

GAHC010187792021



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

Case No. : Review.Pet./106/2021

ON THE DEATH OF BIJOY SHANKAR THAKUR HIS LEGAL HEIRS,
SMTI KAMALA DEVI, WIFE OF LATE BIJOY SHANKAR THAKUR, R/O
HOUSE NO. 313, WARD NO. 2, HINDU GAON, RANGAPARA, DIST-
SONITPUR, ASSAM, PIN-784505

2: SRI AKASH KUMAR
SON OF LATE BIJOY SHANKAR THAKUR
R/O HOUSE NO. 313
WARD NO. 2
HINDU GAON
RANGAPARA
DIST- SONITPUR
ASSAM
PIN-784505

3: SRI PRAKASH KUMAR
SON OF LATE BIJOY SHANKAR THAKUR
R/O HOUSE NO. 313
WARD NO. 2
HINDU GAON
RANGAPARA
DIST- SONITPUR
ASSAM
PIN-784505.

4: SRI BIKASH KUMAR
SON OF LATE BIJOY SHANKAR THAKUR
R/O HOUSE NO. 313
WARD NO. 2
HINDU GAON
RANGAPARA
DIST- SONITPUR
ASSAM
PIN-78450

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SECONDARY EDUCATION DEPARTMENT, ASSAM (CIVIL)
SECRETARIAT, DISPUR, GUWAHATI- 788006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-788006

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI - 781019.

4:THE INSPECTOR OF SCHOOLS
SONITPUR DISTRICT CIRCLE
TEZPUR
PIN- 784001

5:THE DEPUTY COMMISSIONER
SONITPUR DISTRICT
TEZPUR
PIN -784001.

6:THE TREASURY OFFICER
RANGAPARA SUB-TREASURY
RANGAPARA
SONITPUR
PIN -784505
ASSAM

7:THE HEASMISTRESS
SMTI. CHANDRA PRABHA PANDIT SMRITI HINDI VIDYALAYA
P.O. RANGAPARA DIST. SONITPUR
PIN - 784505.

8:MD. LUQMAN ANSARI
ASSISTANT TEACHER
S/O LATE MD. AZIZ ANSARI
C/O AKHTAR ANSARI
NO.1 NAMANIGAON
P.O.-THAKURBARI
DIST-SONITPUR
ASSAM

PIN-78450

Advocate for the Petitioner : MR. R P KAKOTI SR. ADV.

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : WP(C)/4729/2021

ON THE DEATH OF BIJOY SHANKAR THAKUR
HIS LEGAL HEIRS REP.
BIJOY SHANKAR THAKUR
S/O LATE GAYA THAKUR
IN CHARGE HEADMASTER
SMTI CHANDRA PRABHA PANDIT HINDI VIDYALAYA
SONITPUR
RESIDENT OF HOUSE NO. 313
WARD NO. 2
HINDU GAON
RANGAPARA
DIST SONITPUR
ASSAM 784505

1.1: SMTI KAMALA DEVI
W/O LATE BIJOY SHANKAR THAKUR

1.2: AKASH KUMAR
S/O. LATE BIJOY SHANKAR THAKUR.

1.3: PRAKASH KUMAR
S/O. LATE BIJOY SHANKAR THAKUR.

1.4: BIKASH KUMAR
S/O. LATE BIJOY SHANKAR THAKUR.
ALL ARE R/O HOUSE NO. 313
WARD NO. 2
HINDU GAON
RANGAPARA
DIST. SONITPUR
ASSAM
PIN-784505.
VERSUS

THE STATE OF ASSAM AND 3 ORS.

