

GAHC010094782022



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

Case No. : WP(C)/5733/2022

ANGURI BEGUM
D/O- MAJID ALI
VILL- BEHAIRDALA
P.O. LILACHILA
DIST.- KARIMGANJ
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM
EDUCATION (ELEMENTARY) DEPTT.
DISPUR
GHY-06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE MISSION DIRECTOR
ASSAM SARVA SIKSHA ABHIJAN MISSION
KAHILIPARA
GHY-19

4:THE STATE LEVEL SCRUTINY COMMITTEE
REP. BY ITS CHAIRMAN
THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
GHY-19

5:THE DISTRICT SCRUTINY COMMITTEE
REP. BY ITS CHAIRMAN
THE DY. COMMISSIONER
KARIMGANJ

DIST.- KARIMGANJ
ASSAM
PIN- 788710
6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KARIMGANJ
P.O. KARIMGANJ
P.O. KARIMGANJ
DIST.- KARIMGANJ
ASSAM
PIN- 788710

Advocate for : MR. M KHAN
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 5 ORS

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

Judgment & Order(Oral)

Date : 11.06.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. P. K. Borah, learned Standing Counsel for the Elementary Education Department representing the respondents no. 1, 2, 4, & 6 and Mr. S. Borah, learned Standing Counsel for the SSA representing the respondent no. 3 as well as Mr. P. Saikia, learned counsel for the respondent no. 5.

2. The petitioner, by way of instituting the present proceeding has presented a challenge to an order dated 11.01.2022, issued by the Director of Elementary Education, Assam, rejecting the case of the petitioner for provincialisation of her services under the provisions of the Assam Venture

Educational Institutions (Provincialisation of Services) Act, 2011 as amended in 2012, on the ground that the petitioner herein did not have the requisite qualifications at the time of her initial appointment in the venture school.

3. As projected in the writ petition, the petitioner was appointed as an Assistant Teacher of Dalal Shah L.P. School, Karimganj, on 04.02.2008 by its School Managing Committee. The petitioner joined her services on the same date. It is to be noted that at the time when the petitioner was so appointed in the school, the school was in its venture stage. Thereafter, on enactment of the said Act of 2011, the case of the petitioner and the incumbent in the post of Headmaster in the school were taken up for consideration for provincialisation of their services. On conclusion of the process so involved, the Director of Elementary Education, Assam vide an order dated 14.05.2013, proceeded to provincialise the services of the teachers found eligible in venture schools under the jurisdiction of the District Elementary Education Officer (DEEO), Karimganj. Insofar as the school of the petitioner is concerned, in the said order, only the services of the incumbent in the post of Headmaster came to be provincialized and the name of the petitioner was dropped from the purview of the provincialisation of her services. The post of Assistant Teacher in the said school was denoted to be vacant in the said order dated 14.05.2013.

4. The petitioner being aggrieved for being left out from the purview of provincialisation exercise as undertaken and in not being considered for

provincialisation of her services, approached this Court by way of instituting a writ petition being WP(C) No. 4680/2021 and this Court, vide order dated 10.11.2021 on consideration of the issues arising therein, disposed of the said writ petition by holding that a legal right exists in favor of the petitioner for being now considered under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-Organisation Institutions) Act, 2017 and accordingly, the petitioner was directed to submit a representation before the Director of Elementary Education, Assam and the said representation was directed to be considered and disposed of by way of passing a reasoned order by taking note of the provisions of Section 3(1)(x) of the said Act of 2017. The petitioner, accordingly, submitted her representation in the matter in terms of the direction as passed by this Court and the said representation on being considered, came to be rejected vide the order dated 11.01.2022, holding that the claim of the petitioner for provincialisation of her services in the said school cannot be accepted under the said Act of 2011. Being aggrieved, the petitioner has instituted the present proceeding.

5. It is to be noted that this Court, vide the order dated 10.11.2021 had specifically directed the Director of Elementary Education, Assam, to consider the case of the petitioner under the provisions of the said Act of 2017, however, on a perusal of the order dated 11.01.2022, such consideration is seen to not have been extended to the petitioner and her case was again considered under provisions of the repealed Act of 2011, on the ground that the petitioner at the time of her initial appointment in the school did not have the minimum prescribed academic qualifications for

being appointed as an Assistant Teacher in the said L.P. School.

