

GAHC010288142023



2024:GAU-AS:8856

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

Case No. : WP(C)/5398/2022

MD. SANIDUL ISLAM
SON OF LATE ABDUL SALAM
R/O- VILL. AND P.O.- SIMLABARI
DIST.- GOALPARA
ASSAM PIN- 783330.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
EDUCATION (ELEMENTARY) DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM-CUM- CHAIRMAN OF STATE LEVEL SCRUTINY COMMITTEE
KAHILIPARA GUWAHATI-19.

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE GOALPARA
REPRESENTED BY ITS CHAIRMAN -CUM- DEPUTY COMMISSIONER
GOALPARA PIN- 783330.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
LAKHIPUR GOALPARA- 783129.

5:ZALAL UDDINAGED ABOUT 50 YRS S/O LATE EBAD ALI
R/O VILL- GAROJAN P.O- SIMLABARI P.S- LAKHIPUR DIST- FOALPARA
ASSAM PIN- 783330.

Advocate for : MR. I H SAIKIA

Advocate for : SC ELEM. EDU appearing for THE STATE OF ASSAM AND 4 ORS

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

Date of hearing : 03.01.2024

Date of Judgment : 06.09.2024

Judgment & order(CAV)

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Heard Mr. R. Ali, learned counsel, appearing on behalf of the petitioner. Also heard Mr. S. M. T. Chistie, learned standing counsel, Elementary Education Department, appearing on behalf of State respondents No. 1, 2 & 4; Ms. Deepanjalee Das Barman, learned Addl. Senior Government Advocate, appearing on behalf of respondent No. 3; and Mr. P. Bharadwaj, learned counsel, appearing on behalf of respondent No. 5.

2. The challenge made in the present proceeding is to an order, dated 19.02.2022, passed by the Director, Elementary Education Department, Assam, rejecting the case of the petitioner, herein, for provincialization of his service.

3. The petitioner, herein, contends that he was appointed as an Assistant Teacher on 24.04.2009 by the Managing Committee of Salbari M.E. Madrassa, Goalpara. The petitioner, accordingly, joined on the said date and contends to be teaching the language subject in the said school. Upon enactment of the Assam Education(Provincialization of Services of Teachers and Reorganization of Educational Institutions) Act, 2017; the Headmaster of the said school, submitted the particulars of the serving teachers therein, including that of the petitioner and he was shown to have been teaching the subjects of Social Science, Arts, Education, Assamese, English and Hindi, in the school, in question.

4. The cases of the serving teachers in the said school were considered by the jurisdictional District Scrutiny Committee and on verification of their service particulars, it is contended that the names of the teachers found eligible for provincialization of their services, was forwarded to the Director, Elementary Education Department, Assam, by the jurisdictional District Elementary Education Officer(DEEO). It is also contended that in the recommendations so made; the name of the petitioner, herein, was found to be eligible, along with the respondent No. 5, herein, for provincialization of their services. Thereafter, it is contended that the proposal as submitted by the jurisdictional District Scrutiny Committee was remanded back by the Government in the Department of Education, Assam, requiring the said Committee to re-submit the same recommending the names of 3(three) teachers, one, each against the posts of Science, Language and Social Studies, respectively. It is contended that the jurisdictional District Scrutiny Committee, after a further verification, re-submitted the proposal through the jurisdictional District Elementary Education Officer(DEEO) on 28.06.2018, and therein, the name of one Jomir Uddin Ahmed was shown against the Science subject and the name of Abdur Rahim who was functioning as the Headmaster of the said school, was shown against the Social Studies subject.

It is contended that the jurisdictional District Elementary Education Officer(DEEO), on being so directed, had submitted a report in the matter, on a verification made and therein, while the names of Jomir Uddin Ahmed as a Science teacher and Abdur Rahim as a language teacher, was so reflected; one further post which was available in the said school, was shown as vacant. Accordingly, it is the contention of the petitioner that basing on such recommendations made; the services of the teachers teaching the subjects of Science and Social Studies were provincialized as Tutors.

