

GAHC010206692023



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

Case No. : WP(C)/5421/2023

SHOHIDUL ISLAM MOLLAH
SON OF OMAR ALI MOLLAH,
R/O- VILLAGE- CHIRAKUTI, CHATAPARA,
POST OFFICE- CHIRAKUTI,
POLICE STATION- FAKIRGANJ,
DISTRICT- DHUBRI, ASSAM,
PIN- 783330.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
DEPARTMENT OF ELEMENTARY EDUCATION, DISPUR,
GUWAHATI- 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

KAHILIPARA
GUWAHATI- 781019.

3:THE STATE LEVEL SCRUTINY COMMITTEE
KAHILIPARA
GUWAHATI

DISTRICT- KAMRUP(M)
ASSAM

PIN- 781019.

4:THE DISTRICT LEVEL SCRUTINY COMMITTEE
DHUBRI

DISTRICT- DHUBRI

REPRESENTED BY THE DEPUTY COMMISSIONER
DHUBRI (CHAIRMAN)
OF THE DISTRICT LEVEL SCRUTINY COMMITTEE

DHUBRI
PIN- 783331.

5:THE JOINT COMMITTEE
HEADED BY THE DIRECTOR OF ELEMENTARY EDUCATION

KAHILIPARA
GUWAHATI- 781019.

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
PIN- 783331.

7:THE DEPUTY COMMISSIONER
DHUBRI
PIN- 783331.

8:THE HEADMASTER
CHATAPARA M.E. MADRASSA
PIN- 783331.

9:AZIBAR RAHMAN
CHATAPARA M.E. MADRASSA

PIN- 783331

Advocate for the Petitioner : MS. K JAIN

Advocate for the Respondent : SC, ELEM. EDU

Linked Case : WP(C)/2345/2020

SHOHIDUL ISLAM MOLLAH
S/O OMAR ALI MOLLAH
R/O VILL. CHIRAKHUTI
CHATAPARA
P.O. CHIRAKUTI

P.S. FAKIRGANJ
DIST. DHUBRI
ASSAM
PIN-783330

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF ELEMENTARY EDUCATION
DISPUR
GUWAHATI-781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-781019

3:THE STATE LEVEL SCRUTINY COMMITTEE
KAHILIPARA
GUWAHATI
DIST. KAMRUP (M)
ASSAM
PIN-781019

4:THE DISTRICT LEVEL SCRUTINY COMMITTEE
DHUBRI
DIST. DHUBRI
REP. BY THE DEPUTY COMMISSIONER
DHUBRI(CHAIRMAN) OF THE DIST. LEVEL SCRUTINY COMMITTEE
DHUBRI
PIN-783331

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
PIN-783331

6:THE DEPUTY COMMISSIONER
DHUBRI
DHUBRI
PIN-783331

7:THE HEAD MASTER
CHATAPARA M.E. MADRASSA
PIN-783331

8:AZIBAR RAHMAN
CHATAPARA M.E. MADRASSA
PIN-783331

Advocate for : MS. K JAIN
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 7 ORS.

Linked Case : WP(C)/4686/2021

AZIBAR RAHMAN
S/O- BORHAN ALI MOLLAH
R/O- VILL- CHATAPARA
P.O. CHIRAKUTI
DIST.- DHUBRI
PIN- 783330

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY.
EDUCATION (ELEMENTARY) DEPTT.
GOVT. OF ASSAM
DISPUR
GHY-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE STATE LEVEL SCRUTINY COMMITTEE
KAHILIPARA
GHY
REP. BY ITS CHAIRMAN
DIST.- KAMRUP (M)
ASSAM
PIN- 781019

4:THE DISTRICT LEVEL SCRUTINY COMMITTEE
DHUBRI
DIST.- DHUBRI
REP. BY ITS CHAIRMAN
THE DY. COMMISSIONER
DHUBRI
PIN- 783331

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
PIN- 783331

6:THE DY. COMMISSIONER
DHUBRI
PIN- 783331

7:SOHIDUL ISLAM MOLLAH
S/O- OMAR ALI MOLLAH
VILL- CHIRAKUTI

CHATAPARA
P.O. CHIRAKUTI
DIST.- DHUBRI
PIN- 783330

Advocate for : MR H R A CHOUDHURY

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 6 ORS

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

JUDGMENT & ORDER (ORAL)

Date : 17-02-2024

Heard Ms. K. Jain, learned counsel and Mr. H. Ali, learned counsel for the petitioners. Also heard Mr. B. Talukdar, learned Standing Counsel for the Elementary Education Department.

2. The three writ petitions being WP(C)2345/2020, WP(C)4686/2021 and WP(C)5421/2023 have been instituted raising claims by the petitioners for provincialisation of their services against the post of Social Studies teacher in Chatapara MEM.

3. The WP(C) No. 2345/2020 was instituted by *Shohidul Islam Mollah*, assailing the decision of the State Level Scrutiny Committee (For short SLSC) in recommending the case of the respondent no. 8, *Azibar Rahman*, for provincialisation of his services.

4. The WP(C) No. 4686/2021 was instituted by *Azibar Rahman*, respondent no. 8 in WP(C)2345/2020 praying for a direction for provincialisation of his services basing on his service seniority in the school.

5. The WP(C) No. 5421/2023 was instituted by *Shohidul Islam Mollah*, assailing a report of the Joint Committee dated 27.07.2020, recommending the name of *Azibar Rahman*, respondent no. 9, for provincialisation of his services as Social Studies teacher in Chatapara MEM.

6. Since the subject matter of all the writ petitions are inter-related, those were heard together and are being disposed by this common order. For the sake of brevity, only the facts as depicted in WP(C) No. 5421/2023 are referred on an understanding of the parties that the same would suffice for adjudication of the other writ petitioners. The parties are referred to as appearing in WP(C) No. 5421/2023.

The petitioner, *Shohidul Islam Mollah* was appointed as an Assistant Teacher in Chatapara MEM on 09.03.2009 and he had joined his services on 13.03.2009. The respondent no. 6 was projected in the writ petition to have been appointed as the Headmaster of the school w.e.f. 28.12.1993 and to be working in such capacity all along.

The competent authorities, on being satisfied that the said school fulfilled the eligibility criteria as mandated under the provisions of *Assam Education (Provincialisation Services of Teachers and Re-organisation of Educational Institutions) Act, 2017*, (For Short Act of 2017) proceeded to have the cases of eligible serving teachers working in the said school considered for provincialisation of their services under the said Act of 2017. Accordingly, the respondent no. 6, i.e. *Azibar Rahman* as the Headmaster of the school, submitted the particulars of the teachers of the said school on 03.06.2017. In the particulars so submitted, the respondent no. 6 had projected himself as the Headmaster of the school and also

to be teaching the English subject in the school. The petitioner was shown as an Assistant Teacher, teaching the subject Social Studies.

The particulars as submitted of the serving teachers of the said school was placed before the District Level Scrutiny Committee (For short DLSC) and the said committee, upon verification of the particulars, proceeded to recommend the name of the petitioner, respondent no. 6 and 3(three) other teachers by denoting them to be eligible for provincialisation of their services. In the recommendations as made by the DLSC, the petitioner was projected to be a teacher teaching the subject Social Studies and the respondent no. 6 while being designated as the Headmaster of the school was shown to be teaching the Language subject.

It is the allegation of the petitioner that the respondent no. 6 on realizing that the enrolment status of students in the school not permitting sanction of the post of Headmaster and there being a Senior teacher available in the school against the Language subject, his name would not be favorably considered for provincialisation of his services, proceeded to influence the authorities and a fresh recommendation was obtained from the DLSC, wherein, the respondent no. 6 was denoted as the Headmaster and was shown to be teaching the Social Studies subject in the school.

On account of the said projection now made, the petitioner was shown to be not eligible for provincialisation of his services on account of non-availability of the required enrolment status of the students in the school. The petitioner, on coming to learn that his name was dropped and the name of the respondent no. 6 was recommended for provincialisation against the post of Social Studies teacher had approached this Court by way of instituting WP(C)2345/2020.

This Court, upon appreciating the contention of the petitioner vide order dated 09.06.2020, had directed that until further order(s), the State respondents shall not provincialise the services of the respondent no. 6.

The respondent no. 6, thereafter, as petitioner, approached this Court by way of instituting WP(C)4686/2021, praying for a direction upon the respondent authorities to provincialise his services in the said school basing on his service seniority. When the said 2(two) writ petitions being WP(C)2345/2020 and WP(C)4686/2021 were pending disposal before this Court, the petitioner, on receipt of a RTI reply and therein it being revealed that the proposal as submitted by the DLSC was further verified by the SLSC as well as the Joint Committee and such committees had recommended the 3(three) teachers of the school, including Azibar Rahman, (respondent no. 6) for provincialization of their services and accordingly, the present WP(C)5421/2023 came to be instituted by the petitioner making a challenge to the said recommendations of the committee.

7. The learned counsels for the respective parties have made their submissions in tune with the pleadings already brought on record.

8. The issue arising in the present proceedings is, as to who, amongst the petitioner and the respondent no. 6 is entitled to have their services provincialized against the post of teacher/tutor of the subject of Social Studies. It is to be noted that in the said school, services of 2 teachers were already provincialized against the post of Language teacher and Science & Mathematics teacher. The post of Social Studies teacher had remained vacant on account of the interim directions passed by this Court.

9. At the outset, the provisions of 3 (1) (xi) of the Act of 2017 being relevant is extracted herein below: -

“Eligibility criteria for selection of educational institution for provincialization of services of teachers/tutors.

3. (1).....

(i).....

.....

(xi) In case of 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.”

10. For appreciating the issue as arising in the present proceedings, it is required to note as to how the process of provincialization of the services of the serving teachers of the said school were initiated. The Headmaster of the school, i.e. the respondent no. 6 had on 03.06.2017 submitted the particulars of the teachers before the concerned authorities. In the particulars so submitted, at the initial stage, the respondent no. 6 had projected himself to be the Headmaster of the school and also to be teaching the English subject. The petitioner, Shohidul Islam Mollah was shown as an Assistant Teacher, teaching the subject of Social Studies in the school. The said proposal was duly verified by the DLSC and the said committee upon verification of the particulars submitted by the respondent no. 6, had recommended the case of the petitioner for provincialization of his services as Social Studies teacher while the case of the respondent no. 6 was so recommended as the Headmaster and also by specifying that he was teaching the Language subject. The said recommendation is available at Annexure-5 of the writ petition No. WP(C)5421/2023. The said document is also brought on record by the respondent no. 6 in writ petition No. being WP(C)4686/2021 and is annexed as Annexure-17 thereto.

11. The State respondents have filed an affidavit in WP(C)2345/2020 and therein, had projected that the recommendations as made by the DLSC was placed before the SLSC. The SLSC after verifying the requisite particulars had recommended the names of the following serving teachers of the school for provincialization of their services as Tutors: -

Name of School	Name of the Teacher	Date of Joining	Qualification
Chatapara ME School	Azibar Rahman HT	01-01-1994	B.A
	Abdul Mazid Mollah, AT	03.09.1991	H.S
	Jubayar Ahmed, Sc.	08.05.2009	B.Sc

12. It is seen that such recommendation was made solely on the basis of service seniority of the persons so recommended. Thereafter, the Government had sanctioned 3 posts of Tutors for the said school, however, on account of the orders passed by this Court, the services of respondent no. 6 was not provincialized while the name of the other 2 persons so recommended came to be provincialized.

13. This Court, vide order dated 01.02.2024 passed in WP(C)5421/2023 had required the learned Standing Counsel for the Department of Elementary Education to furnish the following information: -

“as to why the DSC had decided as per the recommendation available at Page 24 to 26 of the writ petition, proposed the names of the respondent no. 9 herein as a Language Teacher along with a projection that he is the Headmaster and the petitioner herein as the Social Studies teacher with an assertion that he is an Assistant Teacher, was required to be changed in the subsequent recommendations as available at Page 29 to 31 of the writ petition, proposed the respondent no. 9 as Headmaster and as a Social Studies Teacher while the

petitioner was shown as to be not eligible for provincialization.”

14. In response to the said query raised, the Director of Elementary Education, Assam vide a communication dated 09.02.2024, issued to the learned Standing Counsel for the Elementary Education Department had clarified that in the initial recommendation as made by the DLSC, the signatures of the Chairman, Member Secretary and members of the DLSC were available only in the last page of the proposal and were not so put in the other two pages for which it was difficult to authenticate the same. Accordingly, the proposal was returned to the Deputy Commissioner, Dhubri, vide communication dated 08.08.2019 for authentication of all pages of the proposal, keeping photocopies in the office. Accordingly, the Deputy Commissioner, Dhubri had submitted the proposal with the signatures of the Chairman and other members in all pages vide forwarding dated 26.01.2019.

15. As the particulars of the teachers varied in the said two recommendations of the DLSC which came on record because of the position as narrated herein above, a query was raised and accordingly, it is stated that a field verification in respect of the original proposal submitted by DEEO, Dhubri was done and the original proposal having been found to be tally with the field verification report, the SLSC proceeded to consider the issue basing on the original proposal dated 11.01.2018. The original proposal is the proposal which was forwarded by the DEEO on 11.01.2018 and therein, the DLSC had recommended the case of the petitioner to be eligible for provincialization of his services as the Social Studies teacher.

16. This Court, accordingly, shall proceed with the consideration basing on the original proposal i.e., the initial proposal as submitted by the DLSC through the DEEO, Dhubri on 11.01.2018.

17. The case of the petitioner is that he having been denoted as the Social

Studies teacher and the provisions of Section 3 (xi) of the Act of 2017 having required that the services of one Social Studies teacher is to be provincialized, his services were required to be provincialized and he came to be discriminated against due to the influence exerted in the matter by the respondent no. 6, who after having projected himself as the Language teacher, changed such position and he came to be projected thereafter as the Social Studies teacher in the school.

18. Per contra, the stand of the respondent no. 6 is that in the school, there was no specific assignment of duties to the teachers and all the teachers were required to teach the subjects allotted to them from time to time and in this connection, he relies upon the DISE data of the school, wherein, it has been reflected that the teachers in the school were teaching all subjects and accordingly, the respondent no. 6 having also taught the subject of Social Studies and considering his service seniority in the school, it was held that there was no illegality in the authorities recommending his name for provincialization of his services.

19. The stand of the respondent no. 6 is to be understood from the projections as made by him in the particulars as submitted for provincialization of the services of the teachers of the said school. The said particulars were submitted by him under his own signature as the Headmaster of the school and therein he had projected himself as the Headmaster of the school and to be teaching the English subject whereas, the petitioner was denoted as the Assistant Teacher and projected to be teaching the Social Studies. The said particulars as submitted by the respondent no. 6 is not denied by him, however, in his writ petition no. 4686/2021, he has projected a clarification to the extend that as required by the respondent authorities, a revised Performa disclosing the particulars of the teachers were submitted and therein he had shown the petitioner and the respondent no. 6 to be teaching all subjects and only teachers imparting education

in Science & Maths, Hindi and Arabic were shown to be teachers teaching such specific subjects, whereas, the other teachers were shown to be teaching all subjects.

20. It is to be noted that the respondent no. 6 has placed reliance on the DISE data of the school for the purpose of establishing his stand that the teachers in the school were teaching all subjects. It is to be noted that the said DISE data is prepared basing on the inputs as provided by the respondent no. 6 as the Headmaster of the school and the same cannot be relied upon as the sole basis for the purpose of determining as to who in the said school was teaching which subject. More so, when the petitioner on his own volition had submitted the particulars denoting himself to be the Headmaster, teaching the English subject and denoting the respondent no. 6 as an Assistant Teacher, teaching the Social Studies subject on 03.06.2017. The respondent authorities by ignoring the provisions of Section 3(xi) of the said Act of 2017, proceeded to effect provincialization of services of teachers in the school by reckoning the criteria of service seniority, which admittedly, is not applicable in the facts of the case.

