

GAHC010187312023



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

**Case No. : WP(C)/4881/2023**

MD. ABUL HASEN  
S/O- LATE TURAB ALI, VILL.- KESHARVITA, P.O. JHOWDANGA, P.S.  
MANKACHAR, DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,  
EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION  
ASSAM  
KAHILIPARA  
GUWAHATI-781019.

3:THE DISTRICT ELEMENTARY EDUCATION  
DHUBRI  
ASSA

**Advocate for the Petitioner** : MR. S K TALUKDAR, MR. A SAYED,MS. S T BOKTH

**Advocate for the Respondent** : SC, ELEM. EDU,

Linked Case : WP(C)/4564/2023

MD. ABDUL AKHER ALI  
S/O LT. ABDUR RAHMAN VILL KESHARVITA P.O. JHOWDANGA DIST.  
SOUTH SALMARA MANKACHAR ASSAM PIN 783131

VERSUS

THE STATE OF ASSAM AND 9 ORS  
REP. BY THE SECRETARY GOVT. OF ASSAM DEPTT. OF SCHOOL  
EDUCATION DISPUR GUWAHATI 6

2:THE PRINCIPAL SECRETARY  
GOVT. OF ASSAM FINANCE DEPTT. DISPUR GUWAHATI 6

3:THE DIRECTOR  
ELEMENTARY EDUCATION ASSAM KAHILIPARA GUWAHATI 19

4:THE DEPUTY COMMISSIONER  
DHUBRI  
P.O. AND DIST. DHUBRI ASSAM PIN 783301

5:DISTRICT ELEMENTARY EDUCATION OFFICER  
SOUTH SALMARA MANKACHAR HATSINGIMARI P.O. FEKAMARI DIST.  
SOUTH SALMARA MANKACHAR ASSAM PIN 783135

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER  
DHUBRI  
P.O. AND DIST. DHUBRI ASSAM PIN 783301

7:THE BLOCK ELEMENTRAY EDUCATION OFFICER  
SOUTH SALMARA MANKACHAR HATSINGIMARI P.O. FEKAMARI DIST.  
SOUTH SALMARA MANKACHAR ASSAM PIN 783105

8:THE HEADMASTER  
CHUTO KESHARVITA L P SCHOOL VIL. KESHARVITA P.O. JHOWDANGA  
DIST SOUTH SALMARA MANKACHAR ASSAM PIN 783131

9:SAFIRL HOQUE  
S/O LT NUR HUSSAIN R/O VILL. KESHARVITA P.O.JHOWDANGA DIST.  
SOUTH SALMARA MANKACHAR ASSAM PIN 783131

10:ABUL HUSSAIN  
S/O LT. TURAB ALI R/O VILL. KESHARVITA P.O.JHOWDANGA DIST. SOUTH  
SALMARA MANKACHAR ASSAM PIN 783131

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Advocate for : MR. M ISLAM

Advocate for : SC

ELEM. EDU appearing for THE STATE OF ASSAM AND 9 ORS

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

**Judgment & Order (Oral)**

**Date : 01.08.2024**

Heard Mr. M. Islam, learned counsel for the petitioner in WP(C)/4564/2023. Also heard Mr. B. Kaushik, learned Standing Counsel for the Elementary Education Department appearing for the respondents no. 1, 3, 5, 6 & 7 and Mr. G. Pegu, learned Government Advocate appearing for the respondent no. 4; Mr. B. Gogoi, learned Standing Counsel for the Finance Department appears for the respondent no. 4 as well as Mr. M. Khan, learned counsel appears for the respondents no. 9 & 10 in WP(C)/4564/2023.

**2.** As agreed to by the learned counsel appearing for the parties, the above noted writ petitions are taken up for final consideration and disposal.

**3.** In the above noted writ petitions, the grievance of the petitioners pertain to provincialization of services of serving teachers in Kesharvita M. E. Madrassa.

