GOSWAMI

Advocate for the Respondent : SC, SEC. EDU.

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

Date of hearing : 29.04.2024

Date of Judgment: 29.04.2024

JUDGMENT & ORDER (ORAL)

Heard Ms. M. Borah, learned counsel for the petitioner. Also heard Ms. P. Das, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1, 2, 3, 4 & 5; and Mr. B. Deuri, learned Government Advocate, appearing on behalf of respondent No. 6. However, none has entered appearance on behalf of respondents No. 7 & 8 inspite of service of notice.

2. The petitioner by way of instituting the present writ petition, has prayed for a direction upon the respondent authorities to provincialize his services as an Assistant Teacher (Science) in Madhav Dev High School, Gohpur, w.e.f. 01.01.2013.

3. As projected in the writ petition; the petitioner was appointed as a Science teacher in the said school on 02.04.2010 by the Headmaster of the school. Thereafter, the Managing Committee of the said school adopted a resolution in its meeting held on 02.04.2010 to appoint the petitioner as the second teacher of Mathematics in the school, in question. The senior teacher teaching the subject of science in the said school, having resigned from his post, the petitioner, vide a resolution, dated 21.08.2012, was appointed as a Science teacher in his place. It is the contention of the petitioner that although an

appointment was again effected in his case on 21.08.2012, he was continuing in his services in the said school as a Science teacher w.e.f. 02.04.2010.

On the enactment of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; the cases of the serving eligible teachers of the said school were taken-up for provincialization of their services.

The case of the petitioner was also forwarded for consideration of his case. On the completion of the process of consideration as mandated under the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; the Director, Secondary Education Department, Assam, vide the order, dated 22.09.2014, proceeded to provincialize the services of the eligible teachers of the said school. However, the case of the petitioner was not so considered for provincialization of his services.

4. A perusal of the order, dated 22.09.2014, reveals that 1(one) post of an Assistant Teacher(B.Sc.) was kept vacant in the said school. It is also required to be noted that the teachers so provincialized in the said school vide the order, dated 22.09.2014, were so provincialized w.e.f. 01.01.2013.

5. It is contended by the petitioner in the writ petition that on an enquiry, he was given to understand that in the particulars as submitted by the school authorities for the purpose of provincialization of the services of the eligible teachers in the said school; the date of joining of the petitioner was reflected as 21.08.2012, and on the said ground, the authorities proceeded to not consider the case of the petitioner in-as-much as reckoning the date of appointment as

reflected in his case; he was held to be not eligible for being considered for provincialization of his services.

6. Thereafter, the petitioner contends that on an approach being made, the particulars as submitted by the school authorities were reviewed. However, before setting aside of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, by this Court on a challenge being presented to it; the consideration as mandated therein, in respect of the services of the petitioner, could not be taken to its logical conclusion and accordingly, his services could not be considered under the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011.

7. As contended in the writ petition, upon the enactment of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the jurisdictional District Level Scrutiny Committee(DLSC) had again considered the cases of the petitioner along with other eligible teachers of various schools and had made due recommendations in his case for provincialization of his services.

8. The petitioner refers to a communication, dated 16.02.2021, issued by the Inspector of Schools, Sonitpur District Circle, Tezpur, wherein, it was mentioned that a proposal in respect of the petitioner who was denoted as a "drop-out teacher", was forwarded for inclusion of his name in the list of eligible "drop-out teachers" as uploaded in the departmental website on 17.08.2020 and 04.02.2021. It is the contention of the petitioner that inspite of the above

position; his case has not been considered for provincialization of his services in the said school.

9. At the outset; it is to be noted that basing on the materials available on record, the case of the petitioner was duly recommended by the jurisdictional District Level Scrutiny Committee(DLSC) under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. However, further processing in the matter, it seems, was, thereafter, not taken forward.

10. The Inspector of Schools, Tezpur, vide a communication, dated 18.05.2022, has apprised the Director, Secondary Education Department, Assam, that the petitioner has been continuously serving in the school, in question, w.e.f. 02.05.2010 and on the senior teacher available in the school resigning from his services; the School Managing Committee(SMC) of the school had again appointed the petitioner as a Science Teacher on 21.08.2012 although the petitioner was rendering his services in the said school continuously till the date of the said communication, dated 18.05.2022, w.e.f. 02.05.2010. The said communication, dated 18.05.2022, also brings on record that the jurisdictional District Level Scrutiny Committee(DLSC) had submitted the particulars of the petitioner stating the date of his joining as 02.05.2010.

11. In the above view of the matter; the case of the petitioner not being considered for provincialization of his services only on account of an error occasioning in the particulars submitted in his case by the school authorities and

denoting him therein, to have been so appointed in the said school w.e.f. 21.08.2012, and it also being brought on record that the petitioner was actually appointed on 02.05.2010 in the school, in question, and from the said date, was continuously serving therein; a vested right has accrued to the petitioner for having his case considered for provincialization of his services.

12. Although the petitioner, in the present proceedings, has made a prayer for consideration of his case under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; however, noticing the fact that the said Act of 2011 was set aside by this Court on a challenge being presented to it; the case of the petitioner, at this stage, cannot be directed to considered under the provisions of the said Act of 2011, more so, when the requisite processing of his case as mandated under the provisions of Section 10(4) of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, was not demonstrated by the petitioner to have been so completed.

13. However, the petitioner is entitled to have his case considered for provincialization of his services in the said school under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and accordingly, the petitioner is hereby directed to submit a representation before the Director, Secondary Education Department, Assam, and therein, by bringing on record, the documents pertaining to his appointment in the said school along with the copy of the communication, dated 18.05.2022, presently brought on record in the present

proceedings by the petitioner by way of filing an additional affidavit on 27.05.2022 along with any other relevant document; stake his claim for provincialization of his services in the said school under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

14. The Director, Secondary Education Department, Assam, on receipt of the said representation from the petitioner, shall proceed to examine the same and thereafter, also by including the recommendations as stated to have been made in the case of the petitioner by the jurisdictional District Level Scrutiny Committee(DLSC); proceed to place the case of the petitioner before the State Level Scrutiny Committee(SLSC).

15. The State Level Scrutiny Committee(SLSC) by exercising the powers as vested under the provisions of Section 13(11) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, shall proceed to verify the service particulars of the petitioner and on arriving at a conclusion as to the date of his appointment in the said school and also by scrutinizing other relevant criterias as would be mandated in the matter; proceed to make its recommendations with regard to the claim of the petitioner for provincialization of his services in the said school.

16. The Director, Secondary Education Department, Assam, basing on the recommendations of the State Level Scrutiny Committee(SLSC), if found to be made in favour of the petitioner; proceed to take further steps as may be

mandated in the matter for provincializing the services of the petitioner and issue appropriate orders thereon.

17. It is to be noted that in the event, the petitioner is found to be eligible for having his services provincialized in the said school; such provincialization of his services shall be so effected with retrospective effect i.e. w.e.f. 01.01.2021, with all consequential benefits.

18. In the event, the petitioner is not found eligible by the State Level Scrutiny Committee(SLSC), to be recommended for provincialization of his services in the said school; the Director, Secondary Education Department, Assam, shall, by incorporating the reasons so existing in this connection, issue a speaking order to the petitioner.

19. The exercise as now required to be carried-out in terms of the directions passed by this Court hereinabove, shall be so initiated and completed by the Director, Secondary Education Department, Assam, within a period of 3(three) months from the date of receipt of a representation along with a certified copy of this order.

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

JUDGE

Comparing Assistant