

GAHC010182282018



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

Case No. : WA/285/2018

SMTI KALPANA BARUAH
W/O LATE PANKAJ CHANGKAKATI, R/O K.P.M. CHARIALI, NEAR THE AILA
GAS AGENCY ROAD, P.O. AND P.S. SIVSAGAR, SIBSAGAR 785640

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, EDUCATION (SECONDARY) DEPTT., DISPUR, GUWAHATI 781006

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 781019

3:THE INSPECTOR OF SCHOOLS

SIVSAGAR CIRCLE
SIVSAGAR
ASSAM
PIN 785640

4:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

FINANCE DEPTT.
DISPUR
GUWAHATI -0

Advocate for the Petitioner : MR. S K BARKATAKI

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

13.02.2024

(V. Bishnoi, CJ)

This intra-court writ appeal is filed by the appellant being aggrieved with the order dated 31.05.2018, passed by the learned Single Judge in WP(C) 3363/2018 whereby, while disposing of the writ petition filed by the petitioner, a direction was issued to the Commissioner and Secretary to the Government of Assam, Secondary Education Department; the Director of Secondary Education, Assam and the State Government in the Finance Department to consider and decide the case of the writ petitioner for provincialisation of her services under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 (for short "Act of 2017").

2. Mr. D. K. Nath, learned counsel appearing for the appellant has submitted that the learned Single Judge has not taken into consideration the aspect that the writ petitioner/appellant was agitating since the year 2013 for her rights regarding her appointment as an Assistant Teacher under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (for short, "Act of 2011"), therefore, she is entitled for the benefits such as salary, seniority, etc. with effect from the year 2013, i.e. the year from when the appellant was illegally denied provincialisation of her services.

3. Mr. R. Mazumdar, learned Standing Counsel, Secondary Education Department, Assam, appearing for the respondents has submitted that the benefits of provincialisation cannot be granted to the appellant under the Act of 2011 as the same was declared as *ultra vires* by this Court vide judgment and order dated 23.09.2016, passed in Writ Petition (C) No. 3190/2012 (**Chandan Kumar Neog & 377 Ors. Vs. The State of Assam and Ors.**) and another connected writ petition. He has further submitted that a Division Bench of this Court, in the case of **Smt. Purnabati Brahma vs. The State of Assam and Ors. (WA 283/2019)** has already taken a view that no employee can seek the right for provincialisation under the Act of 2011 which has already been declared as *ultra vires* and has been struck down as unconstitutional and the benefit of provincialisation of service can only be granted to the concerned employee under the Act of 2017.

4. We have heard the learned counsel appearing for the parties.

5. A Division Bench of this Court, in the case of **Smt. Purnabati Brahma** (supra), considering a similar claim as that of the present appellant, has held as under:

9. The case as projected by learned counsel for appellant to the effect that the appellant was vested with rights under the Act of 2011 on the date when judgment was rendered in Chandan Kumar Neog (supra), cannot be accepted. The very fact that the services of the petitioner had not been provincialised and therefore, the writ petition was filed, makes it clear that the case of the petitioner would not be covered within the four corners of the decision rendered on the review petition. Admittedly, the petitioner was not getting salary as provincialised employee. Therefore, it would be a fallacy in law and facts to consider that right had already been vested in the writ petitioner under the Act of 2011, which admittedly has been struck down as constitutionally invalid. The Review Court has held that doctrine of prospective overruling would not apply as the said power is vested only with the Supreme Court of India. It is in such circumstances it has been provided in Para 19(supra) of judgment rendered by the Review court that "the rights of the employees who have been benefited under the struck down statute can be taken care of by giving

retrospective effect to the proposed legislation, if the legislature so decides. Till then it is ordered that the services of the provincialised category and their status as govt. employees shall not be disturbed and they will continue to receive all the benefits which they are getting under the Provincialisation Act, 2011, since struck down by the judgment under Review.”.

6. We find no reason to take a different view to the view as expressed by the Division Bench in **Smt. Purnabati Brahma** (supra). Hence, the writ appeal is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant