



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

WP(C) No.5351 of 2021

Ala Uddin Barbhuiya,
Son of Late Jamir Uddin Barbhuiya,
Village: Natun Ramnagar Part-V, PO:
Dakshin Mohanpur, District: Cachar,
Assam.

.....Petitioner

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Education (Secondary) Department, Dispur, Guwahati – 781006.
2. The Commissioner & Secretary to the Government of Assam, Finance Department, Dispur, Guwahati – 781006.
3. The Director of Secondary Education, Assam, Kahilipara, Guwahati – 781019.
4. The District Scrutiny Committee, Cachar, represented by the Deputy Commissioner, Cachar, PO & PS: Silchar, District: Cachar, Assam.
5. The State Level Scrutiny Committee, Cachar, represented by the Director of Secondary Education, Assam, Kahilipara, Guwahati – 781019.

.....Respondents

- B E F O R E -
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. A.M. Barbhuiya, Advocate.

For the Respondents : Mr. U. Sharma, Standing Counsel,
Education (Secondary) Department, for
respondent Nos.1, 3 & 5.
: Mr. B. Gogoi, Standing Counsel,
Finance Department, for respondent
No.2

: Mr. B. Deori, Junior Government
Advocate, Assam for respondent No.4.

Date of Hearing : 22.03.2024.

Date of Judgment : 22.03.2024.

JUDGMENT & ORDER

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner. Also heard Mr. U. Sharma, learned standing counsel, Education (Secondary) Department, representing the respondent Nos.1, 3 & 5; Mr. B. Gogoi, learned standing counsel, Finance Department, representing the respondent No.2 and Mr. B. Deori, learned Junior Government Advocate, Assam, representing the respondent No.4.

2. The petitioner, by way of instituting the present proceedings, has prayed for a direction from the respondent authorities to extend to him the benefit of provincialisation of services w.e.f. 01.01.2013 in terms of the order dated 20.08.2013, by which the services of other eligible serving teachers in Swadhin Bazar High School, Cachar came to be provincialised. The petitioner was

initially appointed by the Managing Committee of Swadhin Bazar High School on 20.06.1994 as a Persian Classical Teacher in the said School. The said School, at the relevant point of time, was a venture School. The case of the serving eligible teachers in the said School was taken up for consideration under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (for short, "2011 Act") and vide an order dated 20.08.2013, the services of the teachers working in the said School came to be provincialised, however, the name of the petitioner was dropped from the purview of such provincialisation. It is to be noted that the said provincialisation of services of the teachers found eligible in the said School was so effected w.e.f. 01.01.2013.

3. The petitioner being aggrieved on account of non-extension of the benefits of provincialisation of his services to him, approached this Court by way of instituting WP(C) No.1891/2016. This Court, vide order dated 18.03.2016, upon noticing the grievances raised by the petitioner required the Director of Secondary Education, Assam to dispose of the application as preferred by the petitioner under "B" Format by a speaking order regarding the entitlement of the petitioner for having his services provincialised as a Classical Teacher in Persian in the School in question. It is the contention of the petitioner that upon such scrutiny of the "B" Format, the respondent authorities had published a list of teachers found eligible for provincialisation of their services and against the

District of Cachar, the name of the petitioner figured therein and he was denoted to be eligible for provincialisation of his services. Thereafter, the services of the petitioner not being provincialised, he has instituted the present proceedings.

4. Mr. A.M. Barbhuiya, learned counsel for the petitioner submits that the directions of this Court passed vide order dated 18.03.2016 in WP(C) No.1891/2016 having been considered by the respondent authorities and his case being found to be eligible for provincialisation of his services as a Classical Teacher in Persian, the respondent authorities ought to have taken the matter to its logical conclusion by issuing orders towards provincialising his services. It is the contention of the learned counsel for the petitioner that from the affidavit as filed by the Director of Secondary Education, Assam, it is seen that a plea has been raised that the case of the petitioner was not considered for provincialisation of his services due to non-inclusion of his name in the UDISE data for the year 2016.

5. Per contra, Mr. U. Sharma, learned standing counsel, Education (Secondary) Department submits that the petitioner's name having not been found in the UDISE data for the year 2016, his case for provincialisation of the services could not be considered. It is the contention of Mr. Sharma that the inclusion of a name of a serving teacher in the UDISE Code denotes that the said teacher is working

continuously in the School and the said factor is relevant for determining the eligibility of such teachers in terms of the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (for short, "Act of 2017"). It is also contended that the Act of 2017 requires a serving teacher in a Venture Educational Institution to have a minimum service of 6(six) years prior to coming into force of the Act and the cut off date for determination of the same was fixed as 31.12.2012. The continuous service of the petitioner not being established, in absence of his name being included in the UDISE data for the relevant period, the case of the petitioner was not considered for provincialisation of his services.

6. It is an admitted position that the State Level Scrutiny Committee (SLSC) had refused to recommend the name of the petitioner only on the ground that his name did not figure in the DISE data of the School for the years 2014, 2015 and 2016. The petitioner is working in a High School and in terms of the provisions of the Act of 2017, the names of the teachers working in a Venture High School or a Venture Higher Secondary School are not mandated to be captured in the DISE Code or the UDISE Code. The definition of "Venture High School" and "Venture Higher Secondary School" can be seen in Section 2(x) and 2(y) of the Act of 2017, which are reproduced herein below:-

"2.(x) 'Venture High School' means High School imparting education up to class X and established by the people of the locality prior to 1.1.2006 which has received permission from the State Government and recognition from the Board of Secondary Education, Assam on or before 1.1.2006 and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far;

(y) 'Venture Higher Secondary School' means a Higher Secondary School imparting education up to Class XII and established by the people of the locality prior to 1.1.2006 which has received permission from the State Government on or before 01.01.2006 and whereof the services of teachers have not been provincialised under any Act earlier enacted by the State legislature so far."

