

GAHC010172972022



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

Case No. : WP(C)/5790/2022

ROFIQUL ISLAM SHEIKH
S/O- CHANDU SHEIKH,
VILLAGE- SATSIA,
P.O.- JAMADARHAT,
DIST.- DHUBRI (ASSAM).

VERSUS

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

2:THE STATE LEVEL SCRUTINY COMMITTEE FOR ELEMENTARY
EDUCATION
REPRESENTED BY ITS CHAIRMAN CUM THE DIRECTOR OF
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE FOR ELEMENTARY
EDUCATION
REPRESENTED BY ITS CHAIRMAN CUM THE DEPUTY COMMISSIONER
DHUBRI
783301.

4:THE DEPUTY INSPECTOR OF SCHOOLS

DHUBRI
PIN- 783301.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DHUBRI
PIN-783301

6:MD. AHSAN ALI
S/O- NATU CHAND ALI

VILL. SATSIA

P.O. CHIRAKUTI

DIST.- DHUBRI (ASSAM)

PIN- 783330.

7:ASHRAFUZZAMAN
S/O- SHAHID ULLAH SHEIKH

VILL. SATSIA

P.O. JAMADARHAT

DIST.- DHUBRI (ASSAM)

PIN- 783330

Advocate for the Petitioner : MR. A H M R CHOUDHURY

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 06.02.2024

Heard Mr. A. H. M. R. Choudhury, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned standing counsel for Department of School Education and Mr. N. K. Kalita, learned counsel for the respondents no. 6 & 7.

2. The challenge made in the present proceedings is to an order dated 05.07.2022, passed by the Director of Elementary Education, Assam rejecting the claim of the petitioner for provincialisation of his services in Balartari Bapuji MEM.

3. The petitioner was appointed in Balartari Bapuji MEM (herein after referred to as the School) by its School Managing Committee vide its resolution dated 03.11.1998 as the Headmaster of the school. The petitioner joined his services in terms of the said resolution, on 09.11.1998. Likewise, the respondent no. 6 was appointed as an Assistant Teacher in the school on 18.06.2007 and the respondent no. 7 was so appointed on 25.04.2002. At the time of appointment of the petitioner as well as the respondents no. 6 & 7 the school was a Venture school. After coming into force of the *Assam Education (Provincialisation of Services of Teachers & Re-Organisation of Educational Institutions) Act, 2017* (for short, the Act of 2017), the cases of the serving teachers in the said school were taken up for provincialisation. The District Level Scrutiny Committee (for short, DLSC), on verification of the particulars of the teachers of the said school in the month of January 2018, proceeded to recommend the names of the respondents no. 6, 7 and one Mostafizur Rahman as teachers eligible for provincialisation of their services. The name of the petitioner was kept in the list of teachers found to be not eligible for provincialisation on account of the enrollment status of the students in the school.

4. It is contended by the petitioner in the writ petition that when the matter was placed before the State Level Scrutiny Committee (for short, SLSC), it had noticed anomalies in the recommendations made by the jurisdictional DLSC not only in the case of the petitioner's school, but, also in other schools and accordingly, the matter was remanded back to the jurisdictional DSC for a fresh consideration. The fresh consideration was accordingly made and it is contended that this time the names of the petitioner, the respondent no. 7 and the one Mostafizur Rahman came to be recommended as teachers eligible for provincialisation of their services.

5. The respondent no. 6 on being aggrieved with the second recommendation made by the DLSC, approached this Court by instituting WP(C)2975/2020. This Court vide its order, dated 14.09.2020, disposed of the writ petition granting liberty to the respondent no. 6 herein to file appropriate representation before the Director of Elementary Education, Assam, ventilating his grievances. It was further provided that if such representation is filed within the time frame prescribed in the order, the same be considered and disposed of by way of a speaking order.

6. The District Elementary Education Officer, Dhubri, had submitted a report vide his communication dated 18.12.2020, before the Director of Elementary Education, Assam and therein recommended the names of the petitioner, the respondent no. 6 & 7 for provincialisation of their services against the post of Social Studies and Language subject. It was also noted

that the respondent no. 6 had claimed that he was teaching Social Studies subject in the school.

7. The petitioner herein, thereafter instituted WP(C)4115/2021, inter alia, raising a grievance with regard to the delay occasioning in taking the process of provincialisation of the services of the teachers of the school to its logical conclusion. This Court vide its order, dated 25.08.2021, disposed of the writ petition by directing the Director of Elementary Education, Assam to look into the matter and pass appropriate reasoned order so as to bring the process of provincialisation of the teachers serving in the said school to its logical end. Accordingly, the Director of Elementary Education, Assam, after hearing the parties involved and on consideration of the claims made by the SLSC proceeded to dispose of the claims of the parties vide order, dated 05.07.2022, and therein, recorded a finding that as the name of the petitioner not being recommended by the DLSC for provincialisation of his services, the SLSC could not recommend his name and accordingly, the case of the petitioner came to be rejected.