In WP(C)/4564/2023, the petitioner, therein, had presented a challenge to an order dated 26.06.2023, issued by the Director of Elementary Education, Assam, cancelling the provincialization as effected in the case of the petitioner vide an order dated 05.02.2021 w.e.f. 01.01.2021.

In WP(C)/4881/2023, the petitioner has prayed for a direction upon the respondent authorities, for issuance of consequential orders in pursuance to the order dated 26.06.2023, issued by the Director of Elementary Education, Assam, holding the petitioner to be eligible for provincialization of his services as Assistant Teacher in the above noted school.

**WP(C)/4564/2023**

**4.** The petitioner, herein, has contended that he was appointed as an Assistant Teacher of Kesharvita M.E. Madrassa, by the Managing Committee of the school vide an order dated 15.06.1993. The petitioner contends to have joined his services in the said school on 16.03.1993.

**5.** The respondent no. 9, herein, was contended to be appointed as a Headmaster of the said school by its Managing Committee, vide an order dated 13.01.1993 and he was contended to have joined his services on 14.01.1993,

**6.** The petitioner projects that the respondent no. 9 submitted his resignation from the post of Headmaster on account of the fact that he did not possess the minimum educational qualification for being appointed as a Headmaster of the school. Thereafter, one Nurul Ahmed was appointed as the Headmaster of the school by its Managing Committee.

**7.** The respondent no. 10, herein, Abul Hasen was contended to have been appointed vide an order dated 18.05.1998, in the school by its Managing Committee as a Teacher. In the year 2002, on a vacancy arising in the post of Headmaster of the school, on resignation of the incumbent therein, the Managing Committee of the school, promoted/appointed the petitioner to act as the Headmaster of the school w.e.f., 11.03.2002.

**8.** The petitioner contends that he had taken over the charge of the post of Headmaster of the school on 12.03.2002. The petitioner has also projected that the respondent no. 9, herein, was subsequently appointed again afresh in the school on 11.03.2002, against the vacancy caused by the promotion/appointment of the petitioner, herein to the post of Headmaster in the said school.

**9.** On the enactment of the "The Assam Education (Provincialisation of services of Teachers and Re-organisation of Educational Institutions) Act, 2017" (Act of 2017), the cases of the eligible serving teachers of the school were considered for

provincialisation of their services and in terms of the considerations so made, the respondent authorities, vide an order dated 05.02.2021, proceeded to provincialize the services of the petitioner, herein, along with that of the respondent no. 9 and another teacher viz., Mohammed Edrish Ali w.e.f., 01.01.2021.

**10.** The said provincialisation as effected in the case of the petitioner, herein and the respondent no. 9, was assailed by the respondent no. 10, herein by way of instituting WP(C)/3650/2021.

**11.** This Court, vide order dated 17.12.2021, proceeded to dispose of the writ petition, directing the Director of Elementary Education, Assam to consider the issues involved and to decide the claim of the petitioner, therein.

**12.** The Director of Elementary Education, Assam; thereafter, on consideration of the issues arising in the matter and also after hearing the petitioner, the respondent no. 9 and the respondent no. 10, herein, proceeded vide order dated 26.06.2023, to hold that the respondent no. 9 (Language Teacher) is senior to the petitioner, herein, who was also denoted to be a Language Teacher. Thereafter, noticing the fact that only one Language Teacher was eligible to be so provincialized in the school, proceeded to uphold the provincialisation of the services of the respondent no. 9, herein. The petitioner, who was held to be junior to the respondent no. 9, his provincialisation as effected vide the order dated 05.02.2021 was cancelled. Insofar as the respondent no. 10 is concerned in the said order dated 26.06.2023, it was held that he having been serving in the said school as a Social Studies Teacher, he was entitled under the provisions of the said Act of 2017, to have his services provincialised.

