

GAHC010188812024



2024:GAU-AS:10755

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

Case No. : WP(C)/4729/2024

SHONAB UDDIN MOLLAH
S/O- LATE TAHAJ UDDIN MUNSHI,
VILLAGE- BAHADURTARI, WARD NO. 11,
DHUBRI, DISTRICT- DHUBRI, PIN- 783301.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE DEPUTY COMMISSIONER/ DISTRICT COMMISSIONER
DHUBRI.

4:THE DISTRICT SCRUTINY COMMITTEE
DHUBRI
REPRESENTED BY DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
DHUBRI.

5:THE STATE LEVEL SCRUTINY COMMITTEE
REPRESENTED BY THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM.

6:THE DEPUTY INSPECTOR OF SCHOOLS
DHUBRI.

7:SHEIKH MD. ZAKIR HUSSAIN
S/O- SHEIKH A BARI
RESIDENT OF BAHADURTARI
WARD NO. 11
DISTRICT- DHUBRI
PIN- 783301.

8:SHEIKH ANOWAR HUSSAIN
S/O- SHEIKH AYAN UDDIN
VILLAGE- KATLAMARI
P.O.- PODMERALGA
PART IV
DISTRICT- DHUBRI
ASSAM

Advocate for the Petitioner : MR. S K TALUKDAR, MS. S T BOKTH,MR. A SAYED

Advocate for the Respondent : SC, ELEM. EDU, MR G U AHMED (R-7),MR. R ISLAM(R-7),GA,
ASSAM

Linked Case : WP(C)/4773/2012

SHONAB UDDIN MOLLAH
S/O LATE TAHAJ UDDIN MUNSHI
R/O BAHADURTARI
WARD NO.11
P.S. DHUBRI
DIST- DHUBRI
ASSAM

VERSUS

STATE OF ASSAM and ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
EDUCATION ELEMENTARY DEPARTMENT
DISPUR
GHY-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM

KAHILIPARA
GHY-19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
DIST- DHUBRI
ASSAM
PIN-783301

4:THE DY. COMMISSIONER
DHUBRI
ASSAM
PIN-783301

5:THE MANAGING COMMITTEE
BAHADURTARI M.E. SCHOOL
REPRESENTED BY ITS PRESIDENT
P.O. DHUBRI
DIST- DHUBRI
ASSAM
PIN-783301

6:THE HEAD MASTER CUM MEMBER SECRETARY
BAHADURTARI M.E. SCHOOL WARD NO.11
DIST- DHUBRI
ASSAM
PIN-783301

7:SHEIKH MD. ZAKIR HUSSAIN
S/O SHEIKH A. BARI
R/O BAHADURTARI
WARD NO.11
DIST- DHUBRI
ASSAM
PIN-783301

8:SHEIKH ANOWAR HUSSAIN
S/O SHEIKH AYAN UDDIN
R/O KATLAMARI
P.O. PADMERALGA PART-IV
DIST- DHUBRI
ASSAM
PIN-7833

Advocate for : MR.S ALIM
Advocate for : MR.M U MONDAL appearing for STATE OF ASSAM and ORS.

Linked Case : WP(C)/4998/2024

SHONAB UDDIN MOLLAH
S/O- LATE TAHAJ UDDIN MUNSHI
VILLAGE- BAHADURTARI
WARD NO-11
DHUBRI
PIN-783301

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
EDUCATION (ELEMENTARY) DEPARTMENT
DISPUR
GUWAHATI-06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DEPUTY/DISTRICT COMMISSIONER
DHUBRI
DISTRICT- DHUBRI
ASSAM
PIN- 783301.

4:THE DISTRICT SCRUTINY COMMITTEE
REP. BY DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
DIST.- DHUBRI
ASSAM. PIN- 783301.

5:THE STATE LEVEL SCRUTINY COMMITTEE
REP. BY THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM

6:THE DEPUTY INSPECTOR OF SCHOOLS
DHUBRI

7:SHEIKH MD. ZAKIR HUSSAIN
S/O- ABDUL BARI SHEIKH
R/O- BAHADURTARI
WARD NO-11

DHUBRI
PIN-783301

8:ABDUL JUBBAR MAJUMDER
S/O- LATE TAHAJ UDDIN BEPARI
R/O- BAHADURTARI
WARD NO-11
DHUBRI
PIN-783301

Advocate for : MR. S K TALUKDAR
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 7 ORS

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 05.11.2024

- 1.** Heard Mr. S.K. Talukdar, learned counsel for the petitioner in all the three writ petitions as well as Mr. P.K. Bora, learned standing counsel, Elementary Education Department for the respondent Nos. 1, 2, 4, 5 & 6; Mr. B. Deori, learned Government Advocate for the respondent No. 3 and Mr. R. Islam, learned counsel for the respondent No. 7.
- 2.** All the three writ petitions having common cause of action are being disposed of by this common order.
- 3.** Pursuant to a Resolution of the Managing Committee of the Bahadurtari M.E. School, Dhubri, the Secretary, Management Committee of the said school by an Order dated 08.08.1995 appointed the petitioner as Section Teacher in the said school. The petitioner, accordingly, joined on 08.08.1995. In the meantime, by an Order dated 16.12.2005 issued by the Director of Elementary Education, Assam, the Bahadurtari ME School along with 4 (four) other schools

were given temporary recognition w.e.f. 01.01.2005.

