

GAHC010212362021



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

Case No. : WP(C)/7054/2021

SAMEL TIRKEY

S/O LT. PATRAS TIRKEY, VILL- BELKHUTI, P.O- KUMARIKATA, P.S-
TAMULPUR, DIST- BAKSA, ASSAM, PIN-781367

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION (ELEMENTARY), DEPARTMENT,
DISPUR, GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM

FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DIRECTOR OF ELEMENTARY EDUCATION-CUM-CHAIRMAN

STATE SCRUTINY COMMITTEE
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE BODOLAND TERRITORIAL COUNCIL (BTC)
REPRESENTED BY THE PRINCIPAL SECRETARY
BTC
KOKRAJHAR
ASSAM
PIN-783370

5:THE DIRECTOR OF EDUCATION

BTC
KOKRAJHAR
ASSAM
PIN-783370

6:THE DEPUTY COMMISSIONER BAKSA-CUM-CHAIRMAN

DISTRICT LEVEL SCRUTINY COMMITTEE
ELEMENTARY EDUCATION
BAKSA
DIST- BAKSA
ASSAM

7:THE DISTRICT ELEMENTARY EDUCATION OFFICER-CUM-MEMBER
SECRETARY OF DISTRICT LEVEL SCRUTINY COMMITTEE

BAKSA
DIST- BAKSA
ASSAM.

8:THE BLOCK ELEMENTARY EDUCATION OFFICER

TAMULPUR
P.O AND P.S- TAMULPUR
DISTRICT- BAKSA
ASSAM

9:BASUDEV UPADHYAYA

HEAD MASTER
PASCHMIN KUMARIKATA MILAN ME SCHOOL
VILL- BELKHUTI
P.O- KUMARIKATA
DIST- BAKSA
ASSAM
PIN- 78136

Advocate for the Petitioner : MD H R AHMED

Advocate for the Respondent : SC, EDU

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

Judgment & Order(Oral)

30.04.2024

Heard Mr. P. K. Borah learned Standing Counsel for the Elementary Education Department appearing for the respondents no. 1 & 3. Also heard Mr. A. Chalia, learned Standing Counsel for the Finance Department appearing for the respondents no. 2 and Ms. R. B. Borah, learned Standing Counsel for the BTC representing the respondent no. 4, 5, 6, 7 & 8.

None has appeared for the respondent no. 9.

3. The petitioner by way of instituting the present proceeding has prayed for a direction upon the respondent authorities for provincialisation of his services as a Language teacher in Paschim KumariKata Milan M.E. School by considering the enrolment status of the students therein.

4. As projected in the writ petition, the petitioner was appointed as an Assistant Teacher (Language) by the Managing Committee of Paschim KumariKata Milan M.E. School by way of a resolution adopted in its meeting held on 13.08.1994. The petitioner in terms of the said resolution was issued with an appointment order by the Headmaster of the school on 06.09.1994. The petitioner in terms of the said order of appointment joined

his services in the said school on 08.09.1994. It is to be noted at the relevant point of time that the petitioner was so appointed in the said school, the school was in its venture stage. Upon enactment of the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017, the service particulars of the serving teachers in the said school were furnished by the Headmaster of the school to the departmental authorities. It is contented that the case of the serving teachers of the school including that of the present petitioner was placed before the jurisdictional District Scrutiny Committee. The District Scrutiny Committee on verifying the service particulars of the serving teachers of the said school proceeded to recommend the names of five teachers, including the petitioner. Thereafter, the recommendations made by the jurisdictional District Scrutiny Committee came to be placed before the State Level Scrutiny Committee. It is projected in the writ petition that on the scrutiny made by the State Level Scrutiny Committee a list of teachers found eligible for provincialisation of their services in the said school came to be published in the departmental website and therein, only names of three teachers came to be so published. The teachers in the said school found to be eligible for provincialisation of their services are as follows: (i) Basudev Upadhyaya; (ii) Dhamaraj Neopane, and (iii) Samraj Newar. The name of the petitioner herein did not figure in the said list. Thereafter, the respondent authorities proceeded to provincialise the services of the said three serving teachers in the said school. The petitioner being aggrieved by the denial as meted out to him in the matter approached the respondent authorities praying for consideration of his case for provincialisation of his service by reckoning the enrolment status of the students in the said

school. The said prayer of the petitioner having not been considered by the respondent authorities, the present proceeding came to be initiated before this court.

5. The contention of the petitioner in the present proceeding is that the respondent authorities by reckoning the provisions of section 3(1) (xi) ought to have sanctioned an additional post of Assistant Teachers to the said school by considering the enrolment status of the students of the said school, which was contended to be more than 150 at the relevant point of time. The provisions of 3(1) (xi) being relevant, is extracted herein below:

“3. Eligibility criteria for selection of educational institution for provincialization of services of teachers/tutors: 1.