**13.** Being aggrieved by the said order dated 26.06.2023, the petitioner, herein, had preferred an appeal against the same before the Secretary to the Government of Assam, Department of School Education, on 26.07.2023. The said

appeal not being considered, as well as being aggrieved by the conclusions reached by the Director of Elementary Education, Assam in the order dated 26.06.2023, the petitioner has instituted the present proceeding.

**WP(C)/4881/2023**

**14.** The petitioner, herein, was appointed as an Assistant Teacher in Kesharvita M. E. Madrassa, Dhubri and was teaching the subject of Social Studies in the said school.

**15.** The petitioner, being aggrieved by the provincialisation of the writ petitioner and the respondent no. 9 in WP(C)/4564/2023, on the ground that services of two Language Subject Teachers in the school being provincialised, he was deprived from having his services considered for provincialisation in spite of being teaching the subject of Social Studies in the said school, had instituted WP(C)/3650/2021 before this Court.

**16.** This Court, vide order dated 17.12.2021, without entering into the merit of the issues so arising therein, was pleased to dispose of the said writ petition, requiring the Director of Elementary Education, Assam to determine the claim of the petitioner, herein, as well as that of the petitioner and respondent no. 9 in WP(C)/4564/2023.

**17.** The Director of Elementary Education, Assam, thereafter, vide order dated 26.06.2023, on examination of the rival claims as brought on record in the matter, proceeded to conclude that the petitioner, herein, was entitled to have his services provincialised in the said school. The Director of Elementary Education, Assam, also vide the same order dated 26.06.2023, proceeded to cancel the provincialization so effected in the case of the petitioner in WP(C)/4564/2023.

**18.** The said order dated 26.06.2023 was assailed by Abdul Akher Ali, by way of instituting WP(C)/4564/2023. This Court, while issuing notices in the matter had

made an observation to the effect that any provincialisation done in pursuant to the order dated 26.06.2023, would be subject to the outcome of the writ petition.

**19.** The determination as made vide the order dated 26.06.2024 for having his services provincialized not being implemented, the petitioner has instituted the present proceeding, praying for a direction upon the respondent authorities to provincialize his services as a Social Studies Teacher in the school.

**20.** The facts as involved in WP(C)/4564/2023 are noticed and the parties involved are described as per their placement in the said writ petition.

**21.** The learned counsels for the parties in both the above noted writ petitions have not disputed the facts as noticed herein above. However, the learned counsel for the petitioner in WP(C)/4564/2023 has contended that the conclusions as reached by the Director of Elementary Education, Assam, in the order dated 26.06.2023, was on a wrong presumption with regard to the service particulars of the serving teachers involved in the said order. It was contended that the Director of Elementary Education, Assam, in the order dated 26.06.2023 had reckoned the date of appointment of the petitioner, as 12.03.2002, while the respondent no. 9 was so reckoned to be appointed on 14.01.1993; and accordingly, basing on the said assumption, the respondent no. 9 was held to be senior to the petitioner, herein and applying the provisions of Section 3(1) (xi) of the said Act of 2017, the provincialisation as made in respect of the respondent no. 9, herein, as a Language Teacher was proceeded to be upheld.

**22.** Mr. M. Islam, learned counsel for the petitioner has contended that the said assumption made by the Director of Elementary Education, Assam, in the order dated 26.06.2023 is clearly perverse, inasmuch as, the petitioner was serving in the said school w.e.f. 16.03.1993 in pursuance to his appointment as an Assistant Teacher by the Managing Committee, vide an order dated 11.01.1993.

**23.** Mr. M. Islam, learned counsel further proceeds to contend that the respondent no. 9, although appointed in terms of a resolution adopted by the Managing Committee of the school on the same date, however, he was so appointed as a Headmaster of the school. Mr. Islam, further contends that the respondent no. 9 had resigned from the post of Headmaster and left the school and was thereafter, in the 2002, appointed again afresh as a Language Teacher in the school; and accordingly, the seniority of the respondent no. 9 could be considered only w.e.f., the date of his fresh appointment i.e., 11.03.2002.