7. This Court further, at this stage, finds it relevant to take note of two other definitions, i.e. definition of "Venture M.E. School" including "Venture M.E. Madrassa and "Venture Lower Primary School" or "Venture L.P. School", which have been defined in Section 2(za) and 2(zb) of the Act of 2017. The said definitions, being relevant, are also quoted herein below:-

"2(za) 'Venture ME School' including 'Venture ME Madrassa' means an Upper Primary School imparting education from class VI up to class VII and established by the people of the locality prior to 1.1.2006 which has received recognition from the competent authority on or before 01.01.2006 and captured in the DISE Code up to 2009-10 and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far: Provided that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialisation of services of any employee of the institution;

2(zb) 'Venture Lower Primary School' or 'Venture LP School' means a School imparting education up to Class V and established by the people of the locality prior to 1.1.2006 whose name figure in the DISE Code up to 2009-10 and prior to that and whereof the

services of the teachers have not been provincialised under any Act enacted by the State legislature so far: Provided that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialisation of services of any employee of the institution."

8. From the above extracted definitions, it transpire that Section 2(x) defines "Venture High School" to mean such school imparting education up to Class-X and established by the people of the locality prior to 01.01.2006, which has received permission from the State Government and recognition from the Board of Secondary Education, Assam on or before 01.01.2006 and whereof the services of the teachers have not been provincialised under any Act enacted by the State Legislature so far. The definition of "Venture Higher Secondary School" as would be seen from Section 2(y) of the Act of 2017 is similar to "Venture High School". However, the difference in the definitions between Venture High School and the Venture Higher Secondary School is that in Venture High School, the School imparts education up to Class-X whereas in Venture Higher Secondary School, the School imparts education up to Class-XII.

9. From the definitions of "Venture High School", "Venture Higher Secondary School", "Venture M.E. School" and a "Venture Lower Primary School", as quoted hereinabove, it is evident that it is only in respect of the "Venture M.E. School" and a "Venture Lower Primary School" that the requirement of the names of the teachers

being captured in the DISE Code up to 2009-10 has been provided for. In respect of a Venture High School or a Venture Higher Secondary School, as defined under Section 2(x) and 2(y) of the Act of 2017, such prescription is admittedly absent and accordingly, it can be construed that the requirement of a DISE Code is only applicable in case of a Venture Primary or a Venture Upper Primary School.

10. The provisions of the Act of 2017 having not mandated any teacher working in a "Venture Secondary School" or a "Venture Higher Secondary School" to have their names captured in the DISE data up to the year 2009-10, the conclusions reached by the SLSC for the purpose of rejecting the case of the petitioner that her name was not found included in the DISE data of the School for the years 2014, 2015 and 2016 is clearly contrary to the provisions of the said Act of 2017. The SLSC for the purpose of rejecting the case of the petitioner could not have drawn conclusions which are clearly contrary to the provisions of the Act of 2017.

11. In view of the said position, the stand as taken by the respondent authorities for non-consideration of the case of the petitioner for provincialisation of his services cannot be held to be sustainable and accordingly, the said stand as taken by the respondents, stands rejected.

12. The matter accordingly stands remanded to the Director of Secondary Education, Assam, who is now required to place the recommendations made in favour of

the petitioner before the SLSC. While placing the recommendation of the District Level Scrutiny Committee (DLSC) in favour of the petitioner before the SLSC, the Director of Secondary Education, Assam shall specifically bring to the notice of the Committee that the case of the petitioner for provincialisation of his services was found to be eligible on scrutiny of the "B" Format submitted by him and that the case of the petitioner cannot be rejected only on the ground that her name does not figure in the DISE Data of the School for the year 2016. The Director shall also apprise the SLSC about the conclusions arrived at hereinabove by this Court to the effect that the provisions of the Act of 2017 does not mandate the teachers working in a Venture Secondary School or Venture Higher Secondary School to have their names captured in the DISE Data and/or in the UDISE data. Thereafter, on the case of the petitioner being considered by the SLSC strictly in accordance with the provisions of the Act of 2017, necessary order(s) as may be required with regard to the provincialisation of the services of the petitioner be issued by the Director of Secondary Education, Assam.

13. It is provided that in the event the SLSC has any apprehension with regard to the continuous nature of services of the petitioner, the said committee is required to invoke the powers as conferred on it under the provisions of Section 13(11) of the Act of 2017. The said Committee, in terms of the provisions under Section 13(11) of the Act of 2017, shall cause physical verification of the institution

of the petitioner and also inspect all documents and records as may be required for the purpose of consideration of the case of the petitioner for provincialisation of his services and thereafter, render its recommendation in the matter.

14. The process as now required to be carried out by the Director of Secondary Education, Assam in terms of the directions passed herein above by this Court, shall be so initiated and completed within a period of 3(three) months from the date of receipt of certified copy of this judgment & order. The petitioner, to facilitate the process, shall furnish a certified copy of this judgment & order along with a forwarding before the Director of Secondary Education, Assam.

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

J U D G E

Comparing Assistant