

GAHC010188262022



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

Case No. : WP(C)/6094/2022

AJANTA SARMA
W/O- LATE HEMANTA KR. PANDIT,
R/O- HAILAKANDI TOWN, WARD NO.-15,
ASROM ROAD,
P.O. AND P.S. AND DISTRICT- HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

4:DISTRICT SCRUTINY COMMITTEE
CACHAR
REPRESENTED BY THE DEPUTY COMMISSIONER
CACHAR
P.O. AND P.S.- SILCHAR
DIST.- CACHAR
ASSAM
PIN- 788001.

5:THE STATE LEVEL SCRUTINY COMMITTEE
REPRESENTED BY THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

6:THE MISSION DIRECTOR
RASTRIYA MADHYAMIK SIKSHA ABHIYAN
ASSAM
KAHILIPARA
GUWAHATI-19.

7:THE DIRECTOR
SARBA SIKSHA ABHIYAN MISSION
ASSAM
KAHILIPARA
GUWAHATI-19

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (Oral)

Date : 12-02-2024

Heard Mr. A. M. Barbhuiya, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned Standing Counsel for the Secondary School Department representing the respondents no. 1, 2, 3 & 5 and Mr. B. Deori, learned Junior Government Advocate representing the respondent no. 4 as

well as Ms. P. Das, learned Standing Counsel for the SSA, Assam representing the respondents no. 6 & 7.

2. The grievance raised in the present proceeding by the petitioner pertains to the denial to her of the benefit of provincialisation of her services on the ground that her name does not figure in the DISE Code of the school for the years 2014, 2015 and 2016.

3. The petitioner was appointed a Music Teacher in the Digor Srikona High School on 24.12.1997. The petitioner joined the said school on 30.12.1997. The school during that relevant point of time was in the Venture stage. The services of the petitioner and the other teachers working in the said school were approved by the jurisdictional Inspector of Schools vide his order dated 24.09.1998.

4. The cases of the teachers and non-teaching staff working in the said school were taken up for consideration for provincialisation of their services under the provisions of *Assam Venture Educational Institution (Provincialisation of Services) Act, 2011*. On consideration of their cases, while the case of other teaching and non teaching staff of the school came to be provincialised, the petitioner was not extended with such benefit and her name was dropped from the process of provincialisation. Thereafter, the case of the petitioner was considered 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). On the claim of the petitioner being placed before the jurisdictional District Level Scrutiny Committee (For short DLSC), the said committee, on scrutiny of the particulars of the petitioner, recommended her name for provincialisation of her services to the State Level Scrutiny Committee (For short SLSC). The SLSC on consideration of the matter and finding that the name of the petitioner was not included in the DISE data of the school for the years 2014, 2015 and 2016 resolved not to recommend the name of the petitioner for provincialisation of her services.

5. The entreaties made by the petitioner before the authorities for provincialising her services having failed to evoke any response, the petitioner had initiated the present proceedings.

6. It is an admitted position that the SLSC had refused to recommend the name of the petitioner only on the ground that her name did not figure in the DISE data of the school for the years 2014, 2015 and 2016. The petitioner is working in a High School and in terms of the provisions of the Act of 2017, the names of the teachers working in a Venture High School or a Venture Higher Secondary School are not mandated to be captured in the DISE Code or the UDISE Code. The definition of "Venture High School" and "Venture Higher Secondary School" can be seen in [Section 2\(x\)](#) and [2\(y\)](#) of the 2017 Act, which are reproduced herein below:-

"2.(x) 'Venture High School' means High School imparting education up to class X and established by the people of the locality prior to 1.1.2006 which has received permission from the State Government and recognition from the Board

of Secondary Education, Assam on or before 1.1.2006 and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far;

(y) 'Venture Higher Secondary School' means a Higher Secondary School imparting education up to Class XII and established by the people of the locality prior to 1.1.2006 which has received permission from the State Government on or before 01.01.2006 and whereof the services of teachers have not been provincialised under any Act earlier enacted by the State legislature so far."