**24.** Mr. M. Islam, learned counsel for the petitioner, by placing the said dates of appointment and the particulars of service rendered by the petitioner and the respondent no. 9, contends that it is the petitioner, who is the senior Language Teacher in the said school and accordingly, it is his case, which was required to be considered for provincialisation.

**25.** Per contra, Mr. M. Khan, learned counsel for the respondent no. 9 has contended that the respondent no. 9 although was initially appointed as a Headmaster on 13.01.1993 in the said school. However, he had to relinquish the said post on account of not possessing the requisite educational qualification mandated for holding the post of Headmaster. Accordingly, it is contended that the respondent no. 9 was degraded and appointed as the Second Assistant Teacher in the school by its Managing Committee. It is also contended that the petitioner, herein, having obtained his Degree and a vacancy arising in the post of Headmaster, the School Managing Committee, in its meeting held on 09.03.2002, adopted a resolution to appoint the petitioner as the Headmaster of the school and the respondent no. 9, herein, continued against the post of Assistant Teacher.

**26.** It is further contended that the said resolution of the Governing Body was approved by the jurisdictional District Elementary Education Officer (DEEO) and given the date of joining of the respondent no. 9, which is on 14.01.1993; and

that of the petitioner, which is on 16.01.1993, even as a Language Teacher in the school, it is the respondent no. 9 who would be senior to the petitioner, herein.

**27.** Mr. M. Khan, learned counsel submits that given the dates of their joining in the said school, the respondent no. 9 being senior to the petitioner, it is the respondent no. 9, whose services is required to be so provincialized and accordingly, submits that the said factor having been so reckoned by the Director of Elementary Education, Assam, the order dated 26.06.2023, insofar as it concerns the respondent no. 9, would not call for any interference.

**28.** Mr. S. K. Talukdar, learned counsel for the respondent no. 10 submits that in terms of the provisions of the Act of 2017, a post of a teacher, teaching the subject of Social Studies being required to be so provincialised and admittedly, the respondent no. 10 being serving as a Social Studies Teacher in the said school, the case of the respondent no. 10 was required to be so provincialized at the initial stage itself and the respondent authorities had committed an error in provincialising the services of two Language Teachers and thereby, the respondent no. 10 came to be so denied his valuable right for having his services provincialised in terms of the said Act of 2017. It is the further contention of the learned counsel for the respondent no. 10 that the Director of Elementary Education, Assam, in the order dated 26.06.2023, on appreciating the fact that the respondent no. 10 was working as a Social Studies Teacher, had proceeded to conclude therein that the services of the respondent no. 10 is required to be so provincialised.

**29.** Mr. S. K. Talukdar, learned counsel has further submitted that the consequential order in pursuance to the determination made in respect of the respondent no. 10, vide the said order dated 26.06.2023, having not been issued, led him to institute writ petition being no. WP(C)/4881/2023, praying for provincialisation of his services in terms of the determination made vide the order

dated 26.06.2023 by the Director of Elementary Education, Assam.

**30.** I have heard the learned counsels appearing for the parties and perused the materials placed on record.

**31.** It is to be noted that the date of joining of the petitioner, as well as that of the respondent no. 9 is 16.03.1993 and 14.01.1993; respectively, which position is not disputed.

**32.** The petitioner, in the present proceeding while projecting that the petitioner as well as the respondent no. 9 were both Language Teachers has disputed the seniority assigned to the respondent no. 9, on the ground that he having resigned from the post of Headmaster, after being so appointed, on 08.10.1997 was thereafter, re-appointed afresh only on 11.03.2002 as a Language Teacher and accordingly, the seniority of the respondent no. 9 would be so reckonable only w.e.f., 11.03.2002.

**33.** The said position was categorically denied by the respondent no. 9 in the affidavit filed by him and also the submission made in the present proceeding by Mr. M. Khan, learned counsel appearing for the respondent no. 9.