5. The petitioner, being aggrieved by the denial of the benefits of provincialization to him, had approached this Court by way of instituting a writ petition being WP(c)1857/2021. This Court, vide order, dated 13.07.2021, required the Director, Elementary Education Department, Assam, to pass a reasoned order after hearing the petitioner and verifying the records of the said school. The petitioner, herein, contends that in the said writ petition; the Headmaster of the school, in question, who was arrayed as respondent No. 5, had, on affidavit, stated before this Court, that the petitioner who was working as a teacher against the language subject and the post of language teacher not being filled-up; the case of the petitioner may be considered for provincialization against the post of said language teacher. It is in pursuance of the said directions passed by this Court vide order, dated 13.07.2021, in WP(c)1857/2021; the Director, Elementary Education Department, Assam, on examination of the matter, proceeded to issue the impugned order, dated 19.02.2022, rejecting the case of the petitioner, herein. As revealed from the said order, dated 19.02.2022, the services of 2(two) serving teachers of the said school viz. Jomir Uddin Ahmed and Abdur Rahim, were provincialized, against the post of Science and Social Studies, respectively, and the post of language teacher was denoted to be vacant.

6. Being aggrieved by the said order, dated 19.02.2022; the petitioner, herein, has instituted the present proceeding.

7. Mr. Ali, learned counsel for the petitioner, by referring to the order, dated 19.02.2022, has submitted that the Director, Elementary Education Department, Assam, had failed to appreciate the service particulars of the petitioner and although in the order, dated 19.02.2022, it was noticed that the petitioner, herein, in the DISE data of 2018-19, was shown as a language

teacher; the District Scrutiny Committee, Goalpara, not having recommended the name of the petitioner against the post of language teacher; the Director, Elementary Education Department, Assam, proceeded to hold that the case of the petitioner for consideration for provincialization of his service, cannot be accepted.

8. Mr. Ali, learned counsel for the petitioner, has further submitted that in terms of the DISE data brought on record, it is clear that the petitioner, herein, in addition to teaching the language subject, was also teaching other subjects. The learned counsel, however, has contended that the DISE data reflects that the respondent No. 5 was only teaching the language subject i.e. English, in the said school. Accordingly, it is the contention of Mr. Ali, learned counsel that the petitioner, herein, ought to be provincialized against the post of language teacher available in Salbari M.E. Madrassa, Goalpara.

9. Mr. Ali, learned counsel, has contended that there is no reasons assigned for dropping the name of the petitioner, herein, from the recommendations of the jurisdictional District Scrutiny Committee as available in the matter. The learned counsel has submitted that the respondent No. 5, herein, had also instituted a proceeding before this Court and therein, had projected himself to be teaching the Social Studies as well as the Language subjects.

10. By referring to the order, dated 19.03.2021, passed by this Court in WP(c)227/2020, instituted by the respondent No. 5, herein; Mr. Ali, learned counsel for the petitioner, has contended that this Court had directed the Director, Elementary Education Department, Assam, to pass a reasoned order on the representation so filed by the respondent No. 5, herein. It is contended that the said representation, dated 07.01.2020, as filed by the respondent No.

5, was disposed of by the Director, Elementary Education Department, Assam, vide order, dated 20.09.2021, and therein also; by holding that the service of the petitioner, herein, who was projected to be junior to the respondent No. 5, having not been provincialized; the claim of the respondent No. 5, herein, for provincialization of his service under the provisions of the Assam Education(Provincialization of Services of Teachers and Reorganization of Educational Institutions) Act, 2017, came to be rejected.