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
EDUCATION (SECONDARY) DEPARTMENT
DISPUR
GUWAHATI 06

2:THE DIRECTOR OF SECONDARY EDUCATION ASSA CUM CHAIRPERSON

STATE LEVEL SCRUTINY COMMITTEE
KAHILIPARA
GUWAHATI 19

3:THE INSPECTOR OF SCHOOLS

SONITPUR DISTRICT CIRCLE
DIST SONITPUR
ASSAM

4:MD. LUQMAN ANSARI.
ASSISTANT TEACHER
S/O LATE MD. AZIZ ANSARI

C/O AKHTAR ANSARI
NO. 1
NAMANIGAON PO THAKURBARI
DIST SONITPUR
ASSAM 784505

Advocate for : MR. A K DUTTA
Advocate for : SC. EDU. appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WP(C)/3386/2018

LUQMAN ANSARI
S/O LT. MD. AZIZ ANSARI
C/O AKHTAR ANSARI
NO. 1 NAMANIGAON
P.O. THAKURBARI
DIST. SONITPUR
ASSAM

PIN - 784505.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM

EDUCATION (SECONDARY) DEPARTMENT
DISPUR
GUWAHATI- 781006.

2:COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR GUWAHATI- 781006.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GUWAHATI - 781019.

4:THE INSPECTOR OF SCHOOLS
SONITPUR DISTRICT CIRCLE
TEZPUR
PIN- 784001.

5:THE DEPUTY COMMISSIONER
SONITPUR DISTRICT
TEZPUR
PIN -784001.

6:THE TREASURY OFFICER
RANGAPARA SUB-TREASURY
RANGAPARA
SONITPUR
PIN -784505
ASSAM

7:THE HEASMISTRESS

SMTI. CHANDRA PRABHA PANDIT SMRITI HINDI VIDYALAYA
P.O. RANGAPARA
DIST. SONITPUR
PIN - 784505.

8:BIJAY SHANKAR THAKUR
ASSTT TEACHER
SMTI. CHANDRA PRABHA PANDIT SMRITI HINDI VIDYALAYA
P.O. RANGAPARA
DIST. SONITPUR
ASSAM
PIN - 784505.

Advocate for : MR. B CHETRI
Advocate for : GA ASSAM appearing for THE STATE OF ASSAM AND 7 ORS.

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

ORDER

Date : 27.06.2024

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. Nayanjyoti Khataniar, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1, 3 & 4; Mr. R. Borpujari, learned standing counsel, Finance Department, appearing on behalf of respondents No. 2 & 6; Mr. P. Saikia, learned Government Advocate, appearing on behalf of respondent No. 5; and Mr. A. C. Borbora, learned senior counsel, assisted by Mr. B. Chetri, learned counsel, appearing on behalf of respondent No. 8.

2. At the outset, it is to be noted that the original review petitioner viz. Bijoy Shankar Thakur, during the pendency of the present proceeding, had passed away and accordingly, his legal heirs, had instituted the interlocutory application being IA(c)1421/2021, for substituting them in place of Bijoy Shankar Thakur, the petitioner in the present review petition. The said prayer was allowed by this Court vide order, dated 17.08.2022. For the purpose of the present order, late Bijoy Shankar Thakur is denoted as the original petitioner.

3. The facts as requisite for adjudication of the issue arising in the present proceeding, is briefly noted hereinbelow:

The original petitioner, herein, and the respondent No. 8, herein, were

initially appointed as the Assistant Teachers in Srimati Chandra Prabha Pandit Smriti Hindi Vidyalaya, Sonitpur. At the time of the engagement of the original petitioner and the respondent No. 8; the said school was in its venture stage. Upon enactment of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; the cases of the eligible serving teachers were taken-up for consideration of their provincialization and accordingly, vide order, dated 02.09.2013; the Director, Secondary Education Department, Assam, proceeded to provincialize the services of the eligible teachers in the said school w.e.f. 01.01.2013. Vide the said order, dated 02.09.2013, the services of the original petitioner and the respondent No. 8 was so provincialized as an Assistant Teacher in Arts and as a Sanskrit Teacher, respectively.

It is required to be noted that vide the said order, dated 02.09.2013, 7(seven) posts of teachers were allotted to the said school for provincialization of services of the serving teachers therein.

