

GAHC010132042023



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

Case No. : WP(C)/3534/2023

MANOJ DAS
S/O- LATE SARAT DAS, VILLAGE THEKA, P.O- SARUPETA,
P.S- PATACHARKUCHI, DIST- BARPETA, ASSAM

VERSUS

1: THE STATE OF ASSAM AND 3 ORS REP. BY THE PRINCIPAL SECRETARY ,
EDUCATION DEPARTMENT, GOVT OF ASSAM, DISPUR.
GUWAHATI-06

2: SECRETARY TO THE GOVT OF ASSAM SCHOOL EDUCATION
DEPARTMENT DISPUR GUWAHATI-06

3: THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GUWAHATI- 19.

4: INSPECTOR OF SCHOOLS
BAKSA DISTRICT CIRCLE MUSHALPUR BAKSA

Advocate for the Petitioner : MR J CHUTIA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 29-01-2024

Heard Mr. J. Chutiya, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned standing counsel, Education (Secondary) Department, representing all the respondents.

The petitioner, by way of the present proceeding, has presented a challenge to the communication dated 30.04.2022 issued by the Secretary to the Government of Assam, Secondary Education Department, by which the provincialisation of services of the petitioner as Tutor in the Department of Political Science in Dakshin Bijni College (Junior) Ananda Bazar, Barpeta, effected vide an order dated 04.02.2021, was reversed and his such provincialisation was de-provincialised.

The petitioner was appointed as a Lecturer in the Department of Political Science of Dakshin Bijni College (Junior), vide an appointment letter dated 10.01.2010. The said College, at the relevant point of time, was in the venture stage. The cases of the eligible teachers of the said College was taken up for consideration of their services for provincialisation under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (in short "Act of 2017"), as amended, and vide order dated 04.02.2021, the services of the petitioner came to be provincialised as Tutor in the Department of Political Science of the said College. It is to be noted that in the provincialisation order, the name of the College has been denoted as Dakshin Bijni Senior Secondary School.

From the materials available on record in the writ petition, it is seen that vide a communication dated 30.04.2021, the Additional Secretary to the Government of Assam, Secondary Education Department had required the Director of Secondary Education, Assam to cause an enquiry pertaining to the teachers of newly provincialised High/Higher Secondary/Senior Secondary Schools with regard to their actual working in the respective Schools during the relevant period on account of the fact that the names of many such teachers were not found included in the DISE data.

Basing on the said communication, the Director of Secondary Education, Assam, required the jurisdictional Inspector of Schools to carry out the enquiry. Accordingly, the Inspector of Schools, Baksa District Circle, Mushalpur, vide his communication dated 28.06.2021, submitted his report with regard to the case of the petitioner and contended therein that the name of the petitioner is not included in the DISE data but he has been rendering his services with good performance since the date of his joining. It was also brought on record in the said report that the petitioner's services was provincialised vide an order dated 04.02.2021 under the said Act of 2017.

Thereafter, without any notice to the petitioner, the impugned communication dated 30.04.2022 came to be issued and the Government had approved the proposal for de-provincialisation of the services of 8(eight) teachers mentioned therein including the petitioner.

The petitioner being aggrieved by the communication dated 30.04.2022 had submitted representation against the same. The said representation not being considered, the present proceeding was instituted before this Court.

The services of the petitioner, provincialised vide the order dated 04.02.2021, came to be de-provincialised vide the impugned communication dated 30.04.2022 only on the ground that the name of the petitioner did not figure in the DISE data for the relevant years.

The provision of the Act of 2017 requires the particulars of a School to be captured in the DISE data and a DISE code assigned only in case of a Venture Lower Primary School or Upper Primary School, whereas such requirement is not mentioned for a Venture High School/ Higher Secondary School/Senior Secondary School. However, the respondents have de-

provincialised the provincialisation effected in the case of the petitioner only on the ground that his name did not figure in the DISE data.

A Coordinate Bench of this Court in WP(C) 1353/2022 (*Kishor Kumar Nath & Ors. -Vs- The State of Assam & Ors.*) and other connected writ petitions, vide judgment & order dated 12.04.2023, had dealt with the said issue and concluded as follows:-

“16. Therefore, a conjoint reading of the provisions referred to hereinabove in respect to the Act of 2017 there is no requirement for the names of the teachers working in the ‘Venture High School’ as well as ‘Venture Higher Secondary School’ as defined in Section 2(x) and 2(y) of the Act of 2017 to have their names captured in the DISE Code as is otherwise required in the case of a teachers/tutors whose services are to be provincialised in respect of ‘Venture ME School’ and ‘Venture Lower Primary School’ as well as ‘Venture Upper Primary School’ as defined in Sections 2(za), 2(zb) and 2(zc) of the Act of 2017 wherein the names of such teachers or tutors are required to be captured in the DISE Code up to 2009-10.

17. In the backdrop of the above, let this Court take into consideration the case of the petitioners before this Court in the present batch of writ petitions. The learned counsel for the petitioners has submitted that the concerned respondent authorities have not processed the proposals for provincialisation of the services of the petitioners who are working in ‘Venture High Schools’ and ‘Venture Higher Secondary Schools’ on the ground that the petitioners’ names are not captured in the DISE Code. It is also the case of the petitioners that the concerned authorities have issued communication not to process such proposals of provincialisation of services of teachers/tutors whose names have not been captured in the DISE Code.

18. This Court, on the basis of the above analysis of the provisions of the Act of 2017, is of the opinion that the insistence of the respondent authorities of the names of petitioners who have been rendering services in ‘Venture High School’ and ‘Venture Higher Secondary School’ to be captured in the DISE Code of 2009-10 is contrary to the Act of 2017 as it is not the mandate of the Act of 2017 to fulfill such requirement in respect to such teachers and/or tutors working in ‘Venture High School’ and ‘Venture Higher Secondary School’ to have their names captured in the DISE Code upto 2009-10. Such insistence is arbitrary and contrary to the provisions of the Act of 2017 and accordingly interfered with.”

In view of the decision of the Coordinate Bench of this Court in the case of **Kishor Kumar Nath** (supra), it is clear that the provisions of the Act of 2017 do not contemplate capturing of names of teachers working in Venture High/Higher Secondary/Senior Secondary Schools in the DISE data. The non-capturing of name of the petitioner in the DISE data could not have been held against him, more so, when his case was considered by the Committees as constituted under the provisions of the Act of 2017 for the purpose of provincialisation of his services and it was only on finding that the petitioner fulfilled the eligibility criteria as mentioned in the said Act of 2017 that his services came to be provincialised vide the order dated 04.02.2021. In such a view of the matter, the respondent authorities could not have de-provincialised the services of the petitioner on a ground which is not available in terms of the provisions of the Act of 2017 and, more so, without affording the petitioner any opportunity of pre-decisional hearing.

In view of the said position and considering the provisions of the Act of 2017 and the decision of the Coordinate Bench of this Court in the case of **Kishor Kumar Nath** (supra), the communication dated 30.04.2022 de-provincialising the services of the incumbents therein, including the petitioner, is hereby interfered with to the extent it concerns the petitioner in the present proceeding. The petitioner shall be deemed to be continuing as a provincialised employee in terms of the provincialisation of his services effected vide the order dated 04.02.2021 and the petitioner shall be entitled to all benefits so flowing to him. The respondent authorities are hereby directed to allow the petitioner to continue as a provincialised employee in terms of the order dated 04.02.2021 and release to him his due salaries in terms of the said order dated 04.02.2021 w.e.f. the date his such provincialisation was effected, i.e. w.e.f.

01.01.2021.

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

JUDGE

Comparing Assistant