

GAHC010163012022



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

Case No. : WP(C)/5575/2022

HARIHAR KALITA AND 8 ORS
S/O LATE SARAT KALITA,
VILL.- BARAGRA,
P.O.- HATINAMATI,
P.S.- NALBARI,
DIST.- NALBARI, ASSAM, PIN- 781337.

2: SANATAN BAISHYA
S/O LATE MAHENDRA BAISHYA
VILL.- BARAGRA
P.O.- HATINAMATI
P.S.- NALBARI
DIST.- NALBARI
ASSAM
PIN- 781337.

3: JYOTISH NATH
S/O KHAGEN NATH
VILL.- DHANTOLA
P.O.- CHENGNOI
P.S.- NALBARI
DIST.- NALBARI
ASSAM
PIN- 781337.

4: DEVO KUMAR KALITA
S/O LATE PHUKAN CH. KALITA
VILL.- ANGARDHOWA
P.O.- HATINAMATI
P.S.- BARAMA
DIST.- BAKSA
ASSAM
PIN- 781344.

5: JADAB KUMAR DEKA
S/O UMA CHARAN DEKA
VILL.-KENDUKUCHI
P.O.- KENDUKUCHI
P.S.- NALBARI
DIST.- NALBARI
ASSAM
PIN- 781341.

6: LAVITA DEKA
S/O LATE SADANANDA DEKA
VILL.- BALITARA
P.O.- BALITARA
P.S.- GHAGRAPAR
DIST.- NALBARI
ASSAM
PIN- 781349.

7: KHARGESWAR SARMA
S/O LATE DWARIKA
VILL.- BARAGRA
P.O.- HATINAMATI
P.S.- NALBARI
DIST.- NALBARI
ASSAM
PIN- 781337.

8: PRATAP TALUKDAR
S/O LATE LAKSHI TALUKDAR
VILL.- BARAGRA
P.O.- HATINAMATI
P.S.- NALBARI
DIST.- NALBARI
ASSAM
PIN- 781337.

9: UTTAM DAS
S/O SRI CHANDRA DAS
VILL.- BARAGRA
P.O.- HATINAMATI
P.S.- NALBARI
DIST.- NALBARI
ASSAM
PIN- 781337

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPTT., DISPUR, GUWAHATI- 06.

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

3:DEPUTY COMMISSIONER NALBARI DISTRICT NALBARI- 781335.

4:INSPECTOR OF SCHOOL NALBARI DISTRICT CIRCLE NALBARI- 781335

Advocate for the Petitioner : MR. J KALITA
Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 12.02.2024

Heard Mr. J. Kalita, learned counsel for the petitioners. Also heard Mr. Bedanta Kaushik, learned standing counsel, Secondary Education Department, appearing on behalf of Respondents No. 2 & 4; and also Ms. Deepanjalee Das Barman, learned Addl. Senior Government Advocate, appearing on behalf of Respondent No. 3.

2. The petitioners by way of instituting the present proceedings, have prayed for a direction to the respondent authorities to provincialize their services under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, on the ground that their cases for such provincialization was recommended before the said Act of 2011 was set aside by this Court.

3. The petitioners, herein, are the serving teachers of Batahgila Anchalik High School, a venture educational institution established in the year 1993. The said

school was granted permission by the competent authority on 28.10.1996 for Class VIII w.e.f. 01.01.1996 and for opening of Class IX w.e.f. 01.01.1999. The said school was also given the permission to present the students for the High School Leaving Certificate Examination w.e.f. 01.01.2004. The said school being found to have satisfied the eligibility criterias as mandated in the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, the cases of the serving teachers of the said school was taken-up for provincialization of their services. Accordingly, it is contended that the particulars of the serving teachers of the said school came to be placed before the jurisdictional District Level Scrutiny Committee (DLSC) and the said Committee on verification of the said particulars of the serving teachers; had recommended the names of the teachers found eligible for provincialization of their services.

It is also the contention of the petitioners that their names were duly published in the website of the respondent authorities, wherein, it has been reflected that the name of the said school of the petitioners was found eligible for provincialization of the teachers serving therein. However, in view of the fact that this Court on a challenge being presented to the said Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, vide judgment & order, dated 23.09.2016, passed in WP(c)5825/2012, interfered with the said Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, declaring it as unconstitutional and void, the cases of the petitioners for provincialization of their services could not be considered any further.

