

GAHC010146832021



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

Case No. : WP(C)/4775/2021

AZIZUR RAHMAN
S/O. LT. SOFIR UDDIN, VILL. MUNZURI BILL, P.O. TUKRAPARA, DIST.
KAMRUP, ASSAM, PIN-781137.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
THROUGH THE SECY. TO THE GOVT. OF ASSAM, ELEMENTARY
EDUCATION, DISPUR, GHY.-06.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GHY.-19.

3:THE DIST. ELEMENTARY EDUCATION OFFICER

KAMRUP
DIST. KAMRUP
ASSAM.

4:THE DISTRICT SCRUTINY COMMITTEE

KAMRUP
REP. BY ITS CHAIRPERSON CUM DEPUTY COMMISSIONER KAMRUP
DIST. KAMRUP
ASSAM.

5:ABU TAHER
S/O. LT. KHURSHED ALI
VILL. GHORAMARA PATHAR

P.O. BHAUNIABHIATHA
DIST. KAMRUP
ASSAM
PIN-781136.

6:MD. NADIRUL ISLAM
S/O. LT. BABAR ALI
VILL. KACHARIPARA
P.O. MAHATOLI
DIST. KAMRUP
ASSAM
PIN-781136

Advocate for the Petitioner : MR M H AHMED

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 30.07.2024

Heard Mr. M. H. Ahmed, learned counsel for the petitioner. Also heard Mr. P. K. Bora, learned standing counsel, Elementary Education Department for the respondent Nos. 1 to 3; Mr. G. Pegu, learned Govt. Advocate for the respondent No.4 and Mr. A. K. Ahmed, learned counsel for the respondent Nos. 5 and 6.

2. The petitioner was appointed as an Arabic Teacher by the Secretary, Kacharipam M. E. Madrassa on 15.08.1998 to which post, the petitioner joined on 18.08.1998. The petitioner's appointment was given provisional approval by an order dated 11.03.2008, issued by the District Elementary Education Officer, Kamrup, Guwahati. The name of the petitioner was also captured in the Dis Code of 2008-2009, 2009-2010 onwards as an Arabic Teacher. The Headmaster

of the said Kacharipam M. E. Madrassa made an application for provincialisation of the services of teachers/tutors in upper primary schools in terms of the Assam Education (Provincialisation of Services of Teachers and Organization of Educational Institutions) Act, 2017 (Act of 2017 in short). In the said application, the petitioner is indicated to have joined on 10.08.1998 and the respondent No.5/Abu Taher on 17.12.1998 and the respondent No.6/Nadirul Islam on 01.02.2007. Thereafter, the District Scrutiny Committee recommended the case of 4(four) teachers including the respondent Nos. 5 and 6. In the said recommendation, the date of joining in service of the respondent No.5 is shown as 17.12.1990 and that of respondent No.6 on 01.02.2007.

3. It is the case of the petitioner that the respondent Nos. 5 and 6 are junior to the petitioner inasmuch as, the petitioner has joined as Arabic Teacher on 18.08.1998 and the respondent No.5 joined as Hindi Teacher on 17.12.1998 and the respondent No. 6 joined as Assistant Teacher of Social Science on 01.02.2007. Therefore, the case of the petitioner should have been recommended instead of the respondent Nos. 5 and 6.

4. Thereafter, the State Level Scrutiny Committee accepted the recommendation of the District Scrutiny Committee and accordingly, by a Notification dated 4th of February, 2021, the Director of Elementary Education, Assam provincialised the services of 4(four) teachers of Kacharipam M. E. Madrassa including the respondent Nos. 5 and 6. Being aggrieved, the petitioner made a representation before the Director of Elementary Education, Assam through the Headmaster of Kacharipam M. E. Madrassa on 28.02.2019.

5. The respondent No.2/Director of Elementary Education, Assam has filed counter affidavit and on the basis of the counter affidavit, Mr. P. K. Bora, learned standing counsel, Elementary Education Department submits that after the recommendation of the District Scrutiny Committee, (Kamrup), wherein, 4(four) teachers were recommended against Kacharipam M. E. Madrassa of Kamrup (Rural) district were received the same was placed before the State Level Scrutiny Committee followed by the Joint Committee constituted by the Government to examine the proposal for provincialisation of teachers in terms of the Act of 2017. After the Committee verified the documents, the provincialisation order of the 4(four) teachers of Kacharipam M. E. Madrassa was ordered including the respondent Nos. 5 and 6. He further submits that as the petitioner is aggrieved by the provincialisation order of the respondent Nos. 5 and 6, the petitioner may be directed to file an appeal in terms of Section 14 of the Act of 2017.

6. The respondent Nos. 5 and 6 has also filed counter affidavit and in para-7 of the said affidavit it is stated that the respondent No.5 was appointed on 15.12.1998 and he joined his service on 17.12.1998. Further, as regards the respondent No.6, it is stated that he was appointed as Assistant Teacher on 01.02.2007 and joined the service on 01.02.2007. Further, Mr. A. K. Ahmed, learned counsel for the respondent Nos. 5 and 6 submits that the representation alleged to have been submitted by the petitioner which is annexed as Annexure-9 in the reply affidavit dated 23rd of July, 2024 and Annexure-12 annexed in the additional affidavit filed by the petitioner on 25.07.2024 appears to be identical except the name of the Headmaster in Annexure-9 and name of the petitioner

in Annexure-12. He also submits that the receipt number and the date of receipt are identical and therefore, there is every likelihood that the same are manufactured documents.

7. Mr. M. H. Ahmed, learned counsel for the petitioner submits that the petitioner is retiring on 31st of July, 2024 and therefore, appropriate orders may be passed to enable the petitioner to enjoy the service conditions after provincialisation of his service.

8. After hearing the learned counsel for the parties and on consideration of the materials available on record, what this Court has noticed is that the alleged representation which the petitioner claims to have filed on 28.02.2019 before the Director of Elementary Education, Assam appears to have been made before the wrong forum. In terms of Section 14 of the Act of 2017, the petitioner is supposed to have filed an appeal before the State Government against the recommendation of the State Level Scrutiny Committee and not before the Director of Elementary Education, Assam.

9. Therefore, without expressing any opinion on the merits of the case, this writ petition is disposed of with a direction to the petitioner to file an appeal under Section 14 of the Act of 2017 before the State Government in the School Education Department. Thereafter, on receipt of the appeal filed by the petitioner, the State Government in the School Education Department shall consider the appeal by giving an opportunity of hearing to the petitioner as well as the respondent Nos. 5 and 6 and on verification of record shall pass

appropriate orders in accordance with law within a period of 1(one) month from the date of receipt of the appeal. In the event, if the petitioner is found to be entitled for provincialisation, appropriate orders should be passed giving retrospective provincialisation to the petitioner w.e.f. the date the teachers of Kacharipam M. E. Madrassa were provincialised. This direction is being passed inasmuch as the petitioner is retiring on 31st of July, 2024.

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

JUDGE

Comparing Assistant