

GAHC010033082024



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

Case No. : WP(C)/4602/2023

ALEP UDDIN AHMED
SON OF LATE MARFAT ALI

VILLAGE- DINGDINGA

P.O.- CHIRAKUTI

DISTRICT- DHUBRI
ASSAM

PIN- 783330.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM

DEPARTMENT OF SCHOOL EDUCATION

DISPUR
GUWAHATI- 781006.

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

3:THE STATE LEVEL SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN

ELEMENTARY EDUCATION DEPARTMENT
ASSAM

KAHILIPARA
GUWAHATI- 781019.

4:THE DISTRICT LEVEL SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN-CUM- DEPUTY COMMISSIONER

DHUBRI
ASSAM
PIN- 783330.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
DHUBRI
PIN- 783330.

6:HATEM ALI KHAN
SON OF BORHAN ALI KHAN

RESIDENT OF VILL- GORANGTARY

P.O.- CHIRAKUTI

PS.- FAKIRGANJ
DISTRICT- DHUBRI

ASSAM
PIN- 783330.

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

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 31.07.2024

Heard Mr. N. Sarma, learned counsel for the petitioner. Also heard Mr. B. Talukdar, learned standing counsel, Elementary Education Department for the respondent Nos. 1, 2, 3 and 5; Ms. D. D. Barman, learned Govt. Advocate for the respondent No.4 and Mr. A. Deka, learned counsel for the private

respondent No.6.

2. The petitioner in the present writ petition claims to be the founder teacher of Gourangtary Feskarmaru M. E. Madrassa, Dhubri and was appointed by the Managing Committee on 02.01.1991. Thereafter, the petitioner was upgraded as Headmaster of the said School on 11.08.1996. The further case of the petitioner is that the respondent No.6 (Hatim Ali Khan) was appointed as Assistant Teacher of the Gourangtary Feskarmaru M. E. Madrassa by the Managing Committee by an order dated 09.03.2008.

3. In the meantime, the Govt. of Assam enacted the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institution) Act, 2017 (Act of 2017 in short). Accordingly, the School Authorities of Gourangtary Feskarmaru M. E. Madrassa forwarded particulars of the teaching staff of the said school to the District Scrutiny Committee for provincialisation of their services.

4. The case of the petitioner is that his case was recommended by the District Scrutiny Committee as a Social Science Teacher and the name of the respondent No.6 herein did not appear in the report of the said District Scrutiny Committee. However, as the service of the petitioner was not provincialised as per the recommendation of the District Level Scrutiny Committee, the petitioner approached this Court by filing WP(C)/2141/2021, wherein, the present respondent No.6 was arrayed as respondent No.7 therein.

5. During the pendency of the WP(C)/2141/2021 the respondent No.7 therein/ respondent No.6 herein filed an I.A.(Civil)/2143/2021 annexing a communication dated 07.09.2021 written by the Director of Elementary Education, Assam and addressed to the Senior standing counsel, Education (Elementary) Department, wherein, it was mentioned that the District Scrutiny Committee, Dhubri recommended the names of three teaching staffs of Gourangtary Feskarmaru M. E. Madrassa for provincialisation of services as per the Act of 2017. In the said Communication dated 07.09.2021, it was also indicated that the name of the respondent No.7 therein/respondent No.6 herein was shown at Sl. No.2 for provincialisation of his service.

Therefore, when this Court noticed the discrepancies with regard to the 2(two) recommendations of the District Scrutiny Committee, Dhubri, one in respect of the petitioner and the other in respect of the respondent No.6 herein/respondent No.7 therein, the Writ Petition No.2141/2021 was disposed of on 09.08.2022, directing the petitioner to file an appeal before the Director of Elementary Education, Assam within a period of 2(two) weeks from the date of the order. It was further directed that in the said appeal, the petitioner shall annex a copy of the writ petition, namely, WP(C)/2141/2021 along with all the annexures appended thereto and thereafter, the Director of Elementary Education, Assam shall hear the petitioner as well as the respondent No.7 therein/ respondent No.6 herein, and after verification of all relevant records shall pass an appropriate order in accordance with law.

6. Consequent to the directions passed by this Court on 09.08.2022 in WP(C)/2141/2021, the Director of Elementary Education Assam, passed an

order on 25th of July, 2023 and the relevant portion reads as under:

“Order:

From the above facts and circumstances, it is seen that DSC, Dhubri under Clause 13(6) of the Act/2017 was not recommended the name of petitioner, Alep Uddin Ahmed for Provincialisation of services, also the DSC, Dhubri resolved vide minutes dtd. 29/11/2017 that in case of Head Master of UP School recommended having more than 100 enrolments in the Institution. On the other hand, the DSC, Dhubri recommended 3 Nos of teachers under the Clause 3(1)(xi) of the Act/2017 and after verification of the documents the SLSC as well as Joint Committees could not recommended the name of petitioner Alep Uddin Ahmed for Provincialisation of services against Gaurangtari Feskarmaru MEM as per Act /2017. Hence the claim of the petitioner for Provincialisation of services cannot be consider and hereby rejected.

This is issued in Compliance of the Hon'ble Guwahati High Court order dtd. 09/08/2022 passed in 2141/2021.”

7. Being aggrieved with the order dated 25th of July, 2023 petitioner is before this Court by way of the present writ petition.

8. While considering the order dated 25th of July, 2023 passed by the Director of Elementary Education Assam/respondent No.2 it appears that the respondent No.2 did not come to a finding with regard to the genuineness with regard to the 2(two) recommendations of the District Scrutiny Committee in respect of the petitioner as well as the respondent No.6. Therefore, without expressing any opinion on the merits of the case, this writ petition is disposed of directing the petitioner to file an appeal before the Secretary, Department of School Education, Assam/respondent No.1 within a period of 2(two) weeks from

today. Thereafter, the respondent No.1 on receipt of the appeal to be filed by the petitioner shall hear the petitioner as well as the respondent No.6 along with the concerned District Officers as well as Officials of the SSA and thereafter pass appropriate orders in accordance with law. While considering the appeal the respondent No.1 shall also take into consideration the DISE report for the period 2006-2015 as well as all other relevant records in respect of the petitioner as well as the respondent No.6. Let such exercise be done and completed within a period of 3(three) weeks from the date of receipt of the appeal by the respondent No.1. The respondent No.1 is also directed to communicate the outcome of the consideration of the appeal to both the petitioner as well as the respondent No.6. Consequently, the order dated 25th of July, 2023 issued by the Director of Elementary Education, Assam is set aside and quashed.

9. With the above observations and direction the writ petition stands disposed of.

JUDGE

Comparing Assistant