7. This Court further at this stage finds it relevant to take note of two other definitions, i.e. definition of "Venture M.E. School" including "Venture M.E. Madrassa and "Venture Lower Primary School" or "Venture L.P. School", which have been defined in [Section 2\(za\)](#) and [2\(zb\)](#) of the 2017 Act. The said definitions, being relevant, are also quoted herein below:-

"2(za) 'Venture ME School' including 'Venture ME Madrassa' means an Upper Primary School imparting education from class VI up to class VII and established by the people of the locality prior to 1.1.2006 which has received recognition from the competent authority on or before 01.01.2006 and captured in the DISE Code up to 2009-10 and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far: Provided that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialisation of services of any employee of the institution;

2(zb) 'Venture Lower Primary School' or 'Venture LP School' means a School imparting education up to Class V and established by the people of the locality prior to 1.1.2006 whose name figure in the DISE Code up to 2009-10 and prior to that and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far: Provided that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialisation of services of any employee of the institution."

8. From the above extracted definitions, it transpire that [Section 2\(x\)](#) defines "Venture High School" to mean such School imparting education up to Class-X and established by the people of the

locality prior to 01.01.2006, which has received permission from the State Government and recognition from the Board of Secondary Education, Assam on or before 01.01.2006 and whereof the services of the teachers have not been provincialised under any Act enacted by the State Legislature so far. The definition of "Venture Higher Secondary School" as would be seen from [Section 2\(y\)](#) of the Act of 2017 is similar to "Venture High School". However, the difference in the definitions between Venture High School and the Venture Higher Secondary School is that in Venture High School, the School imparts education up to Class-X whereas in Venture Higher Secondary School, the School imparts education up to Class-XII. Further, in "Venture Higher Secondary School" only the permission from the State Government on or before 01.01.2006 is required.

9. From the definitions of "Venture High School", "Venture Higher Secondary School", "Venture M.E. School" and a "Venture Lower Primary School", as quoted hereinabove, it is evident that it is only in respect of the Venture M.E. School and a Venture Lower Primary School that the requirement of the names of the teachers being captured in the DISE Code up to 2009-10 has been provided for. In respect of a Venture High School or a Venture Higher Secondary School, as defined under [Section 2\(x\)](#) and [2\(y\)](#) of the 2017 Act, such prescription is admittedly absent and accordingly, it can be construed that the requirement of a DISE Code is only applicable in case of a Venture Primary or a Upper Primary School.

10. The provisions of the Act of 2017 having not mandated any teacher working in a “Venture Secondary School” or a “Venture Higher Secondary School” to have their names captured in the DISE data up to the year 2009-10, the conclusions reached by the SLSC for the purpose of rejecting the case of the petitioner that her name was not found included in the DISE data of the School for the years 2014, 2015 and 2016 is clearly contrary to the provisions of the said Act of 2017. The SLSC for the purpose of rejecting the case of the petitioner could not have drawn conclusions which are clearly contrary to the provisions of the Act of 2017.

11. In view of the said position, the decision of the SLSC as reached in the case of the petitioner is hereby interfered with.

12. The matter is remanded back to the Director of School Education, Assam, who is now required to place the recommendation made in favor of the petitioner by the District Level Scrutiny Committee before the State Level Scrutiny Committee. While placing the recommendation of the DLSC in favor of the petitioner before the SLSC, the Director of School Education, Assam shall specifically bring to the notice of the said committee that the rejection of the case of the petitioner by the committee earlier on account of her name not being captured in the DISE data of the school for the years 2014, 2015 and 2016 has been interfered with by this Court and also the conclusions of this Court that the provisions of the Act of 2017 does not mandate the teachers working in Venture Secondary School or Venture Higher Secondary School to have their name captured in the DISE data

and/or in the UDISE data. Thereafter, on the case of the petitioner being considered by the SLSC, strictly in accordance with the provisions of the Act of 2017, necessary order(s) as may be required with regard to the provincialisation of the services of the petitioner be issued by the Director of Secondary School, Assam.

13. It is provided that in the event the SLSC has any apprehension with regard to the continuous nature of services of the petitioner, the said committee is required to invoke the powers as conferred on it under the provisions of Section 13 (11) of the Act of 2017. The said committee, in terms of the provisions under Section 13(11) of the Act of 2017, shall cause physical verification of the institution(s) of the petitioner and also inspect all documents and records as may be required for the purpose of consideration of the case of the petitioner for provincialisation of her services and thereafter, render its recommendation in the matter.

14. The process as now required to be carried out by the Director of Secondary School, Assam in terms of the directions passed herein above by this Court, shall be so initiated and completed within a period of 3(three) months from the date of receipt of certified copy of this judgment and order. The petitioner, to facilitate the process, shall furnish a certified copy of this judgment and order along with a forwarding before the Director of Secondary Education, Assam.

15. With the above observations and directions, the writ petition stands

disposed of.

JUDGE

Comparing Assistant