.....

(i).....

.....

(xi) In case of Venture Upper Primary School, there shall be minimum three teachers or tutors at least one teacher each for (a) Science and Mathematics, (b) Social Studies and (c) Languages:

Provided that for additional posts, it shall be considered in accordance with the norms and standard stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009(Central Act No. 35 of 2009).”

6. The contention as made by the petitioner about the enrolment status of students in the said school was disputed by the Director of Elementary Education, Assam, by way of filing an affidavit in the matter. In terms of the affidavit filed, the enrolment position in the school as of 2016/2017 and 2017/2018 was 101 students. Accordingly, in the affidavit, it was contended that given the enrolment status of the students in the said school as determined by the authorities, the State Level Scrutiny Committee had

recommended for provincialisation of the services of three teachers working in the said school and accordingly, the Government having sanctioned (3) three posts of tutor for the said school, the services of the teachers so found eligible were provincialised.

7. The provisions of section 3(1) (xi) while mandating that in case of "Venture Lower Primary School", there shall be minimum of three teachers or tutors and at least one teacher each shall be for (a) Science and Mathematics; (b) Social Studies and (c) Language subjects. It was further mandated that an additional post if so required, shall be considered in accordance with the norms and standards stipulated in the schedule under Section 19 and 25 of the Right of Children to Free and Compulsory Education Act 2009.

8. A perusal of the provisions of the schedule as available in the said Act of 2009 would bring to the forefront that there ought to be at least one teacher per class for (a) Science and Mathematics (b) Social Studies and (c) Language subjects. Further, it mandates that at least one teacher for every 35 students and the said schedule also mandates that where enrolment of students is more than 100, there should be at least one full time Head Teacher.

9. Applying the provisions of the said Act of 2009, more particularly the schedule thereof, which is now applicable to the issue in hand in view of the proviso to Section 3(1) (xi) of the Act 2017, it is seen that admittedly, in the

school in question there is at least 101 students enrolled during the period 2016/2017 and 2017/2018 and accordingly, there would arise a need for sanction of post of Head Teacher/Head Master in the said school. In such an eventuality of a post of Head Teacher being sanctioned to the said school, the respondent no 9 herein, who is now been provincialized in his service as Social Studies teacher would now be required to be provincialized in his services as the Head Master of the school and accordingly, a post of Tutor now becoming available, the same would be now required to be so filled up from amongst the other serving teachers in the school by applying a criteria known to law.

10. In view of the above conclusions as reached in the matter and appreciating that there would be a necessity to carry out a process of verification before the issue as to whether an additional post is called to be sanctioned to the school in question in view of the enrolment status of students therein, is decided, this court hereby directs the petitioner herein, to submit an appeal under Section 14 of the said Act of 2017, before the Secretary to the Government of Assam, School Education Department and therein by furnishing all requisite particulars pertaining to his service and qualification, also furnish the enrolment status of students in the said school during the period as would be mandated for consideration of the issue as to whether an additional post is called upon to be sanctioned to the said school and thereby stake a claim for provincialisation of his services.

11. The petitioner in the said appeal would also highlight before the appellate authority that given the status of enrolment of students in the said school as of 2016/2017 and 2017/2018 as brought on record by the Director of Elementary Education Department in the present proceeding that is 101 students, contend that a need exist in terms of the said Act of 2009 for sanctioning a post of Head Master to the said school and that respondent no 9, if so adjusted against the said post of Headmaster, the vacant post of tutor as would become available, be utilized for provincialisation of the service of the petitioner herein.

12. The Secretary to the Government of Assam on receipt of the said appeal from the petitioner along with certified copy of this order shall consider the contentions as made in the said appeal and upon such consideration, it is so felt necessary, shall have the matter placed before the State Level Scrutiny Committee for scrutiny of the particulars brought on record by the petitioner in his appeal.

13. On such consideration being made, the Secretary to the Government of Assam, Department of School Education, shall pass a speaking order in the matter and therein by recording the reasons for the decision so arrived at, communicate the same to the petitioner. In the event upon completion of the process of the consideration, as directed hereinabove, it is found that the petitioner is eligible for having his service provincialized in the said school, the service of the petitioner be so provincialized w.e.f. **the date other teachers in the school were** provincialized in their service.

14. The above exercise as directed to be undertaken by the Secretary to the Government of Assam, Department of School Education, shall now be initiated and concluded within a period of 90 days from the date of receipt of the appeal along with certified copy of this order from the petitioner herein.

With the above observation and direction the writ petition has been disposed of.

JUDGE

Comparing Assistant