**34.** It is to be noted that when the cases of the serving teachers of the said school were to be so considered for provincialisation under the provisions of Act of 2017, the petitioner in WP(C)/4564/2023 had submitted the particulars of the serving teachers of the said school in the prescribed format along with their educational as well as professional qualifications.

**35.** In the said statement of the service particulars of serving teachers, the petitioner had projected that he had joined the said school on 12.03.2002; while the respondent no. 9 had so joined on 14.01.1993 and both were denoted to be teaching the Language subject. The name of the respondent no. 10 was not included therein. The petitioner has contended that the respondent no. 10 was

discharged from the said school on 02.09.2013 and accordingly, his name was not forwarded by the school authorities for consideration of his case for provincialisation of his services.

**36.** The order dated 26.06.2023, reveals that while the services of the respondent no. 10 was discharged, however, he had approached this Court by assailing the said process and in pursuance to directions passed by this Court, the Director of Elementary Education, Assam had issued an order dated 16.06.2017 that the said respondent no. 10 is liable to get all service benefits as Assistant Teacher of Kesharvita M.E. Madrassa and his case may be considered for provincialisation of his services under the provisions of the Act of 2017.

**37.** Section 3 (1) (xi) stipulates that in case of a Venture Upper Primary School, there shall be minimum 3(three) Teachers or Tutors and at least one Teacher each for a) Science and Mathematics; b) Social Studies and c) Language Teacher.

**38.** The proviso to Section 3 (1) (xi) of the said Act of 2017 stipulates that requirement of additional post, shall be considered in accordance with the norms and conditions stipulated in the Schedule under Section 19 and 25 of the Right to Education, Act 2009.

**39.** The RTE, Act 2009 more particularly, the Schedule thereto under Serial No. 1 (b), would reveal that when the number of children for admission in a particular school is more than 100, a full time Headmaster can be provided for.

**40.** In the present case on hand, the parties in WP(C)/4564/2023 are teaching the following subjects:-

The petitioner and the respondent no. 9 teach the Language subject while the respondent no. 10 teaches the Social Studies subject.

**41.** The respondent no. 10, who was serving in the said school and teaching the

subject of Social Studies, in terms of the conclusions reached by the Director of Elementary Education, Assam, vide the order dated 26.06.2023 is entitled to have his services provincialised in the said school.

**42.** At this stage, it would be relevant to refer to the provisions of Section 3(1) (xi) of the said Act of 2017, the same being relevant is extracted herein below: -

**“In case of a Venture Upper Primary School, there shall be minimum three teachers or tutors at least one teacher each for a) Science and Mathematics; b) Social Studies and c) Languages.”**

**43.** Accordingly, applying the provisions of Section 3(1) (xi) of the said Act of 2017, it is seen that out of the petitioner and the respondent no. 9, only one can have their services provincialised while the respondent no. 10 being projected as the Social Studies Teacher, would be eligible to occupy the other post so available.

**44.** It is also to be noted that there is no dispute with regard to the incumbent so provincialised in the said school against the post of Science Teacher.

**45.** The above being the position, between the petitioner and the respondent no. 9 both denoted as Language Teacher, it is the senior amongst them who would be so required to be provincialised as Language Teacher.

**46.** The date of joining of the petitioner as well as the respondent no. 9 in WP(C)/4564/2023 in the school, as reckoned by the Director of Elementary Education, Assam, for determining their inter-se seniority in the order dated 26.06.2023 as well the dates so recorded in the statement of service particulars submitted by the petitioner, herein as the Headmaster of the school, is disputed by the petitioner to the extent that his date of joining has to be so reckoned on 16.03.1993 and that of the respondent no. 9, on 14.01.1993, respectively.

**47.** Ignoring the other contentions so raised, even reckoning the date of joining of the petitioner and the respondent no. 9, as contended by the petitioner i.e., 16.03.1993 and 14.01.1993 respectively, it has to so held that it is the respondent no. 9, who would be senior to the petitioner, herein; and accordingly, it is the respondent no. 9 who would be entitled to have his services provincialised in the said school against the post of Language Teacher.