11. Mr. Ali, learned counsel for the petitioner, has further contended that the respondent No. 5 had assailed the said order, dated 20.09.2021, before this Court by way of instituting a writ petition being WP(c)6928/2020, and this Court, after noticing the issues coming on record, directed the Director, Elementary Education Department, Assam, to have the entire matter re-visited by the District Scrutiny Committee and thereafter, basing on such recommendations that would now be made; to pass a speaking order. It is contended that the District Scrutiny Committee, Goalpara, in its meeting held on 18.08.2022, had re-visited the issue of provincialization of the services of eligible teachers of Salbari M.E. Madrassa, Goalpara, and therein; upon verification of the service particulars of the serving teachers and also upon determining the fact that the respondent No. 5 was senior to the petitioner, herein; proceeded to recommend the name of the respondent No. 5 as language teacher for provincialization of his service in the said school. It is also contended by Mr. Ali, learned counsel for the petitioner that the said recommendations as made by the jurisdictional District Scrutiny Committee, is clearly perverse and not based on the services rendered by the teachers in the said school.

12. Per contra, Mr. Bharadwaj, learned counsel for respondent No. 5, has

submitted that the respondent No. 5, herein, being aggrieved by the denial of benefit of provincialization to him; had initially instituted WP(c)227/2020 and basing on the directions so passed; the Director, Elementary Education Department, Assam, had rejected his case vide an order, dated 20.09.2021, only on the ground that he would have no grievance, inasmuch as, the service of the petitioner, herein, was not provincialized, and it was projected that the petitioner was junior to the respondent No. 5. It is further contended by Mr. Bharadwaj, learned counsel for respondent No. 5, that being aggrieved by the order, dated 20.09.2021; the respondent No. 5 had again approached this Court by way of instituting a writ petition being WP(c)6928/2021, and in terms of the directions passed therein, the matter was again re-visited by the jurisdictional District Scrutiny Committee and thereafter, on verification of the service particulars of all the serving teachers of the school, in question, including the petitioner, herein, and the respondent No. 5, and further, by determining the inter-se seniority position between the respondent No. 5 and other language teachers working in the said school including the petitioner, herein; the jurisdictional District Scrutiny Committee had proceeded to recommend the name of the respondent No. 5 for provincialization of his service as a Tutor against the post of language subject.

13. Mr. Bharadwaj, learned counsel for respondent No. 5, has further submitted that the determination having been made that both the petitioner and the respondent No. 5 were eligible for having their respective cases considered for provincialization against the post of language teacher and the respondent No. 5 being senior to the petitioner, herein; basing on the date of joining in Salbari M.E. Madrassa, Goalpara; the recommendations made in favour of the respondent No. 5 for such provincialization in respect of the service of respondent No. 5, would not call for an interference in the matter by this Court.

14. It is further contended by Mr. Bharadwaj, learned counsel for respondent No. 5, that in view of the interim directions passed by this Court in the present proceeding vide order, dated 22.08.2022; the order provincializing the service of the respondent No. 5, was not so issued. Accordingly, the learned counsel has submitted that the recommendations now made by the District Scrutiny Committee in its meeting held on 18.08.2022, being not under challenge in the present proceeding; the interim order as passed in the matter vide order, dated 22.08.2022, is called upon to be vacated and the respondent authorities directed to provincialize the service of the respondent No. 5, with effect from the date, the other 2(two) serving teachers in the said school, were so found eligible for provincialization of their respective services.

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

16. At the outset, it is to be noted that the petitioner while projecting himself to be teaching the language subject along with the other subjects, had also contended that the respondent No. 5, herein, was teaching the subjects of Language as well as Social Studies. It is also to be noted that when the service particulars of the teachers of Salbari M.E. Madrassa, Goalpara, were so forwarded by the Headmaster of the said school, for consideration of their cases for provincialization under the provisions of the Assam Education (Provincialization of Services of Teachers and Reorganization of Educational Institutions) Act, 2017; the name of the respondent No. 5, herein, was not so forwarded.