4. The petitioners contend that the State respondents had instituted a review

petition before this Court being Review Pet. No. 167/2016 and this Court vide order, dated 02.01.2017, had provided that the rights of the employees who have been benefitted under the struck down statute can be taken care of by giving retrospective effect to the proposed legislation, if the legislature so decides and till then, the services of the provincialized category and their status as Government employees shall not be disturbed and they will continue to receive all the benefits which they were getting under the Assam Venture Educational Institutions(Provincialization of Services) Act, 2011.

5. The cases of the petitioners not having been considered in terms of the determination of the eligibility made in their cases, the petitioners have instituted the present proceedings before this Court.

6. The learned counsels appearing for the parties have advanced their respective submissions in line with the facts as noted hereinabove.

7. On perusal of the materials as brought on record, it is not determinable as to whether the cases of the petitioners were finally approved by the authorities for provincialization of their services under the provisions of the Assam Venture Educational Institutions(Provincialization of Services) Act, 2011. There is no material brought on record to show that the authorities before the striking down of the said Act of 2011, had passed orders creating posts for provincialization of the services of the serving teachers in the school, in question, under the provisions of the Assam Venture Educational Institutions(Provincialization of Services) Act, 2011. As such, final conclusion not being arrived at by the

authorities in terms of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; it cannot be held that the services of the serving teachers of the said school, had stood provincialized by operation of law under Section 4(1) of the said Act of 2011.

8. It is to be noted that pursuant to the striking down of the Assam Venture Educational Institutions(Provincialization of Services) Act, 2011, the respondent authorities had enacted the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017.

9. On a query made by this Court as to whether the petitioners had applied for having their cases considered under the provisions of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017; the petitioners have filed an additional affidavit in the matter and therein, have brought on record the fact that pursuant to the enactment of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, the petitioners had applied *online* and the Headmaster of the said school had submitted the particulars of the teachers working in the said school. However, the respondent authorities, thereafter, have not processed the matter.

10. No vested right of the petitioners having accrued under the provisions of the said Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, for having their cases provincialized; no direction can be issued by this Court for provincialization of the services of the petitioners under the Assam

Venture Educational Institutions (Provincialization of Services) Act, 2011. However, the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, having been so enacted in continuance of the Assam Venture Educational Institutions(Provincialization of Services) Act, 2011, and the same also having been given retrospective effect; a vested right has now accrued to the petitioners for having their cases considered for provincialization of their services under the provisions of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017. As noted hereinabove, the petitioners have also submitted formal applications for consideration of their cases for provincialization of their services under the provisions of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017.

11. In view of the said position; the petitioners are hereby directed to approach the Director, Secondary Education Department, Assam, by way of submitting a representation making a claim therein for provincialization of their services under the said Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017. The petitioners shall along with the said representation, submit the particulars as was submitted by them online earlier and which has been brought on record in the additional affidavit filed by the petitioners in the present proceedings.

12. The Director, Secondary Education Department, Assam, on receipt of such representation from the petitioners, shall consider the same and have the cases

of the petitioners placed before the jurisdictional District Level Scrutiny Committee(DLSC) for verification of their particulars.

13. Basing on the recommendations of the jurisdictional District Level Scrutiny Committee(DLSC), the cases of the petitioners shall be, thereafter, placed before the State Level Scrutiny Committee(SLSC) and on receipt of the recommendations as may be made in the matter by the State Level Scrutiny Committee(SLSC), further processing of the cases of the petitioners for provincialization of their services shall be so made by the Director, Secondary Education Department, Assam. On receipt of the recommendations as made by the State Level Scrutiny Committee(SLSC) in respect of the petitioners; the Director, Secondary Education Department, Assam, shall communicate the same to each of the petitioners.

14. In the event, the case of any of the petitioners is not so recommended by the State Level Scrutiny Committee(SLSC) for provincialization of their services; the reasons basing on which such decision was arrived at, shall be communicated to the concerned petitioner(s) by the Director, Secondary Education Department, Assam, by way of issuance of a speaking order incorporating therein, the said reasons as assigned by the State Level Scrutiny Committee(SLSC) for rejecting the cases of such petitioner(s).

15. The petitioners, in whose cases, favourable recommendations are received from the State Level Scrutiny Committee(SLSC), process for issuance of orders towards provincializing their services be initiated forthwith.

16. The entire exercise as 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 6(six) months from the date of receipt of a certified copy of this order.

17. The petitioners, along with the representation as required to be submitted by them in the matter, shall furnish a certified copy of this order before the Director, Secondary Education Department, Assam, facilitating the authority to take-up the matter forward.

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

JUDGE

Comparing Assistant