**48.** As regards the respondent no. 10, it is already concluded herein above that he being the sole Social Studies Teacher in the school and there being no other claimant for the said post, he would be eligible for having his services provincialised against the existing post of Social Studies Teacher.

**49.** However, having reached the above conclusions, the further contention of Mr. M. Islam, learned counsel for the petitioner, in WP(C)/4564/2023, to the extent of the services rendered by both respondent no. 9 & 10 in the said school, is to be so considered.

**50.** It is the contention of the petitioner in WP(C)/4564/2023 that both the respondents no. 9 & 10 had a break in their services. While the respondent no. 9 had resigned in the year 1997 followed by his fresh appointment in the year 2002, the respondent no. 10 was contended to have been discharged from his services in the said school, by its Managing Committee, on 02.09.2013. The said aspect of the matter was disputed by the learned counsels for the respondents no. 9 & 10.

**51.** The above being the position and it requiring an ascertainment of facts, this Court, basing on the affidavits filed by the parties, not being in a position to reach a conclusion on the said contentions raised with regard to the services rendered by the respondents 9 & 10 by the petitioner in WP(C)4564/2023, a factual determination being called for, it is provided that the petitioner, herein, is at liberty to approach the jurisdictional Educational Tribunal as contemplated

under the provisions of Section 19 (2) of the said Act of 2017 for determination of such contentions raised in the present proceeding.

**52.** In view of the above conclusions, this Court is of the considered view that the order dated 26.06.2023, passed by the Director of Elementary Education, Assam, would not call for any interference.

**53.** Accordingly, the provincialisation as effected in the case of the respondent no. 9 is not interfered with.

**54.** The petitioner in WP(C)/4564/2023 is directed to institute proceedings before the jurisdictional Educational Tribunal by invoking the provisions of Section 19 (2) of the said Act of 2017, for establishing his claim for provincialisation of his services in the said school within 20.09.2024. The petitioner, in the event of instituting such proceeding, shall implead the respondents no. 9 & 10 in WP(C)/4564/2023 as party respondents in such proceeding. The jurisdictional Educational Tribunal shall on proceedings being initiated before it by the petitioner in WP(C)/4564/2023 on or, before 20.09.2024, proceed with the adjudication of the matter and reach its independent conclusions therein, without being swayed by the observations made herein above in this order.

**55.** Insofar as the petitioner in WP(C)/4881/2023 is concerned, this Court in WP(C)/4564/2023 having not interfered with the order dated 26.06.2023 and by reckoning the conclusions as reached by the Director of Elementary Education, Assam therein, that the services of the petitioner is entitled to be so provincialised, this Court hereby directs that the Director of Elementary Education, Assam, shall issue consequential order(s) towards provincialising the services of the petitioner, herein, w.e.f. 01.01.2021 as was so done in case of provincialisation of the services of the other serving teachers of the said school, with all consequential benefits of pay, seniority etc.

**56.** The Director of Elementary Education, Assam shall pass appropriate order(s) in terms of the above direction within a period of 45 days from the date of receipt of a certified copy of this order and the petitioner in WP(C)/4881/2023, shall be authorized all his due service benefits as entitled on his provincialisation being effected in terms of the direction passed herein above.

**57.** The provincialisation as already effected in the case of the respondent no. 9 and now directed to be so effected in the case of respondent no. 10 (both respondents in WP(C)/4564/2023) shall, however be subject to the decision of the jurisdictional Educational Tribunal in the proceeding that would be instituted by the petitioner in WP(C)/4564/2023 in terms of the liberty granted to him, by this Court herein above.

**58.** In view of the above conclusions reached by this Court, the Writ Petition No. 4881 of 2023 stands allowed; while the Writ Petition No. 4564 of 2023 stands disposed of.

**JUDGE**

**Comparing Assistant**