

GAHC010196642023



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

Case No. : WP(C)/5165/2023

HARISH CHANDRA ROY
S/O- LATE DHAN CHANDRA ROY,
R/O- VILL.- KISMAT HASDAHA, P.O. KISMAT HASDAHA,
DIST. DHUBRI, ASSAM, PIN- 783334.

VERSUS

1: THE STATE OF ASSAM AND 5 ORS REPRESENTED BY THE
COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6.

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DIST. DHUBRI ASSAM PIN- 781039.

4:THE EXECUTIVE DIRECTOR, SARBA SIKSHA ABHIYAN MISSION
ASSAM KAHILIPARA GUWAHATI-781019.

5:THE DISTRICT SCRUTINY COMMITTEE, DHUBRI
REPRESENTED BY ITS CHAIRMAN DIST. DHUBRI ASSAM

6:DILIP KR. ROY
S/O- PRABHAT CH. ROY
R/O- VILL.- KISMAT HASDAHA PT-II
P.O. KISMAT HASDAHA DIST. DHUBRI ASSAM PIN- 783334

Advocate for the Petitioner : MR. P K DEKA

Advocate for the Respondent : SC, ELEM. EDU

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

ORDER

Date : 10-01-2024

Heard Mr. P.K. Deka, learned counsel for the petitioner. Also heard Mr. A. Phukan, learned standing counsel, Education (Elementary) Department, representing the respondent Nos.1, 2 & 3 and Ms. P. Das, learned standing counsel, Sarba Siksha Abhiyan (SSA), representing the respondent No.4.

The petitioner, by way of the present writ petition, has presented a challenge to an order dated 10.07.2023 passed by the Secretary to the Government of Assam, Department of School Education rejecting the appeal preferred by the petitioner under Section 14 of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (for short, "2017 Act") on the ground that his case for provincialisation of his services cannot be considered as his name was not recommended by the District Scrutiny Committee, Dhubri.

The case of the petitioner is that he was appointed as a Hindi Teacher in Dindayal Rabidas Memorial M.E. School on 16.01.1994. The appointment of the petitioner made by the Managing Committee of the said School was approved by the District Elementary Education Officer, Dhubri vide his order dated 29.06.2011. The petitioner all along has been denoted as a Language Teacher in the said School and his name figures in the DISE data for the year 2009-2010. The cases of the eligible teachers of the said School were taken up for consideration for provincialisation of their services under the provisions of the 2017 Act and vide Notification dated 04.02.2021, the services of such teachers were provincialised. However, the case of the petitioner was not provincialised and he was left out.

Being aggrieved, the petitioner instituted WP(C) No.4174/2021 before this Court and this Court vide order dated 25.07.2022 disposed of the said writ

petition by granting liberty to the petitioner to file an appeal under Section 14 of the 2017 Act before the appropriate Appellate Authority. The Appellate Authority was to dispose of the appeal within a period of 2(two) months from the date of receipt of a certified copy of the said order.

Accordingly, the petitioner submitted his appeal and a hearing was held on 15.05.2023. On consideration of the matter, the Secretary to the Government of Assam, Department of School Education, vide his order dated 10.07.2023, proceeded to reject the said appeal of the petitioner on the ground that his case was not recommended by the District Scrutiny Committee. It is this order dated 10.07.2023 that is presently under challenge in the instant writ proceeding.

The ground as assigned for rejection of the appeal of the petitioner is not tenable inasmuch as the petitioner had in his appeal assailed the conclusions arrived at by the District Scrutiny Committee in his case and the Appellate Authority was required to consider as to whether the rejection of his case by the District Scrutiny Committee was proper or not. The District Scrutiny Committee had rejected the case of the petitioner on the ground that in the subject taught by the petitioner, the enrollment was not upto the required level.

Section 14 of the 2017 Act being relevant for consideration of the issues involved in the present proceeding, is extracted herein below:-

“14. Appellate Authority:- 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.”

The proceeding involved in Section 14 of the 2017 Act is an appeal and it is a settled position of law that when an authority considers a matter exercising appellate jurisdiction, the said authority is to examine all the involved facts and

thereafter only arrive at his conclusion in the matter. The provisions of Section 14 provide that when a case is not favourably considered by the State Level Scrutiny Committee or the District Scrutiny Committee, the State Government in the concerned Administrative Department shall be the Appellate Authority.

In the case in hand, the petitioner in support of his contention that the rejection of his case by the District Scrutiny Committee was not valid, had raised certain contentions which was not considered by the Appellate Authority while considering the appeal submitted by the petitioner. The Appellate Authority by a cryptic order had rejected the case of the petitioner after recording the facts on the ground that his case for provincialisation cannot be considered as his name was not recommended by the District Scrutiny Committee, Dhubri. The other grounds and facts as highlighted by the petitioner in his appeal were ignored.

The decision as contained in the order dated 10.07.2023, in view of the manner in which it was passed, it is concluded that the same is an improper consideration. Accordingly, the order dated 10.07.2023 passed by the Secretary to the Government of Assam, Department of School Education stands set aside and quashed.

The Secretary to the Government of Assam, Department of School Education shall now reconsider the appeal preferred by the petitioner in pursuance to the directions passed by this Court vide order dated 25.07.2022 in WP(C) No.4174/2021 and arrive at his conclusion in the matter after examining and verifying the contentions so raised by the petitioner in his said appeal. The Appellate Authority shall also verify the connected records and also provide an opportunity to the petitioner as well as the respondent No.6 of an oral hearing. On conclusion of the said exercise, the Appellate Authority shall pass a speaking order by recording his reason with regard to each and every contention raised by the petitioner in his said appeal and thereafter communicate the same to the

petitioner by way of a speaking order. The said exercise be initiated and completed within a period of 2(two) months from the date of receipt of a certified copy of this order along with a copy of the appeal as preferred by the petitioner earlier.

To facilitate a proper consideration in the matter, the petitioner is required to submit a certified copy of this order along with a copy of the appeal as filed by him earlier and available in Annexure-11 to the present writ petition.

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

JUDGE

Comparing Assistant