

GAHC010009662024



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

Case : WP(C)/5281/2023

JABEDA KHATUN
W/O- KAMAL UDDIN AHMED
VILLAGE- BATUATULI
P.O. DEBOTTAR HASDAHA
P.S. GOLAKGANJ
DISTRICT- DHUBRI
ASSAM
PIN- 783334

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF SCHOOL EDUCATION (ELEMENTARY)
DISPUR
GUWAHATI-06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM-CUM-CHAIRMAN OF STATE LEVEL SCRUTINY COMMITTEE (SLSC)
KAHILIPARA
GUWAHATI-19

3:THE DEPUTY COMMISSIONER-CUM-CHAIRMAN OF DISTRICT SCRUTINY
COMMITTEE (ELEMENTARY EDUCATION)
DHUBRI

P.O. AND P.S. DHUBRI
DISTRICT- DHUBRI
ASSAM
PIN- 783301

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
P.O. DHUBRI
DISTRICT- DHUBRI
ASSAM
PIN- 783301

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
GOLAKGANJ

P.O. GOLAKGANJ

DIST.- DHUBRI

ASSAM

PIN- 783334

6:RESHMA AHMED

TUTOR OF BALAJAN GIRLS M.E. SCHOOL

W/O- OSMAN GONI

VILL.- DEBOTTAR HASDAHA PT-VI

P.O. DEBOTTAR HASDAHA

P.S. GAURIPUR

DIST.- DHUBRI

ASSAM

PIN- 783331

Advocate for : MR. M R KHANDAKAR

Advocate for : SC

ELEM. EDU appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

07.02.2024

The petitioner by way of instituting the present proceedings has challenged the order dated 12.04.2023 passed by the Secretary to the Government of Assam, Department of School Education, rejecting the claim of the petitioner for provincialisation of her services in Balajan Girls' M. E. School.

As per the projection made in the writ petition, the petitioner was appointed as the Head Mistress of Balajan Girl's M.E. School by its School Managing Committee on 30.12.1995. The petitioner joined her service in terms of the said order of appointment on 01.01.1996 and thereafter continued in the said capacity. The respondent No.6 herein was appointed in the same school by the School Managing Committee on 03.02.2008 as an Assistant Teacher and was involved in teaching the subject MIL (Assamese). The appointments of the petitioner as well as the respondent

No.6 and the other teachers in the school were approved by the jurisdictional District Elementary Education Officer vide order dated 01.09.2011.

The cases of the serving teaching Staff of Balajan High School were taken up for consideration for provincialisation of their services under the provisions of the Assam Education (Provincialisation of services of teachers and re-organization of educational institutions) Act, 2017.

The matter on processing came to be placed before the District Level Scrutiny Committee and the District Level Scrutiny Committee on consideration of the matter and on verification of the relevant materials, proceeded to recommend the name of the respondent No.6 as a language teacher and the name of one Bipul Ch. Roy as the Social Science teacher. No recommendation at that stage was made against the post of Assistant teacher in Science and Math. The name of the petitioner came to be placed in the list of persons found not eligible for provincialisation on account of non availability of the required number of enrolment of students in the school. Thereafter, the matter came to be placed before the State Level Scrutiny Committee and the State Level Scrutiny Committee upon carrying out the necessary verification approved the name of the respondent No.6 said Bipul Roy and one Abdul Roshid for provincialisation of their services. It is to be noted that the recommendation in respect of Abdul Roshid was also subsequently made by the District Level Scrutiny Committee against the post of Science Teacher. The recommendations as made by the State Level Scrutiny Committee came to be placed before the Government in the Elementary Education Department and accordingly on approval being granted the services of the Respondent No.6 along with 2(two) others came to be provincialised. The services of Respondent No.6 was provincialised vide an order dated 05.02.2021 w.e.f. 01.01.2021.

The petitioner being aggrieved by the non extension of the benefit of provincialisation to her, had approached this Court by way of instituting WP(C) No. 4270/2021. This Court vide order dated 02.09.2021 was pleased to direct the respondent authorities

not to give further effect to be provincialisation as affected in the case of respondent No.6, thereafter the said writ petition being WP(C) No. 4270/2021 was taken up for final consideration and this Court after examining the matter was pleased vide order dated 23.08.2022 to dispose of the said writ petition by requiring the petitioner to file a fresh appeal under the provisions of Section 14 of the said Act of 2017 and the Secretary to the Department of School Education was required to consider the same and pass a speaking order after causing due verification and also upon hearing the Respondent Nos. 6 and 7. Accordingly, the petitioner submitted his fresh appeal on 31.08.2022. On conclusion of the process of consideration, the Secretary to the Government of Assam, Department of Secondary Education proceeded to dispose of the appeal of the petitioner by holding that the enrolment position in the school does not warrant consideration of the case of the petitioner for provincialisation of her services and by upholding the recommendations of the DSC as well as the SLSC proceeded to reject the plea of the petitioner. Being aggrieved, the petitioner has instituted the present proceeding.

At this stage it is to be noted that in terms of the provisions of the said Act of 2017 more particularly Section 3(XI) in a venture school there shall be minimum three teachers or tutors with at least one teacher each for the subjects of (a) Science and Mathematics (b) Social Studies and (c) Languages. The petitioner was admittedly appointed as a Head Mistress of the school and had joined her services in school on 01.01.1996. The petitioner was at no point of time appointed as an Assistant teacher in said school. The petitioner while applying for provincialisation of her services had described herself as the Head Mistress of the said school. In the particulars of teachers as submitted by petitioner before the respondent authorities, the petitioner had projected herself to be the Head Mistress but also teaching English language whereas the respondent No.6 was denoted to be an Assistant Teacher teaching MIL (Assamese). The provisions of Section 3(XI) further provides that claim for scansion of any additional post would be governed by the norms and standards as stipulated in

the Schedule under Section 19 and 25 of The Right of Children to Free and Compulsory Education Act, 2009. In terms of the provisions of the said Act of 2009 in the event the enrolment status of the school exceeds above 100 the school is entitled to be allotted a post of Headmaster. In the case on hand, the enrolment status in the school being below 100, the question of sanction of a post of Head Master would not arise. Accordingly, in absence of a provision for sanctioning of the post of Head Master in the said school the consideration of the petitioner for provincialisation of her services as a Head Mistress of the said school cannot be contemplated.

This brings the Court to consider the contention of the petitioner that she while functioning as the Head Mistress of the said school was also involved in teaching students the language English. As noticed hereinabove the petitioner's initial appointment was as an Head Mistress only and the resolution adopted towards appointing the petitioner does not specify that the petitioner in addition to being appointed as Head Mistress of the school will also be required to teach the subject English. No materials has been brought on record by the petitioner other than the list of particulars of teachers prepared for submission to the authorities for consideration of the cases of eligible serving teachers in the school for provincialisation of their services and the DISE data for the relevant year, wherein the petitioner has been shown to be teaching the language subject. It is to be noted that the data as recorded in the DISE data is based on the inputs given by the petitioner as the Head Teacher in the said school. Further the particulars of the teachers submitted for provincialisation of their services was also prepared by the petitioner. As such the said documents cannot be solely relied upon to conclusively establish that the petitioner was in fact teaching the language subject in the school

The learned counsel for the petitioner Mr. Khandakar strenuously has submitted that the petitioner all along was teaching the English subject in the school and this could be evident from the DISE data available. Mr. Khandakar has not placed before this

Court any material including the attendance sheets or the time tables prepared from time to time to demonstrate that the petitioner was in fact taking classes in the said school, since her initial appointment, as English teacher also. It is to be noted that the case of the petitioner was duly considered by the DLSC as well as the SLSC and these two bodies being constituted under the Act of 2017 specifically for the purpose of verification of the particulars of the teachers, having on examination of the records not come to a conclusion that the petitioner was entitled to have her services provincialised also on account of the services rendered by her as a language teacher in English in the school, this Court is not in a position to take a different view in the matter. It is to be appreciated that other than the documents which have been prepared basing on inputs from the petitioner and/or by herself there is no material available on record to conclusively demonstrate that the petitioner was in fact teaching the subject English in the said school. Moreover, there is no resolution brought on record from the Managing Committee of the school by which it could be demonstrated that the petitioner while functioning as the Head Teacher of the school was also required to take the English subject.

Mr. Khandakar at this stage has placed before this Court the order dated 09.05.2022 passed by Co-ordinate Bench of this Court in WP(C) No.5702/2021 (Abu Khayer Sheikh Vs the State of Assam and others) wherein under similar circumstances this Court had held that the petitioner therein being the first language teacher would be entitled to have his services provincialised by virtue of seniority in service.

I have perused the said judgment and order of the co-ordinate Bench in the case of Abu Khayer Sheikh(Supra) and I find that the facts involved in the said case is different from that available herein. In the case of Abu Khayer Sheikh(supra) the petitioner therein was initially appointed as an Assistant Teacher by the School Managing Committee and it was thereafter only that the said petitioner came to be appointed as the Head Master of the said school. The petitioner in the case of Abu

Khayer Sheikh (supra) having been appointed as an Assistant teacher in the school initially continued to teach the language subject allotted to him even after he was appointed as the Head Master of the school by the School Managing Committee. It is in that background that this court had required that the petitioner therein being the first Assistant Teacher, his case be considered on the basis of service seniority of provincialisation.

In the case on hand there is no record of the petitioner being appointed as a language teacher at any point of time and as such the decision of the co-ordinate Bench of this Court in the case of Abu Khayer Sheikh (supra) shall not be applicable to the facts and circumstances involved in the present proceedings.

In view of the above the following issues arise for consideration in the present proceedings; (i) as to whether the petitioner having been appointed as a Head Mistress of the school that is Balajan Girl's M.E. School, was also teaching the English language therein and (2) whether in absence of any decision of the School Managing Committee to allow the petitioner to teach the subject of English, she could be deemed to be teaching the said subject solely basing on the DISE data and the particulars of the teachers of the school for provincialisation of their services, prepared and put up by the petitioner herself.

The said issues would require a determination of the facts as existing in the matter and the counsel for the private respondent No.6 having disputed the fact that the petitioner was also teaching the language subject English in the school, for a determination of the said issues examination of the documents of the school and witnesses would be called for.

The petitioner had approached this Court earlier by way of filing WP(C) No. 4270/2021 and this Court on consideration of the matter was pleased vide order dated 23.08.2022 to dispose of the same with liberty to the petitioner to file a fresh appeal

under Section 14 of the said Act of 2017 before the Secretary to the Government of Assam, Elementary Education Department. The records of the writ petition reveals that the petitioner had on 31.08.2022, in terms of the liberty granted by this Court, preferred an appeal before the Secretary to the Government of Assam, Elementary Education Department. The petitioner in the said appeal had raised the contention that she has been teaching the language subject English and the respondent No.6 was teaching the language subject Assamese. The petitioner has contended therein that in the category of language subject teachers, the petitioner is senior to the respondent No.6 and accordingly prayed that her services be provincialised.

A perusal of the order dated 12.04.2023 passed by the Secretary to the Government of Assam, Department of School Education reveals that the said contention as made by the petitioner in her appeal dated 31.08.2022 has not been taken into consideration. Further, the issues as noted herein above which also arose before the appellate authority in the process of consideration of the claims of the petitioner and the respondent No.6 was not examined. The appellate order was passed only on the issue that the name of the petitioner not having been recommended by the jurisdictional DLC on the ground of low enrolment in the school, the claim of the petitioner for provincialisation of her services came to be rejected.

As noticed hereinabove, the issues as noted by this Court above would require determination of the facts and also examination of witnesses, and the said issues cannot be decided basing on the affidavits filed by the parties to the proceeding herein. Accordingly, without interfering with the order dated 12.04.2023, the matter now stands remanded back to the Secretary to the Government of Assam, Department of School Education to re-examine the issue also by taking on record the appeal dated 31.08.2022 stated to have been filed by the petitioner and thereafter decide the issues as framed hereinabove by this Court. The Secretary to the Government of Assam, Department of School Education on consideration of the appeal of the petitioner is of

the view that the issue is required to be scrutinized by the State Level Scrutiny Committee, he is at liberty to place the matter before the said committee for evaluation. The said committee in the event of being required to decide the issue shall in addition to hearing the petitioner as well as the respondent No.6 proceed to examine the matter by exercising its power under Section 13(XI) of the said Act of 2017 and would cause a physical verification of the School as well as inspect all required documents and records. Thereafter the said committee shall render its recommendation by determining the issues as framed by this Court hereinabove. The Secretary to the Government of Assam, Department of School Education on receipt of such recommendation from the State Level Scrutiny Committee shall pass a speaking order in the matter incorporating the recommendation so made by the State Level Scrutiny Committee. The speaking order that would be passed by the authority on conclusion of the exercise as required to be carried out by this Court vide this order shall supersede the order dated 12.04.2023. Further, course of action as may be required in the matter shall be so done by the authorities in terms of the speaking order i.e. now required to be passed in terms of this order, by the Secretary to the Government of Assam, Department of School Education.

The respondent No.6 pending issuance of the speaking order as required herein above shall be released her arrears of pay and allowance and she also be paid her current salaries. Thereafter, on passing of the orders as required by this Court hereinabove, the services of the respondent No.6 shall be regulated in terms thereof.

With the above observations and directions the writ petition stand disposed of.

Interim order, if any, shall stands vacated.

JUDGE

Comparing Assistant