

GAHC010190782021



2024:GAU-AS:13133

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

Case No. : WP(C)/6045/2021

CHAHENARA BEGUM
D/O DHARIBUDDIN AHMED, R/O VILL- BHITOR CHENG MARI, P.O.-
BIDYAPUR, DIST- BONGAIGAON (ASSAM)

VERSUS

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

2:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BONGAIGAON
ASSAM

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
BOITAMARI
DIST-BONGAIGAON
ASSAM

5:THE DISTRICT SCRUTINY COMMITTEE
BONGAIGAON
DIST- BONGAIGAON
ASSAM (TO BE REPRESENTED BY ITS CHAIRMAN-CUM-DEPUTY
COMMISSIONER
BONGAIGAON

DIST-BONGAIGAON
ASSAM)

6:THE STATE LEVEL SCRUTINY COMMITTEE
ASSAM
(TO BE REPRESENTED BY ITS CHAIRMAN-CUM-THE DIRECTOR OF
ELEMENTARY EDUCATION DEPARTMENT
KAHILIPARA
ASSAM)

7:NAFIR UDDIN SHIEKH
S/O BAJOR UDDIN SHEIKH
R/O PASCHIM BHADRAGAON
P.O.-BIDYAPUR
DIST-BONGAIGAON (ASSAM)
PIN-78337

Advocate for the Petitioner : MR. J LASKAR, M M RAHMAN,MR R DAS

Advocate for the Respondent : SC, ELEM. EDU,

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

02-09-2024

Heard Mr. J. Laskar, learned counsel for the petitioner and Mr. G. Pegu, learned Standing Counsel, Department of School (Elementary) Education for the respondent Nos. 1 to 4 & 6. Also heard Mr. B. Deuri, learned Government Advocate, Assam for the respondent No.5.

2. The contention of the petitioner is that on being recommended by the School Managing Committee (SMC) and on being appointed by the Head Teacher of Bidyapur Anchalik M.E. Madrassa under Bongaigaon Education Block of District- Bongaigaon she is serving as an Assistant Teacher in the said Madrassa with effect from 19.01.1988 since its venture stage. However, while provincialising the services of the Teachers of the said Madrassa under the provisions of *the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017*, disregarding her seniority, the respondent authorities provincialised the services of respondent Nos.7 and 2 others, though she is senior to the respondent No.7.

3. Pursuant to the order of the Court, Mr. Pegu, learned Standing Counsel, Department of School (Elementary) Education placed the order of provincialisation of the respondent No.7 and 2 others namely, Iliyas Uddin Sarkar and Baharul Islam, Assistant Teachers of said Bidyapur Anchalik ME Madrassa, now M E School, under the Deputy Inspector of Schools, Bongaigaon as Tutors under the said 2017 Act.

4. From the appointment order of the respondent Nos. 7 and 2 others appointed as Tutors by the Director of Elementary Education, Assam on 05.02.2021 placed before the Court, it can be seen that the District Scrutiny Committee (DSC) following the provisions of the said 2017 Act, recommended their names for provincialisation and thereafter, the State Level Scrutiny Committee (SLSC) considered provincialisation of their services and on the approval of the SLSC, the Director of Elementary Education, Assam issued their appointment orders as Tutors on 05.02.2021.

5. The claim of the petitioner is that she is the senior most Social Studies Teacher in said Bidyapur Anchalik M E School and that the State authorities should have considered her case above the respondent No.7, considering the fact that she joined her service in said Bidyapur Anchalik M E School on 19.01.1988, whereas, the respondent No.7 joined his service in the said School on 05.03.1988 and both of them used to teach Social Studies Subject in the said ME School.

6. The petitioner submitted that following the provisions of Section 3(xi) of said 2017 Act and as there were less than 100 numbers of students in the said Bidyapur Anchalik M. E. School, only three Teachers have been appointed as Tutors under the said 2017 Act, in the said School, one of which is to teach Science and Mathematics, one Language Teacher and one Social Studies and as the petitioner was serving as a Language Teacher, her service should have been considered for appointment as Tutors under the said 2017 Act in place of the respondent No.7.

7. The respondent No.7 has filed an affidavit in the matter stating that he is a Graduate, whereas, the petitioner is only a HSSLC (10+2) passed and that he is serving as Head Master of said Bidyapur Anchalik ME School being a Graduate and therefore, the respondent authorities by order dated 05.02.2021 considered him for appointment as Tutor.

8. Section 14 of the said 2017 Act, as amended in 2018 provides for an Appellate Authority which stipulates as follows:-

“The State Level Scrutiny Committee shall be the appellate authority against any recommendation of the District Scrutiny Committee and the State Government in the concerned administrative department shall be the Appellate Authority against any recommendation of the State Level Scrutiny Committee”.

9. It is seen that the service of the respondent No.7 has been considered for appointment as a Tutor on the recommendation of the District Scrutiny Committee, Bongaigaon and thereafter, on being approved by the State Level Scrutiny Committee. However, the petitioner instead of approaching the statutory forum, i.e., the State Level Scrutiny Committee, has preferred this writ petition.

10. The Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act 2017, amended in 2018 is a complete Act. In said 2017 Act itself, there is a statutory provision of an Appellate Authority, as noted above.

11. As the petitioner has an appropriate statutory forum for redressal of her grievances with regard to the appointment of the respondent No. 7 as Tutor in said Bidyapur Anchalik M E School by order dated 05.02.2021, disregarding her claim for such appointment as Tutor, this Court accordingly, disposed of this writ petition directing the petitioner to prefer an appeal before the State Level Scrutiny Committee, represented by the Director of Elementary Education, Assam being the Chairman of the said Committee, at the earliest, along with certified copy of this order.

12. In the event of filing such appeal before the Director of Elementary Education-cum-Chairman of the State Level Scrutiny Committee by the petitioner as directed above, the said authority shall dispose of the appeal of the petitioner in accordance with law on perusal of the records in original with regard to the appointment of the petitioner vis-a-vis the respondent No. 7 that shall be placed by the Deputy Inspector of Schools, Bongaigaon and after giving an opportunity of hearing to the petitioner as well as the respondent No. 7 for placing their relevant claims.

13. Needless to say, that in the event of filing such appeal by the petitioner, as directed

above, the Director of Elementary Education-cum-Chairman of the State Level Scrutiny Committee shall dispose of the appeal of the petitioner, preferably within a period of 4 (months).

14. The appointment of the respondent No. 7 as Tutor in said Bidyapur Anchalik M E School presently attached to Noldaba Lower Primary School pursuant to the order dated 05.02.2021 under No. EPD-16.Provn-UP(Act, 2017) 2021/885 shall be subject to the outcome of the said appeal to be preferred by the petitioner.

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

JUDGE

Comparing Assistant