

GAHC010197442022



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

Case No. : WP(C)/6492/2022

SADDAT HUSSAIN CHOUDHURY
S/O- SIRAJ UDDIN CHOUDHURY, VILL.- SAHABAD PART-II, P.O. SAHABAD,
HAILAKANDI DISTRICT, ASSAM, PIN- 788151, ASSISTANT TEACHER
(ASSAMESE) OF A.S.B. MEMORIAL M.E. SCHOOL, UNDER HAILAKANDI
DISTRICT, ASSAM

VERSUS

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

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

3:THE SECRETARY TO THE GOVT. OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-6.

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

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI
ASSAM
PIN- 788151.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER

DIST. HAILAKANDI
BLOCK- KATLICHERRA
ASSAM
PIN- 788151.

7:THE HEAD MASTER OF A.E.B. MEMORIAL M.E. SCHOOL
HAILAKANDI
ASSAM
PIN- 788151

Advocate for the Petitioner : MRS A BUJARBARUAH

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 22.04.2024

Heard Mrs. A. Bujarbaruah, learned counsel for the petitioner. Also heard Mr. P. K. Bora, learned Standing Counsel for the Elementary Education, Assam representing the respondents no. 1, 3, 4, 5 & 6 and Mr. B. Gogoi, learned Standing Counsel for the Finance Department appears for the respondent no. 2. None has appeared for the respondent no. 7.

2. As agreed to by the learned counsel for the parties, the present writ petition is taken up for consideration and final disposal.

3. The petitioner, by way of instituting the present proceeding has raised

a grievance with regard to non-consideration of his case for provincialisation of his services as an Assamese Language Teacher in A.S.B. Memorial M.E. School, Aryanapur, under the provisions of "Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017".

4. As projected in the writ petition, the petitioner was appointed as an Assamese Language Teacher by the School Managing Committee of A.S.B. Memorial M.E School, Aryanapur, Hailakandi, on 16.07.2000 and the petitioner joined his services as an Assamese Teacher on 18.07.2000. The services of the petitioner were also approved by the jurisdictional District Elementary Education Officer (DEEO), on 30.06.2015. On the enactment of the "Assam Venture Education Institutions Provincialisation of Services Act, 2011", the cases of the petitioner and other serving teachers of the said school were taken up for consideration for provincialisation of their services. However, while the services of the teachers found eligible in the said school were so provincialized, the services of the petitioner was not so provincialized holding that he was under qualified. On such consideration being made, vide an order dated 11.06.2013, the Director of Elementary Education, Hailakandi, proceeded to provincialise the services of the teachers found eligible in the said school, however, in the said order, the post of Assamese Language Teacher was denoted to be vacant.

5. It is to be noted herein that it is the contention of the petitioner that he had passed the Higher Secondary Examination under the Assam Higher

Secondary Education Council, Assam in the year 1994 and thereafter, had acquired his Bachelor Degree in Arts from the Assam University, Silchar, in the year 1999. From the year 2014, Assamese medium was also made compulsory in the Barak Valley Schools and as the petitioner has been appointed as an Assamese Language Teacher, he was permitted by the Assam Higher Secondary Council, Assam to clear the Assamese subject. Such permission was so granted to the petitioner on 05.05.2014; the petitioner accordingly, appeared in his HS Examination in Assamese paper and cleared the same in the year 2015. The petitioner contends that he has also acquired his D.El.Ed (ODL) degree in the year 2019. Although a process was initiated for re-consideration of the cases of teachers dropped on account of being under qualified for provincialisation of their services and the case of the petitioner was also so considered in such process, however, before the same could be taken to its logical conclusion, this Court had set aside the said Act of 2011 and accordingly, the process so initiated in respect of the petitioner therein, could not be taken to its logical conclusion and could not be further proceeded with.

