

GAHC010193712018



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

Case No. : WP(C)/6463/2018

KANDARPA KR. KALITA AND 6 ORS.
S/O- LT ANANDI RAM KALITA, R/O- VILL- KATHRA, P.O. DAKHINGAON,
DIST- NALBARI, ASSAM, PIN- 781350

2: CHANUR ALI S/O- LT HUSSAIN ALI
R/O- VILL- KHUDRAFALADI
P.O. BYASKUCHI DIST- BARPETA
ASSAM PIN- 781307

3: SRI HEM CH. KALITA S/O- LT DAIBYA RAM KALITA
R/O- VILL- GATIAN P.O. GUWAKUCHI
DIST- NALBARI ASSAM PIN- 781369

4: SRI UMESH CH. SARMA S/O- LT KUMUD CH. SARMA
R/O- VILL- DIGHELI P.O.BAR-DIGHELI DIST- NALBARI
ASSAM PIN- 781334

5: ANOWAR HUSSAIN S/O- LT NUR ALI
R/O- VILL- KUNDERGAON P.O. DAKHINGAON
DIST- NALBARI ASSAM PIN- 781350

6: BABUL DAS S/O- DHANE RAM DAS
R/O- VILL- AKANA P.O. BARAJOL DIST- NALBARI
ASSAM PIN- 781369

7: SRI RAJAT KALITA S/O- BHABIN KALITA
R/O- VILL AND P.O. BARAJOL
DIST- NALBARI ASSAM PIN- 78136

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
DEPTT. (SECONDARY) DISPUR, GHY-6
2: THE DIRECTOR OF SECONDARY EDUCATION ASSAM

KAHILIPARA GHY-19

3:THE COMM. ANND SECY. TO THE GOVT. OF ASSAM FINANCE DEPTT.
DISPUR GHY-

Advocate for the Petitioner : MR D CHOUDHURY

Advocate for the Respondent : SC, EDU

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

ORDER

Date : 11.01.2024

Heard Mr. D. Choudhury, learned counsel for the petitioners.

The writ petitioners No. 1 to 5 were appointed by the Managing Committee of Borajol High School, against the posts of Teachers in various subjects while the writ petitioner No. 6 was so appointed as an UDA and the writ petitioner No. 7 was appointed as an Office Assistant.

The said appointments were so made in the extended/upgraded Higher Secondary Section of the Borajol High school. It is to be noted that the said School was a provincialized school. Basing on the application made; the Government had vide communication, dated 28.02.2021, accorded approval for upgradation of the said school into a Higher Secondary Section school. However, it was provided that such upgradation would be without providing any post at present.

It is on record that there were moves made by the authorities of the said school at different points of time for having posts created for the upgraded Higher Secondary Section of the said school but none of the steps taken by them, could be taken to its logical conclusion.

Poised thus, the petitioners approached this Court by way of instituting a writ proceeding being WP(c)4317/2008, praying for release of salaries to them and for creation of posts for the upgraded Higher Secondary Section of the said school. This Court, vide order, dated 24.07.2013, on consideration of the matter, disposed of the said writ petition, requiring a decision to be arrived at by the authorities with regard to the question of creation of posts. The relevant paragraphs of the said judgment is quoted hereinbelow for ready reference:

“4. Neither the learned counsel for petitioners nor the learned Standing Counsel could furnish any information as to whether subsequently the proposal was taken to its logical consequence. The petitioners contend that no action has been taken from Education Department. It is settled law that Writ Court cannot give any direction to the executive for creation of posts. It is within the province of the executive to create any cadre of posts, strength of said cadre depending upon the necessity, as may be felt by various authorities under the executive. What is reflected from the affidavit submitted by Respondent Nos. 1, 2 & 3 is that the matter is still going on between the Finance Department as well as Education Department. Once the Higher Secondary Sections have been opened and students have been admitted to the course, the concerned authority should take decision as to whether there should be creation of posts. The ultimate decision is to be taken by the Government, in consultation with the Finance Department. It is the allegation of the petitioners that the matter has not been unattended since 2001. It is in the fitness of case that the executive takes the matter to its logical end at an early date as to whether the posts should be created or not.

5. Accordingly, this writ petition is disposed of with observation that since the matter involves career of the students, respondent should arrive at a decision expeditiously after being objectively satisfied with the point raised before it. Let the decision be taken by the Executive within a period of 6 months from today.”

This Court, vide order, dated 24.07.2013, while disposing of the said writ petition, had categorically held that the concerned authorities after having permitted the opening of the Higher Secondary Section of the said school, should have taken a decision with regard to the creation of posts. With the said observation; the matter was left to the discretion of the authorities for such creation. Accordingly, in terms of the directions passed by this Court, vide order, dated 24.07.2013, in WP(c)4317/2008, it is seen that the case of the petitioners came to be placed before the jurisdictional

District Level Scrutiny Committee(DLSC) constituted under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011. The District Level Scrutiny Committee(DLSC), on consideration, recommended the cases of the petitioners along with others and such recommendation was forwarded to the Director of Secondary Education, Assam. The Director of Secondary Education, Assam, on having the recommendation of the jurisdictional District Level Scrutiny Committee(DLSC) considered in the manner required, proceeded vide his speaking order, dated 23.12.2013, to accept the recommendations so made and required the matter to be placed before the Government for approval and creation of posts.

The Government vide communication, dated 13.08.2014, having accorded approval for creation of the required posts; the Director of Secondary Education, Assam, vide order, dated 22.09.2014, provincialized the services of the petitioners and others working in Barajoli Higher Secondary School. The provincialization of services of the petitioners and others working in Barajoli Higher Secondary School was made effective w.e.f. 01.01.2013. The petitioners, on acceptance of the provincialization of their services w.e.f. 01.01.2013, have been enjoying the benefits so flowing to them on account of the same.

The petitioners by way of presenting the instant writ petition on 30.08.2023, have prayed for effecting the provincialization of their services w.e.f. 01.04.2002. The order, dated 22.09.2014, makes it clear that the provincialization of the services of the petitioners were effected under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, and the provincializations so effected, was given effect w.e.f. 01.01.2013. The provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, does not have any retrospective operation.

The petitioners in the present proceedings, have not presented any challenge to the order, dated 22.09.2014, requiring the provincialization so effected of their services to be so made with retrospective effect w.e.f. 01.04.2002. The Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, was published in the Official Gazette on 05.09.2011 and Section 1(3) of the said Act of 2011, mandates that it shall come into force on such date as the State Government may, by Notification in the Official Gazette, appoint. As such, the Act of 2011 would not have any retrospective effect prior to the appointed date.

The services of the petitioners having been provincialized under the provisions of the Act of 2011, their such provincialization have to be construed strictly in terms of the said Act and cannot be permitted to be effected from a date prior to the appointed date with effect from which the Act of 2011 had come into force. As such, the prayer of the petitioners for effecting the provincialization of their services w.e.f. 01.04.2002, cannot be accepted and the same requires to be rejected. The contentions as raised by the petitioners for having their services provincialized w.e.f. 01.04.2002 does not merit acceptance in view of the provisions of the Act of 2011.

In view of the conclusions reached hereinabove; the writ petition is without any merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant