

GAHC010170182022



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

Case No. : WP(C)/5561/2022

JAHANARA BEGUM
W/O- ALIM UDDIN,
VILL- RATABARI,
P.O AND P.S- RATABARI,
DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19

3:THE MISSION DIRECTOR
ASSAM SARVA SIKSHA ABHIJAN MISSION

KAHILIPARA
GUWAHATI-19

4:THE STATE LEVEL SCRUTINY COMMITTEE
REP. NY ITS CHAIRMAN
THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

5:THE DISTRICT SCRUTINY COMMITTEE

REP. BY ITS CHAIRMAN THE DEPUTY COMMISSIONER
KARIMGANJ

DIST- KARIMGANJ
ASSAM
PIN-788710

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
P.O-KARIMGANJ

DIST- KARIMGANJ
ASSAM
PIN-78871

Advocate for the Petitioner : MR. M KHAN, MR A BURAGOHAIN,MR. J RAHMAN

Advocate for the Respondent : SC, ELEM. EDU, GA, ASSAM,SC, SSA

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 25.10.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. B. Talukdar, learned standing counsel, Elementary Education Department for respondent Nos. 1, 2, 4 and 6; Mr. B. Choudhury, learned standing counsel, SSA, for respondent No. 3 and Ms. D. D. Barman, learned Addl. Senior Government Advocate, for respondent No. 5.

2. By this writ petition, the petitioner is challenging the Order, dated 31.03.2022 issued by the Director, Elementary Education Department, Government of Assam, whereby the claim of the petitioner for provincialisation of her service under the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (the Act of

2017 in short) on the ground that the petitioner, at the time of her initial appointment in the said school, did not have the required minimum qualification of Higher Secondary or equivalent passed.

3. The petitioner was appointed as Assistant Teacher in Kaiyakhal L. P School on 25.12.2008, to which post she joined on 01.01.2009. During the relevant point of time, the school in question was in the venture stage. After the enactment of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (the Act of 2011 in short), the case of the eligible serving teachers of the said school was taken up for consideration for provincialisation of their services and accordingly, the case of the petitioner was also forwarded for provincialisation of her service.

4. It is the case of the petitioner that on a consideration being made by the Director, Elementary Education Department, Government of Assam with regard to the proposal submitted in respect of the petitioner for provincialisation of her service, the name of the petitioner was also notified in the Website of the respondents and she was found to be eligible for provincialisation of her service. However, when the provincialisation of services of the serving teachers in various Primary Schools were affected, the name of the petitioner was dropped from the list and only the service of the Headmaster of the School in question was provincialised. In the meantime, the Act of 2011 was set aside by this Court and thereafter, the Act of 2017 was enacted.

5. As the case of the petitioner was not considered for provincialisation of her

service in terms of the Act of 2017, the petitioner approached this Court by filing WP(C) No. 4365/2021, which was disposed of by the Order dated 13.09.2021 and the relevant portion reads as under:

“3. It is stated that one teacher of the school namely Anowar Uddin Ahmed has been provincialised. As two teachers of the school can be provincialised and one such teacher had been provincialised, we are of the view that a legal right remains in favour of the petitioner for being considered for provincialisation against the second post in respect of Kaiyakhal V.L.P. School under the Act of 2017. The Act of 2017 also provides for provincialising the services of such teachers who do not have the adequate qualification by provincialising them as tutors with a condition to obtain the necessary qualification within a period of five years thereafter.

4. From the said point of view, even if the petitioner does not have the necessary qualification still the authorities can consider her for provincialising the services as a tutor. Be that as it may, as a legal right exists in favour of the petitioner for being considered for provincialisation under the Act of 2017, we require the petitioner to submit a representation before the Director of Elementary Education, Assam who shall thereupon pass a reasoned order either accepting or rejecting the claim of the petitioner. But in doing so, shall strictly consider her case against the second post of teacher in Kaiyakhal V.L.P. School by taking note of the Section 3(1)(x) of the Act of 2017.

5. The representation be submitted within a period of 15 days from today and the Director shall pass a reasoned order within a period of two months from the date of receipt of such application.”

6. Thereafter, the Director, Elementary Education Department passed the Order dated 31.03.2022, which is being impugned in the present writ petition.

7. A perusal of the Order, dated 31.03.2022 issued by the Director, Elementary Education Department, Government of Assam/Respondent No. 3,

would indicate that the only ground, on which the case of the petitioner was rejected, was that the petitioner did not possess the required qualification of Higher Secondary or equivalent passed at the time of her initial appointment in the said Venture Educational Institution.

8. As the case of the petitioner is now required to be considered for provincialisation of her service under the Act of 2017. The relevant provisions of the said Act of 2017 will have to be considered.

9. Section 2(u) of the Act of 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 thereunder.

10. Section 6 of the Act of 2017, mandates that services of a teacher in a venture educational institution from primary level upto 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.

11. Section 7 of the Act of 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.

12. It is further provided under the provisions of Section 7(2) of the Act of 2017 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.

13. Considering the Order dated 31.03.2022 in the light of the provisions of the Act of 2017 discussed hereinabove, it is found that the reasons, given in the Order dated 31.03.2022 in rejecting the case of the petitioner, is not in terms of the provisions of the Act of 2017.

14. The provisions of the Act of 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.

15. The learned counsel for the petitioner submits that the petitioner had passed her HS Examination in the year 2013. The petitioner, in view of passing her HS Examination in the year 2013, therefore, had acquired the required qualification in terms of Section 6(1) of the Act of 2017. The service of the petitioner is required for provincialisation as a Tutor under the Act of 2017.

16. As the case of the petitioner has not been considered in terms of the provisions of the Act of 2017, this Court finds that the Order dated 31.03.2022 passed by the Respondent No. 3, has been passed clearly ignoring the provisions of the Act of 2017 as well as the observations made by this Court in the Order dated 13.09.2021 passed in WP(C) No. 4365/2021.

17. In view of the discussions made hereinabove, this Court is of the considered opinion that the Order, dated 31.03.2022, stands vitiated and the same is, accordingly, set aside and quashed.

18. The writ petition is, accordingly, disposed of with the following the directions :

(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 Act of 2017, by bringing on record all requisite particulars pertaining to Higher Secondary and/or equivalent 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 Act of 2017, and thereafter, in the event, it is found that the petitioner has acquired the prescribed qualification as mandated under the provisions of the Act of 2017 shall proceed to have the case of the petitioner considered in terms of the provisions of the Act of 2017, for provincialization of her services as a tutor or teacher as the case may be.

(iii). The exercise as directed by this Court hereinabove, shall be 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.

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

JUDGE

Comparing Assistant