4. The Government of Assam took a policy decision to provide financial assistance to the Venture Schools/Madrassa, whereby such financial assistance is given to the Headmasters and other Assistant Teachers of the schools. However, as the petitioner was deprived of giving the financial assistance, the petitioner approached this Court by filing WP(C) No. 633/2012, which was disposed of by an Order dated 10.02.2012 directing the Director of Elementary Education, Assam to cause an inquiry and then to decide the issue relating to seniority of the petitioner vis-a-vis the two other private respondents for the purpose of financial assistance.

5. Consequent thereto, the Director of Elementary Education, Assam, after hearing the parties, passed an order on 21st of June 2012, whereby the petitioner was declared to be senior and his date of joining was indicated as 08.08.1995.

6. Despite the order passed by the Director of Elementary Education Assam on 21st June, 2012, the petitioner was shown junior amongst the other teachers of Bahadurtari ME School in Dhubri district. He, therefore, again approached this Court by filing WP(C) No. 4773/2012. This Court, on 09.11.2012, passed an interim order directing that the financial assistance issued to the Bahadurtari ME School in Dhubri district, shall not be disbursed either to the private respondents or to the petitioner in the said writ petition and their share shall be kept aside. Further, the petitioner preferred a miscellaneous application being MC No. 195/2013, wherein this Court, by an Order dated 14.05.2013, directed that in view of the seniority declaration in favour of the petitioner by the Order dated 21.06.2012 issued by the Director of Elementary Education, Assam, the services

of the respondent Nos. 7 & 8 therein, namely, Sheikh Md. Zakir Hussain and Sheikh Anowar Hussain should not be provincialised in the Bahadurtari ME School by ignoring the petitioner under the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011.

It is to be noted at this stage that the Interim Order dated 09.11.2012 passed in WP(C) No. 4773/2012 and the Order dated 14.05.2013 passed in MC No. 195/2013 is still subsisting till date.

7. In the meantime, WP(C) No. 4773/2012 was disposed of by an Order dated 28.05.2014 directing the respondents, more particularly, the Director of Elementary Education, Assam to cause scrutiny of the matter through prescribed agencies to determine as to who is senior, the petitioner or the respondent No. 7 therein, i.e. Sheikh Md. Zakir Hussain.

8. Pursuant to the Order dated 28.05.2014 passed in WP(C) No. 4773/2012, the Member Secretary, DSC, District Elementary Education Officer, Dhubri passed an order on 11.08.2014 whereby the petitioner was shown to have been appointed on 24.11.2007 and the claim of the petitioner as Assistant Teacher was rejected.

9. The petitioner again filed a review petition being Review Petition No. 65/2017 praying for review of the Order dated 28.05.2014 passed in WP(C) No. 4773/2012. This Court, after hearing the parties, disposed of the said review petition by Order dated 22.08.2023 by coming to the conclusion that an error apparent on the face of the record had occurred while passing the Order dated 28.05.2014 in WP(C) No. 4773/2012 inasmuch as the Order dated 21st of June 2012 issued by the Director of Elementary Education, Assam was overlooked. Accordingly, the Order dated 28.05.2014 passed in WP(C) No. 4773/2012 was

recalled and the WP(C) No. 4773/2012 was restored back to file.

10. The Government of Assam enacted the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (the Act of 2017 in short) wherein Section 3(1)(xi) provides that in case of Venture Upper Primary Schools, there shall be minimum three teachers or tutors at least one teacher each for (a) Science and Mathematics (b) Social Studies and (c) Languages.

11. In terms of the provisions of the Act of 2017, the process for provincialisation of the services of the Teaching and Non-teaching Staffs of the Bahadurtari ME School started and the District Scrutiny Committee, Dhubri recommended the case of one Nowshad Ali Sarkar for provincialisation as a Language Teacher. Further, the case of the respondent No. 7 and the respondent No. 8 were also recommended for provincialisation as Tutors in Social Studies and Science & Mathematics respectively. However, the case of the petitioner was not recommended on the ground of non-availability of required enrolment. Consequent thereto, the Director of Elementary Education, Assam provincialised the service of the said Nowshad Ali Sarkar as a Tutor in Science w.e.f. 01.01.2021 by an Order dated 05.02.2021. The petitioner being aggrieved for non-consideration of his case as a Tutor (Language) has approached this Court by way of the present writ petition.