6. A perusal of the order dated 11.01.2022, reveals that the only ground on which the case of the petitioner was so rejected was that the petitioner did not possess the mandated qualification of Higher Secondary or equivalent passed at the time of her initial appointment, in the venture educational institution.

7. The case of the petitioner now being required to be so considered under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the relevant provisions therein, in this connection, is to be considered.

8. Section 2(u) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, defines a “tutor” to mean and include a teacher whose services cannot be provincialized as a Teacher under the Act due to lack of his/her educational and professional qualification required as per the Right of Children to Free and Compulsory Education Act, 2009, as well as the National Council for Teachers Education Act, 1993 and the relevant rules and regulations framed there under.

9. Section 6 of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017,

mandates that services of a teacher in a venture educational institution from primary level up to degree level shall be considered for provincialization against the post of Teacher subject to fulfillment of the eligibility criterias relating to educational and professional qualification as laid down under the Acts mentioned therein.

10. Section 7 of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, relating to “tutors” mandates that a person provincialized in his/her services as a “tutor” must acquire the prescribed educational and professional qualification within a period of 5(five) years from the date of publication of the provincialization order in the official gazette of services of the teacher and/tutor of the concerned venture educational institution and it is only after upon acquiring such required qualification, their services shall be upgraded to the post of Teacher in the appropriate cadre. It is further provided under the provisions of Section 7(2) that if such “tutor” fails to acquire such prescribed qualification within a period of 5(five) years from the date of publication of the order of provincialization in the official gazette, their services shall not be considered for upgradation to the post of Teacher after the lapse of 5(five) years from the date of the publication of the provincialization order in the official gazette and they shall continue to function as “tutor” as per the same terms and conditions which were applicable to them before provincialization of the concerned venture educational institutions.

11. Considering the order, dated 11.01.2022, in the light of the provisions as noted hereinabove existing in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; it is found that the reasoning as advanced in the order, dated 11.01.2022, for rejecting the case of the petitioner, herein, is not in consonance with the prescriptions as made in this connection in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

12. The provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, does not mandate considering the educational and professional qualification possessed by a teacher working in a venture educational institution on the date of his/her initial appointment but mandates that such qualification shall be considered as on the date when the case of such teacher is considered for provincialization of his/her services under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

13. The petitioner, in the writ petition has contended that she had appeared for the Higher Secondary Level Examination and cleared the same in the year 2011 and thereafter, had obtained her D.El.Ed in the year 2019. The petitioner, in view of the said qualifications as acquired by her satisfies the requisite eligibility criterias as mentioned in the Acts as laid out in the provisions of Section 6(1) of the Assam Education (Provincialization of

Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and accordingly, the case of the petitioner was mandated to be considered on merit for provincialization of her services as a “tutor” at least under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

14. The respondent authorities not having considered the case of the petitioner as mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, it is found that the order, dated 11.01.2022, was so passed clearly ignoring the provisions as existing in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, as well as the observations as made by this Court in the order, dated 10.11.2021, passed in WP(C)4680/2021.

15. In view of the above conclusions; this Court is of the considered view that the order, dated 11.01.2022, cannot be sustained and the same is accordingly interfered with.

16. In view of the interference made by this Court with the order, dated 11.01.2022, following directions are hereby issued:

(i). The petitioner is directed to submit a detailed representation before the Director, Elementary Education Department, Government of Assam, within a period of 30(thirty) days from today and therein, stake a claim for

provincialization of her services under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, by bringing on record all requisite particulars pertaining to Higher Secondary and/or equivalent qualification as possessed by her along with the D.El.Ed. qualification as acquired by her.

(ii). The Director, Elementary Education Department, Government of Assam, on receipt of such representation from the petitioner, shall consider the same strictly in accordance with the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and thereafter, in the event, it is found that the petitioner has acquired the prescribed qualification as mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; proceed to have the case of the petitioner considered in terms of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, for provincialization of her services as a Tutor and/or Teacher as the case may be.

(iii). The exercise as now required to be carried-out in terms of the directions as passed by this Court hereinabove, shall be so initiated and completed by the Director, Elementary Education Department, Assam, within a period of 3(three) months from the date of receipt of the representation to be submitted by the petitioner along with a certified copy of this order.

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

JUDGE

Comparing Assistant