21. It is to be noted that proposals submitted in respect of other schools, were considered by the DLSC and the SLSC by reckoning the subjects taught by the teachers serving in the Venture Educational Institutions, it is not understood as to why a different methodology was adopted for the purpose of provincialization of the services of the teachers of the present school. The action on the part of the respondent no. 6 in submitting particulars denoting the petitioner to be an Assistant Teacher and teaching the subject of Social Studies and he himself to be teaching the Language subject could not have been permitted to be changed by the authorities, subsequently, to the prejudice of the petitioner herein. It is seen that the original proposal as indicated in the communication of the Director of

Elementary Education Department, Assam, dated 09.02.2024 happens to be the recommendations of the DLSC, wherein the petitioner was recommended as the Social Studies teacher of the school for provincialization of his services. The respondent authorities could not have based their subsequent decisions on materials produced by the Headmaster in the form of a revised proforma of particulars of the teachers of the school and or, on the disclosures made in the DISE data, which again was so prepared basing on the inputs furnished by the respondent no. 6. Accordingly, the decisions as arrived at towards provincialization of the services of the respondent no. 6 as Social Studies teacher in Chatapara MEM cannot be sustained.

22. It is relevant to note that other than the particulars as submitted by the respondent no. 6 of the serving teachers in the school, no contemporaneous records indicating the subjects taught by the serving teachers in the school was brought on record. Further, the respondent no. 6 has also not brought on record any direction that may have been issued by the school Managing Committee, requiring him to teach the students in the school in addition to discharging his duties as the Headmaster of the school.

23. The State Level Scrutiny Committee although vested with the power to carry out inspection of the records maintained in the school, has not ventured to carry out any such inspection of the contemporaneous records to arrive at a conclusion as to the exact nature of duties rendered by the respondent no. 6 in the school and/or for ascertaining the subjects taught by the petitioner, respondent no. 6 and other teachers in the school. As such, it is to be held that the SLSC had not arrived at its conclusions in the matter by following the procedure mandated.

24. In view of the above conclusions reached by this Court, the following directions are issued: -

(i) Recommendations of the SLSC for provincialization of the services of the respondent no. 6 is hereby interfered with.

(ii) The revised recommendations as made by the DLSC, available at Page 29 of the writ petition No. WP(C)5421/2023 also stands interfered with.

(iii) The Director of Elementary Education Department, Assam would now be required to place the particulars of the petitioner as well as the respondent no. 6 before the SLSC for a fresh consideration of their respective cases for provincialization of their services. The SLSC, on receipt of such proposal from the Director of Elementary Education Department, Assam shall proceed to examine the claims of the petitioner as well as the respondent no. 6 by invoking the powers conferred on it under the provisions of Section 13 (11) of the said Act of 2017 and thereafter, by inspecting the contemporaneous records that is maintained in the school, indicating the subjects taught by the petitioner and the respondent no. 6 in the school as well as the other serving teaches therein, shall arrive on its conclusion as to who amongst the petitioner, the respondent no. 6 is eligible for being recommended for provincialization of their services against the vacant sanctioned post of Social Studies teacher available in the said school.

(iv) The SLSC while undertaking the exercise as required herein above shall not base its decision on the DISE data of the school, but, shall come to its conclusion after examining all contemporaneous records as maintained in the school, which would indicate the nature of duties rendered by the petitioner and the respondent no. 6 therein.

(v) On conclusion of the exercise as required to be carried out by the SLSC,

for the purpose of arriving at a due and proper conclusion in the matter, the SLSC shall provide an opportunity of hearing to the petitioner as well as the respondent no. 6 and thereafter, shall proceed to make its recommendations in the matter.

(vi) On conclusion of the exercise as required to be carried out by the SLSC and the recommendations made thereafter shall be communicated by the Director of Elementary Education, Assam to both the petitioner as well as the respondent no. 6.

(vii) The above exercise shall be initiated and completed within the period of 90 days from the date of receipt of a certified copy of this order from either the petitioner or, the respondent no. 6 by the Director of Elementary Education, Assam.

(viii) The petitioner or the respondent no. 6 shall submit the certified copy of this order along with a representation raising their respective claims and submit the same before the Director Elementary Education, Assam to facilitate the taking forward of the matter.

25. With the above observations and directions, the writ petitions being WP(C)2345/2020, WP(C)4686/2021 and WP(C)5421/2023 stand disposed of.

JUDGE

Comparing Assistant