12. Mr. S.K. Talukdar, learned counsel for the petitioner submits that when Section 3(1)(xi) of the Act of 2017 provides that three teachers each in Science & Mathematics, Social Studies and Languages have to be considered for provincialisation of their services, the District Scrutiny Committee should have considered the case of the petitioner as mandated by Section 3(1)(xi) of the Act of 2017. He also submits that in terms of the directions passed by this Court in

WP(C) No. 633/2012, the Director of Elementary Education, Assam has passed an order on 21.06.2012, whereby the petitioner is shown senior to the respondent No. 7 and his date of joining is indicated as 08.08.1995 whereas that of the respondent No. 7 is shown as 12.02.2008. Further, it is submitted that pursuant to a direction passed by this Court in WP(C) No. 3452/2021 (*Sheikh Md. Zakir Hussain Vs. State of Assam and others*) by Order dated 10.04.2023, the Secretary to the Government of Assam, Department of School Education passed an order on 31.07.2024, whereby the respondent No. 7 was recommended for provincialisation of his service as Social Science Tutor and the respondent No. 8 against Science & Mathematics. He, therefore, submits that at no point of time, the respondents have considered the case of the petitioner, who is a Language Teacher, for provincialisation as mandated under Section 3(1)(xi) of the Act of 2017. Therefore, he submits that the respondents be directed to consider the case of the petitioner for provincialisation of his service as a Tutor in the Language Subject in terms of the Section 3(1)(xi) of the Act of 2017 as well as the Order dated 14.05.2013 passed by this Court in MC No. 195/2013 in connection with WP(C) No. 4773/2012.

13. Mr. P.K. Bora, learned standing counsel, Elementary Education Department, submits that the District Level Committee has recommended the case of one Nowshad Ali Sarkar against the Language Subject. He, therefore, submits that the District Scrutiny Committee has taken steps in terms of the requirements made under Section 3(1)(xi) of the Act of 2017. Further submission is made that the provincialisation of services of the teachers are personal to those teachers and once the incumbent retires/expires, the said vacancy stands extinguished.

14. Mr. R. Islam, learned counsel for the respondent No. 7, submits that in terms of the Order dated 31.07.2024 issued by the Secretary to the Government

of Assam, Department of School Education, the respondent No. 7 has been recommended for provincialisation as a Social Science Tutor and therefore, as the petitioner is seeking for provincialisation only as a Language Teacher, the process of provincialisation of the services of respondent No. 7 should not be disturbed.

15. This Court has considered the submissions made by the learned counsel for the parties.

16. Section 3(1)(xi) of the Act of 2017 reads as under :

“3. Eligibility criteria for selection of educational institution for provincialisation of services of teachers/tutors:- (1) *Subject to the provisions of Article 30 of the Constitution of India, the following categories of Venture Educational Institutions shall be eligible for being considered for provincialisation of the services of their teachers and tutors :-*

(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:

Provided that for additional posts it shall be considered in accordance with the norms and standard stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009);”

17. This Court, by an Order dated 14.05.2013, passed in Misc. Case No. 195/2013 directed the respondents not to provincialise the services of the two teachers, namely, Sheikh Md. Zakir Hussain and Sheikh Anowar Hussain without considering the case of the petitioner. The relevant portion reads as under :

“Be that as it may, having regard to the interim order of 09.11.2012 in the WP(C) No. 4773/2012 and the seniority declaration in petitioner’s favour made on 21.06.2012 by the DEE, Assam, the service of the respondents 7 & 8 should not be provincialised in the Bahadurtari M.E. School, by ignoring the petitioner.

Misc. Case is disposed of accordingly with the above interim order."

18. It is to be noted that the Order dated 14.05.2013 passed in MC No. 195/2013 is still subsisting till date.

19. The District Scrutiny Committee, Dhubri, while making its recommendation for provincialisation of the services of the Teachers of Bahadurtari ME School, recommended the case of one Nowshad Ali Sarkar as a Language Teacher. However, when the provincialisation order of Nowshad Ali Sarkar was issued by the Order dated 05.02.2021, the said Nowshad Ali Sarkar was provincialised as a Tutor (Science). It is submitted by the learned counsel for the petitioner that the said Nowshad Ali Sarkar has retired in the month of November, 2022. Be that as it may, what is to be noted is that despite the District Scrutiny Committee recommending the case of the said Nowshad Ali Sarkar as a Language Teacher, his provincialisation was done as a Tutor in Science. This would indicate that at no point of time, the case of the petitioner was considered for provincialisation as a Language Teacher. Further, the Director of Elementary Education, Assam, by an Order dated 21.06.2012, has already declared the petitioner to be senior to the respondent No. 7 and the date of joining of the petitioner is indicated as 08.08.1995. Under such circumstances, this Court is of the considered opinion that the petitioner has been victimized inasmuch as the petitioner's case was never considered for provincialisation as a Language Teacher as required under Section 3(1)(xi) of the Act of 2017. Accordingly, the respondents are directed to consider the case of the petitioner for provincialisation of his services as a Language Teacher/Tutor in terms of Section 3(1)(xi) of the Act of 2017 by following the due process of law.

20. Let such exercise be done and completed within a period of 3 (three) months from the date of receipt of a certified true copy of this order.

21. The petitioner is permitted to furnish a certified true copy of this order to the Deputy Commissioner, Dhubri for doing the needful.

22. It is made clear that this Court is also not interfering with the process of provincialisation of the respondent No. 7 in terms of the Order dated 31.07.2024 passed by the Secretary to the Government of Assam, Department of School Education.

23. With the above observations and directions, all the three writ petitions are disposed of.

JUDGE

Comparing Assistant