

GAHC010180982021



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

Case No. : WP(C)/5835/2021

MD. JEAHRUL ISLAM
S/O LATE MAZAR ALI
RESIDENT OF VILLAGE BARAGUA, DIST BARPETA, ASSAM 781314

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR
GUWAHATI 06

2:DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 19
KAMRUP M ASSAM

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

BARPETA
ASSAM

4:THE DEPUTY COMMISSIONER

BARPETA
ASSAM

5:MD. DIDAR ALAM
SON OF NOT KNOWN

RESIDENT OF VILLAGE BARAGUA
DIST BARPETA
ASSAM 78131

Advocate for the Petitioner : MR G BORDOLOI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 06.02.2024

Heard Mr. G. Bordoloi, learned counsel for the petitioner. Also heard Mr. B. Talukdar, learned standing counsel for the Elementary Education Department and Mr. R. Ali, learned counsel appearing for respondent no. 5.

2. The petitioner by way of instituting the present proceedings has raised a grievance with regard to the denial to him the benefits of provincialisation of his services under the provisions of the *Assam Education (Provincialisation of Services of Teachers & Re-Organisation of Educational Institutions) Act, 2017* (for short, the Act of 2017).

3. The petitioner was appointed a teacher of Arabic subject by the School Managing Committee (SMC) of Alia MEM on 01.02.1994. The petitioner joined his services in the school on 07.02.1994. The school at that relevant point of time was a venture school. The cases of the teachers and staff of Alia MEM were taken up for provincialisation of their services under the provisions of the said Act of 2017. The jurisdictional District Level Scrutiny Committee (DLSC) on

consideration of the matter recommended the cases of teachers of the school including the petitioner and the respondent no. 5 for provincialisation of their services.

4. The recommendation as made by the DLSC, came to be forwarded to the Director of Elementary Education, Assam by the District Elementary Education Officer, Baksa and therein the names of both the petitioner and respondent no. 5 figures. The matter was further processed and came to be placed before the State Level Scrutiny Committee (SLSC). The SLSC upon verification of the relevant particulars recommended the names of 5 teachers of the school including the respondent no. 5 for provincialisation of their services. Considering the enrolment status of the school the name of the petitioner was not recommended for provincialisation of his services.

5. It is the case of the petitioner that he having joined the school on 07.02.1994, he is senior to many of the teachers of the school, including the respondent no. 5, who had joined the school only on 03.10.1994 as a language teacher. The petitioner further contends that he also being a language teacher his case could not have been ignored by the respondents and proceeded to provincialise the services of the respondent no. 5, ignoring his better claim.

6. The respondent authorities, however, contend that the teachers serving in the school whose services were provincialised were so extended with such benefit only on finding them to be entitled for the same. The case of the petitioner could not be considered for provincialisation of his services, as the enrolment of students in the school does not permit provincialisation of services of any further teachers in addition to those already provincialised in the school.

7. The said position is disputed by the petitioner and contends that given the enrolment of students in the school during the relevant period of time, services of at least 9 teachers were required to be provincialised, but the authorities proceeded to provincialise the services of only 5 teachers. Such contention of the petitioner is not supported by the respondent authorities.

8. In the present proceedings, the petitioner has challenged list of teachers of the Alia MEM recommended by the SLSC for provincialisation of their services. However, as revealed from the affidavit filed by the respondent no. 2, the services of the teachers so recommended by the SLSC, including the respondent no. 5 have since been provincialised.

9. In view of the said position, the petitioner is required to file an appeal before the Secretary to the Government of Assam, Department of School Education raising all the issues as raised in the present proceedings and claim for provincialisation of his services. The Secretary to the Government of Assam, Department of School Education, on receipt of such appeal from the petitioner shall proceed to consider the issues so raised therein and upon consideration of the contemporaneous records and after hearing the petitioner and the respondent no. 5 proceed to dispose of the appeal by recording his findings on each of the issues so raised in the appeal.

10. In the event, the Secretary to the Government of Assam, Department of School Education, is of the view that the matter requires to be placed before the SLSC for a detailed verification, he shall be at liberty to do so. On receipt of the

recommendations of the SLSC, the Secretary to the Government of Assam, Department of School Education, shall pass a speaking order incorporating the reasons given by the SLSC along with his own reasoning on the issues as arising after providing due opportunity of hearing to the petitioner and the respondent no. 5.

11. The Secretary to the Government of Assam, Department of School Education, shall dispose of the appeal as preferred by the petitioner in compliance of the directions contained hereinabove, within a period of 3(three) months from the date of receipt of the appeal along with a certified copy of this order.

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

JUDGE

Comparing Assistant