17. However, disputes having arisen in the matter as to the eligibility of the persons working in the said school; the recommendations as initially made by

the District Scrutiny Committee was, thereafter, directed to be re-done by the departmental authorities and accordingly, the re-verification was carried-out and therein, it is found that both the petitioner as well as the respondent No. 5, came to be recommended for provincialization of their services in Salbari M.E. Madrassa, Goalpara. Thereafter, it is seen that the jurisdictional District Elementary Education Officer(DEEO), on being directed by the Director, Elementary Education Department, Assam, had submitted a report and therein, had only recommended the names of 2(two) eligible teachers in the said school and had denoted the 3rd post, to be kept vacant. Accordingly, the services of Jomir Uddin Ahmed and Abdur Rahim were so provincialized in the said school vide order, dated 05.02.2021, w.e.f. 01.01.2021. The 3rd post which now has been stated to be that of a language teacher not having been provincialized; the petitioner, herein, had instituted proceeding before this Court and in terms of the directions so passed; the order, dated 19.02.2022, impugned in the present proceeding, came to be passed by the Director, Elementary Education Department, Assam.

18. It is seen that parallelly, the respondent No. 5 had initially approached this Court by way of instituting the writ petition being WP(c)227/2020 and this Court, vide order, dated 19.03.2020; had directed the Director, Elementary Education Department, Assam, to pass a reasoned order on the representation, dated 07.01.2020, as submitted in the matter by the petitioner, therein. The said representation was considered and vide order, dated 20.09.2021, the Director, Elementary Education Department, Assam, proceeded to reject the same by drawing a conclusion therein, that the name of the respondent No. 5, herein, was not recommended by the jurisdictional District Scrutiny Committee for provincialization of his service and further, that the claim by the respondent No. 5 in his representation that the petitioner was

junior to him and it being an admitted position the service of the petitioner, herein, was not provincialized; the Director, Elementary Education Department, Assam, held that the respondent No. 5, would have no grievance in the matter on account of the fact that the service of the petitioner who was projected to be junior to him, was not provincialized and accordingly, rejected the representation as submitted by the petitioner, herein. A challenge being presented to such rejection, by the respondent No. 5 by instituting the writ petition being WP(c)6298/2021; this Court, vide order, dated 17.12.2021, had required the Director, Elementary Education Department, Assam, to have the entire matter pertaining to the provincialization of the services of the eligible serving teachers in the said school, to be re-visited by the jurisdictional District Scrutiny Committee.

19. In terms of the directions passed by this Court; the matter came to be placed before the District Scrutiny Committee, Goalpara, and the said committee in its meeting held on 18.08.2022, proceeded to carry-out the said re-verification. On a re-verification made of the service particulars of the serving teachers of Salbari M.E. Madrassa, Goalpara; the jurisdictional District Scrutiny Committee proceeded to uphold the recommendations as made earlier in respect of Abdur Rahim and Jomir Uddin Ahmed as a Social Studies and Science and Mathematics Teachers, respectively. With regard to the post of language teacher, the said District Scrutiny Committee proceeded to determine the inter-se seniority position amongst the language teachers working in the said school and on such determination made; proceeded to hold the respondent No. 5 to be senior to all other language teachers working in the said school, including the petitioner, herein. Basing on the said conclusion; the name of the respondent No. 5 was recommended as a language tutor for provincialization of his service. A inquiry report was also submitted in the matter by the jurisdictional District Scrutiny Committee and

therein, it had recorded a finding to the effect that in the initial meeting of the District Scrutiny Committee held on 09.06.2018, the service particulars of the respondent No. 5, herein, not being forwarded by the Headmaster of the said school, inspite of the fact that the respondent No. 5 had submitted all the required service particulars to the Headmaster of the school, in question; the case of the respondent No. 5 was not considered for provincialization of his service. Thereafter, noticing the fact that the respondent No. 5, herein, had received financial assistance during the year 2010-11 and also noticing that the respondent No. 5 is the senior-most language teacher in the said school; it was concluded that the service of the respondent No. 5 was required to be provincialized.