In addition to the above posts, further 1(one) post of Headmaster and 1(one) post, each, of Junior Assistant and Grade-IV, respectively, were also allotted for the said school for provincialization of services of the persons so identified for the said posts. In terms of the said order, dated 02.09.2013, the services of the original petitioner and the respondent No. 8, herein, came to be so provincialized.

It is seen that after issuance of the said order; an issue had arisen in-as-much as the respondent No. 8, herein, was shown to have been so provincialized against the post of Sanskrit Teacher while he contends that he

was appointed as an Assistant Teacher in Arts. The said issue was processed by the respondent authorities and the same led to issuance of an order, dated 08.04.2015, issued by the Director, Secondary Education Department, Assam, wherein, noticing that the service of the original petitioner was provincialized as a Sanskrit Teacher due to oversight; the said order, dated 02.09.2013, to the above extent was so withdrawn and further noticing that the District Scrutiny Committee(DSC) had recommended the name of the respondent No. 8 as a Hindi Teacher and there being no provision of provincializing the service of a Hindi Teacher in a Hindi Medium school; the provincialization in respect of the respondent No. 8 came to be withdrawn. Being aggrieved; the respondent No. 8 approached this Court by way of instituting a writ petition being WP(c)3386/2018 and therein, had also impleaded the original petitioner, herein, as respondent No. 8.

This Court, upon consideration of the issue as arising in WP(c)3386/2018, vide order, dated, 08.08.2019, proceeded to dispose of the same interfering with the order of the Director, Secondary Education Department, Assam, dated 08.04.2015, with a further direction that the service of the respondent No. 8 be provincialized in place of the original petitioner, herein. It was further provided that vacancies having arisen in the meantime in the posts of Assistant Teacher on expiry of 2(two) provincialized Assistant Teachers in the said school; the service of the original petitioner, herein, be adjusted against 1(one) post out of the said 2(two) vacancies. It was also observed in the said order, dated 08.08.2019, that the respondent No. 8, herein, is senior to the original petitioner, herein, and accordingly, had a better claim for provincialization to the post of an Assistant Teacher in Arts.

In terms of the directions passed by this Court vide order, dated 08.08.2019, in WP(c)3386/2018; the Director, Secondary Education Department, Assam, proceeded to pass the consequential order on 04.08.2021, provincializing the service of the respondent No. 8, herein, in lieu of the service of the original petitioner, herein, with further stipulation that the respondent No. 8 would continue to enjoy the benefits of provincialization of his service w.e.f. 01.01.2013.

Being aggrieved, the original petitioner had instituted a writ petition being WP(c)4729/2021 before this Court, assailing the said order, dated 08.09.2021, passed in WP(c)3386/2018. This Court, vide order, dated 17.09.2021, while issuing notice in the matter, appreciating the fact that this Court had already vide order, dated 08.08.2019, passed in WP(c)3386/2018, proceeded to require the provincialization of the service of the respondent No. 8, herein, and the said judgment holding the field, no different view being permissible to be taken in a different proceeding; proceeded to direct that the provincialization of the original petitioner, herein, be not disturbed.

It is relevant to note that this Court vide order, dated 17.09.2021, as passed in WP(c)4729/2021; had recorded an observation to the effect that the original petitioner would be senior to the respondent No. 8, herein, in-as-much as both of them were appointed on the same date i.e. 14.03.1990 and by age, it is the original petitioner who is to be held to be senior to the respondent No. 8. It is under the above circumstances; the original petitioner had instituted the present proceeding.

4. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

5. On perusal of the materials available on record and taking into consideration, the submissions as made by the learned counsels appearing for the parties; this Court had noticed the fact that amongst the posts so allotted to the school, in question, at the time of the provincialization i.e. the posts so allotted vide order, dated 02.09.2013; one of the posts was found to have not been utilized. Accordingly, vide order, dated 17.05.2024, passed in this review petition; the learned standing counsel, Secondary Education Department, was directed to receive instructions in the matter as to whether the said post as sanctioned by the Government for the purpose of provincialization of the services of the serving teachers in the said school, was utilized or not and further as to whether the said post was continuing to exist in the school.

6. In terms of the said directions; Mr. Khataniar, learned standing counsel, Secondary Education Department, has placed on record, a communication, dated 16.05.2024; received by him from the Inspector of Schools, Sonitpur District Circle; wherein, it has been contended that one post of Assamese Language Teacher originally sanctioned to the said school vide order, dated 02.09.2013, had remained vacant and the said post continued to remain in the said school and was not withdrawn in the meantime by the Government.

7. The above position having come to the forefront; the learned counsels appearing for the parties, have submitted that this Court would be pleased to

consider the said development and proceed to grant the due benefits to the original petitioner, herein, while not disturbing the service of the respondent No. 8, herein.

8. The said being the position and considering the agreement arrived at by and between the parties; this Court would not further proceed to consider the issues arising in the review petition but would hold that given the materials available on record, more particularly, the dates of joining in their services by the original petitioner and the respondent No. 8; it is to be held that their inter se seniority has to be so determined, given the fact that both of them had joined their services on the same date i.e. 14.03.1990, by applying the criteria of their respective dates of birth.

9. The original petitioner being senior to that of the respondent No. 8 in terms of their respective dates of birth; it is held that the original petitioner would rank senior to the respondent No. 8, herein.

10. Having recorded the said conclusion and also appreciating the agreement arrived at by and between the parties; the following directions are passed in the matter:

(i). The original petitioner would be deemed to be so provincialized in his service against the post as mentioned against his name in the order, dated 02.09.2013, and accordingly, the original petitioner would be deemed to have been so provincialized in his service w.e.f. 01.01.2013, till the date of his death. Accordingly, the original petitioner would be entitled to receive

his pay and allowances in terms of the provincialization of his service as effected vide order, dated 02.09.2013, w.e.f. 01.01.2013, till the date of his death.

(ii). The respondent No. 8 would now be provincialized in his service against the post of an Assamese Language Teacher as allotted to the said school vide order, dated 02.09.2013, and accordingly, he also would be entitled to receive all his service benefits including the pay and allowances w.e.f. 01.01.2013 against the said post of Assamese Language Teacher.

(iii). It is provided that the direction for provincialization of the service of the respondent No. 8, herein, against the post of Assamese Language Teacher, is so passed by this Court considering the unique facts and circumstances as arising in the matter and the respondent authorities shall proceed to provincialize the service of the respondent No. 8 against the post of Assamese Language Teacher as allotted to the said school vide order, dated 02.09.2013, and for the purpose, shall not consider as to whether the respondent No. 8 would be entitled for such provincialization of his service against the post of Assamese Language Teacher but shall so provincialize his service against the said post of Assamese Language Teacher and release to him all due service benefits.

(iv). The original petitioner during the pendency of the present proceeding having passed away; the pay and allowances now due to him along with other benefits that would so accrue to him on account of the

said provincialization of his service in the said school w.e.f. 01.01.2013, shall be now so released to his legal heirs after deducting the amounts already paid to the original petitioner during his lifetime.

(v). Likewise, the respondent No. 8, herein, would now be entitled to receive the service benefits including the pay and allowances on account of his provincialization of service w.e.f. 01.01.2013 and the same would be so released to the respondent No. 8 by the Director, Secondary Education Department, Assam, after deducting the amounts already paid to him in this connection.

(vi). Orders passed by the respondent authorities, contrary to the directions passed hereinabove, shall stand interfered with and the services of both the original petitioner, herein, and the respondent No. 8, herein, shall be regulated in terms of the above directions.

(vii). The above directions would now be implemented by the Director of Secondary Education, Assam, within a period of 3(three) months from the date of receipt of a certified copy of this order.

11. With the above directions and observations, this review petition stands disposed of.

JUDGE

Comparing Assistant