8. In the said order, dated 05.07.2022, it is mentioned that on completion of the scrutiny by the constituted committees under the Act of 2017, the respondent no. 7 was recommended for provincialisation of his services as a Language Teacher, while the respondent no. 6 was so recommended against the post of Social Studies and one Mostafizur Rahman was recommended against the post of Maths/Science teacher. It is this order, dated 05.07.2022, which is under challenge in the present

proceedings.

9. The petitioner has contended that he, in addition to being the Headmaster of the said school was also teaching the subject of Language in the school and this position is also reflected in the DISE data of the school. It is further contended that the petitioner as well as the respondents no. 6 & 7 were teaching all subjects including that of Social Studies and Language subjects and accordingly, amongst the petitioner, respondents no. 6 & 7, it is the senior amongst them, who is to be considered for the provincialisation of their services against the posts of Social Studies and Language subjects teacher in the school.

10. Per contra, the respondent no. 6 & 7 have disputed the contention raised by the petitioner in the writ petition and has contended that while the respondent no. 6 since the date of his initial appointment was teaching the subject of Social Studies, the respondent no. 7 was teaching the Language subject and accordingly, it is contended that in terms of the provisions of Section 3(1)(xi) of the Act of 2017, it is the cases of the respondents no. 6 & 7, that is to be considered for provincialisation for their services against the post of Social Studies and Language subjects in the school. It was contended that the enrollment status of the students in the school not being above 100, the post of Headmaster could not be sanctioned to the school and accordingly, the case of the petitioner could not be considered for provincialisation.

11. It is seen that the petitioner was appointed specifically as the Headmaster of the school by the SMC and there is no document brought on record to show that at any point of time he was so engaged to also act as an Assistant Teacher in the school. The respondents no. 6 & 7 were specifically appointed as Assistant Teachers.

12. The dispute raised in the present proceedings is as to who amongst the petitioner, respondent no. 6 and respondent no. 7 is eligible for having their services provincialised as Social Studies and Language teacher. The petitioner claims that he is also teaching the Language subject along with all other subjects. The said contention of the petitioner is disputed by the respondents no. 6 & 7 who contend that the petitioner was specifically appointed in the school as its Headmaster and that the petitioner never taught the children on regular basis and had had only taken classes on a teacher in the school being absent. The rival contentions raised by the parties to the proceeding, an issue have arisen in the present proceedings as to who is actually teaching the subjects of Social Studies and Language in the school in question.

13. A perusal of the order dated 05.07.2022, reflects that the issue that arose before the authorities issuing the order dated 05.07.2022 was also to arrive at a definite conclusion with regard to the said aspect of the matter and to determine as to who amongst the petitioner, the respondent no. 6 & 7 would be eligible for provincialisation of their services as Social Studies and Language teacher and this position having emerged from the

report of the District Elementary Education Officer, Dhubri, dated 18.12.2020 ought to have been considered by the appellate authority and a determination made thereon before issuance of the order dated 05.07.2022.

14. The factual determination required to be made in the matter to determine as to who would be eligible for provincialisation against the posts of Social Studies and Language teacher in the school cannot be made by this Court basing on the materials brought on record by way of affidavits from the contesting parties inasmuch as the same does not disclose a clear picture in the matter. Accordingly, basing on the said affidavits, this Court is not in a position to determine the said issue.

15. Accordingly, the matter stands remanded back to the Director of Elementary Education, Assam, who would now place all requisite particulars of the petitioner, the respondent no. 6 & 7 before the SLSC for evaluation of the same and for coming to a conclusion as to who amongst the petitioner, the respondent no. 6 & 7 would have to be recommended for provincialisation of their services against the posts of Social Studies and Language teacher in the school in question.

16. The SLSC is required to carry out the verification as required by this Court by invoking its power under Rule 13(xi) of the Act of 2017 and after making a physical verification to verify the records maintained in the school in this connection as well as also by affording a due opportunity of

hearing to the parties to this proceeding and thereafter make its recommendations strictly basing on the materials coming on record.

17. It is pointed out that the SLSC shall not base its recommendations solely on one factor, but, shall take a view after examining the issue involved after examining and verifying the contemporaneous records as maintained in the school and also the deposition of the parties to this proceeding. The SLSC shall undertake the exercise as required herein above and render its recommendations in the matter within a period of 90 days from the date of receipt of such proposal from the Director of Elementary Education, Assam.

18. The Director of Elementary Education, Assam, thereafter, shall basing on the conclusions so reached by the SLSC pass a reasoned speaking order and communicate the same to the petitioner and also to the respondent no. 6 & 7 within a period of 1(one) month from the date of receipt of the recommendations of the SLSC. The orders of provincialisation of the services of persons now recommended by the SLSC be thereafter processed and issued.

19. It is provided that the Director of Elementary Education, Assam, shall place the particulars of the petitioner, the respondent no. 6 & 7 before the SLSC within a period of 1(one) month from the date of receipt of certified copy of this order along with the contemporaneous records maintained in the school and thereafter, the further steps requisite to be

taken in the matter shall be taken by the SLSC as indicated herein above.

20. The petitioner shall furnish a certified copy of this order along with a forwarding to the Director of Elementary Education, Assam, for taking the matter forward.

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

JUDGE

Comparing Assistant