20. It is seen that that the re-verification as made by the District Scrutiny Committee in its meeting held on 18.08.2022, was so carried-out in respect of all the eligible teachers, both provincialized as well as non-provincialized teachers serving in the said school, in pursuance of the directions passed by this Court vide order, dated 17.12.2021, in WP(c)6928/2021. The said recommendations as made by the District Scrutiny Committee, on a re-verification of the service particulars; is not under challenge in the present proceeding instituted by the petitioner, herein.

21. The writ petitioner while instituting the present proceeding, had not impleaded the respondent No. 5 as a party respondent in this proceeding. Accordingly, the respondent No. 5 had filed an interlocutory application being IA(c)804/2023, praying for permission to implead himself as respondent No. 5 in the present writ petition. In the said interlocutory application; the respondent No. 5 had brought on record, the re-verification report as submitted by the District Scrutiny Committee, Goalpara, in its meeting held on

18.08.2022. The forwarding of such report by the jurisdictional District Elementary Education Officer(DEEO) to the Director, Elementary Education Department, Assam, was also placed on record. In spite of the said position coming to the notice of the petitioner, herein; he had refrained himself from presenting a challenge to the said recommendations of the jurisdictional District Scrutiny Committee. The District Scrutiny Committee in terms of the directions passed by this Court, having carried-out a re-verification of the service particulars of the serving teachers of Salbari M.E. Madrassa, Goalpara, and the same not having been assailed before this Court by the petitioner, herein, and further, the petitioner having also not brought on record, any material to demonstrate that the finding of the District Scrutiny Committee, that both the petitioner and the respondent No. 5 were working as language teachers in the said school and the respondent No. 5 being senior to the other language teachers to be perverse; this Court would not entertain a challenge to the order, dated 19.02.2022, inasmuch as, after the said order, dated 19.02.2022, was so issued by the Director, Elementary Education Department, Assam, a further verification process was carried-out in terms of the directions passed by this Court by the jurisdictional District Scrutiny Committee in its meeting held on 18.08.2022. The jurisdictional District Scrutiny Committee being a committee empowered to verify the service particulars of serving teachers of a venture school and recommend the names of the teachers so found eligible after verification, the recommendations of the said committee, not being put to challenge by the petitioner in the present proceeding; this Court would not interfere with such findings.

22. In view of the above conclusions so reached in the matter by this Court; the Director, Elementary Education Department, Assam, is directed to take on record, the recommendations as made by the jurisdictional District Scrutiny Committee in its meeting held on 18.08.2022 and thereafter, proceed to

process the name of the respondent No. 5, herein, further for provincialization of his service as a tutor against the vacant post of language subject in Salbari M.E. Madrassa, Goalpara.

23. The Director, Elementary Education Department, Assam, would now initiate and conclude the process requisite for issuance of necessary orders towards provincialization the service of the respondent No. 5, herein, within a period of 2(two) months from the date of receipt of a certified copy of this order.

24. The conclusions as reached hereinabove; does not permit this Court to issue any directions in respect of the petitioner, herein, for provincialization of his service in the said school. However, the petitioner, having brought on record, the fact that he had preferred an appeal on 03.04.2023, before the Secretary to the Government of Assam in the Department of School Education, against the order, dated 19.02.2022, passed by the Director, Elementary Education Department, Assam; the minutes of the District Scrutiny Committee, Goalpara, in its meeting held on 18.08.2022; and the inquiry report as submitted in the matter by the jurisdictional District Scrutiny Committee in pursuance of the directions passed by this Court vide order, dated 11.02.2021, in WP(c)6928/2021; the said appeal would be considered on its own merits by the appellate authority after also hearing the respondent No. 5, herein, and a reasoned order be passed thereon, within a period of 3(three) months from the date of receipt of a certified copy of this order.

25. This Court not having examined the Minutes of the Meeting of the District Scrutiny Committee, Goalpara, dated 18.08.2022, on merits, in absence of a challenge to it; it is provided that the provincialization of the

services of the respondent No. 5, shall be subject to such directions as would be passed by the appellate authority in the appeal, dated 03.04.2023, preferred by the petitioner in the matter.

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

JUDGE

Comparing Assistant