6. Thereafter, on enactment of the said Act of 2017, notifications were issued inviting applications from eligible teachers serving at venture L.P. and M.E. Schools for provincialisation of their services. Thereafter, on 31.05.2017, a further advertisement was issued inviting applications from teachers whose educational institutions were provincialized under the Act of 2011 but, their services were not so provincialized. Accordingly, the petitioner applied for provincialisation of his services against the post of Assamese Language Teacher, which was lying vacant in the said school and

the same was forwarded by the Headmaster of the school in question. It is the contention of the petitioner that the process as initiated vide the advertisement dated 31.05.2017 was processed by the jurisdictional District Scrutiny Committee and recommendations in favor of persons found so eligible was forwarded to the Director of Elementary Education, Assam for further consideration but, the name of the petitioner was left out from the said list. It is the contention of the petitioner that the jurisdictional DEEO, vide a communication dated 12.07.2009, forwarded to the Director of Elementary Education, Assam, the particulars of the dropped teachers whose services were not provincialized during the year 2013 and therein, the name of the petitioner was reflected at Serial No. 8 with a remark "under qualified". The petitioner had contended that although at the time of his initial appointment, he was under qualified he has subsequently passed the Higher Secondary Examination in Assamese paper as M.I.L and accordingly, can be considered as qualified. It was also noticed that the petitioner has also cleared his Bachelor of Arts Examination. It is to be noted that in spite of the said recommendation as made in the matter by the jurisdictional DEEO, vide his communication dated 12.07.2009, no further processing has been made in respect of the case of the petitioner for having his case considered for provincialisation of his services.

7. The facts as noticed hereinabove would bring to the forefront that the case of the petitioner was not considered under the provisions of the Act of 2011 on the ground that he did not have the requisite eligibility criteria and accordingly, by denoting him to be an "under qualified" candidate, his case was removed from the purview of the exercise taken up for provincialisation

of the teachers found eligible for the purpose.

8. It is an admitted position that the petitioner had thereafter, basing on the permission granted to him by the Assam Higher Secondary Education Council, Assam appeared in the HS Examination in Assamese paper and the cleared the same in the year 2015. Thereafter, the case of the petitioner was recommended by the jurisdictional DEEO and to the Director of Elementary Education, Assam for further processing of his case for provincialisation of his services. In the list as enclosed to the said forwarding, issued by the Director of Elementary Education, Assam on 12.07.2009; against the name of the petitioner, it was shown that the petitioner having subsequently cleared his HS Examination in the Assamese paper, he is to be considered as a qualified candidate and he also having acquired his B.A. degree was recommended as an eligible candidate for provincialisation of his services.

9. The above being the position, the Director of Elementary Education, Assam ought to have taken a decision in the matter pertaining to the services rendered by the petitioner and in the event, the petitioner was found eligible for having his case considered under the provisions of the Act of 2017 for provincialisation of his services ought to have required the concerned authorities to initiate appropriate steps in the matter so as to have the case of the petitioner so considered.

10. In view of the above position and a right having been vested upon the

petitioner under the provisions of the said Act of 2017 to have his case considered for provincialisation of his services, the petitioner is hereby required to submit a representation before the Director of Elementary Education, Assam, praying for provincialisation of his services and therein also bring on record his service particulars including the qualifications so acquired by him.

11. The Director of Elementary Education, Assam in the event of submission of such representation by the petitioner herein, shall examine the same and if it is found that the petitioner fulfills the requirement for having his case considered for provincialisation of his services under the said Act of 2017 and in the event, his case has not been so considered under the provisions of the Act of 2017 by the jurisdictional District Scrutiny Committee, require the case of the petitioner to be put up before the jurisdictional District Scrutiny Committee for verification.

12. Basing on the recommendation as would now made by the jurisdictional District Scrutiny Committee in respect of the case of the petitioner herein, further processing of the matter shall be undertaken by the Director of Elementary Education, Assam and the process for consideration of the case of the petitioner for provincialisation of his services would be taken to its logical conclusion. On conclusion of such process, the outcome thereof, be informed to the petitioner in the form of a speaking order.

13. In the event the petitioner is found to be entitled for provincialisation of his services after the process of scrutiny/verification as mandated under the Act of 2017 is completed, the Director of Elementary Education, Assam shall issue order(s) towards provincializing the services of the petitioner as an Assamese Language Teacher in the school in question.

14. In the event it is found that the petitioner is not entitled to have his services provincialized, the Director of Elementary Education, Assam, while issuing the speaking order as required herein above, shall incorporate therein the reasons so existing for arriving at the conclusion that the petitioner is not entitled to have his services so provincialized.

15. The exercise now required to be carried out shall be so initiated and concluded by the Director of Elementary Education, Assam within a period of 3(three) months from the date of receipt of a certified copy of this order along with the representation now required to be filed by the petitioner in the matter.

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

JUDGE

Comparing Assistant