

GAHC010222162023



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

Case No. : WP(C)/6013/2023

SRIMATI NABANITA MANDAL
W/O SRI DIPAK KUMAR MANDAL, R/O KAIMARI, PART-II, P.O.-KAIMARI,
P.S.-GOLAKGANJ, DIST- DHUBRI, ASSAM, PIN-783335

VERSUS

THE STATE OF ASSAM AND 6 ORS
THE SECRETARY DEPARTMENT OF SCHOOL EDUCATION, GOVT OF
ASSAM, ASSAM SECRETARIAT, BLOCK-C, 3RD FLOOR, DISPUR,
GUWAHATI-781006.

2:THE SECRETARY DEPARTMENT OF SCHOOL EDUCATION
GOVT. OF ASSAM
ASSAM SECRETARIAT
BLOCK C
3RD FLOOR
DISPUR
GUWAHATI-781006

3:THE DIRECTOR ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19
PIN-781019

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

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
AGOMONI
P.O.-AGOMONI

P.S.-GOLAKGANJ
DIST- DHUBRI
ASSAM
PIN-783335

6:THE HEAD MASTER
KAIMARI M.E. MADRASSA ASSAM
R/O VILL-KAIMARI (PART-II)
P.O.-KAIMARI
DIST-DHUBRI
ASSAM
PIN-783335

7:THE PRINCIPAL SECRETARY
DEPARTMENT OF FINANCE
GOVT. OF ASSAM
ASSAM SECRETARIAT
C.M. BLOCK
DISPUR
GUWAHATI-78100

Advocate for the Petitioner : MS. J PAUL
Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date : 02.02.2024

ORDER

Heard Ms. J. Paul, learned counsel for the petitioner. Also heard Mr. P. K. Borah, learned standing counsel, Elementary Education Department, Government of Assam, and Mr. A. Chaliha, learned standing counsel, Finance Department, appearing on behalf of their respective respondents.

2. Considering the nature of the order proposed to be passed today, notice upon the respondent No. 5 is not deemed necessary.

3. The grievance raised by the petitioner in the present proceeding, is the

denial of the benefits of provincialization of her services with effect from the date of her appointment in Kaimari M.E. Madrassa School i.e. 29.10.1990, which benefit was extended to persons appointed in the said school even after the date of such appointment of the petitioner.

4. It is to be noted that Kaimari M.E. Madrassa School was provincialized in the year 1980. However, such provincialization of services of the employees working therein, was kept in abeyance by the Government. It is after the provincialization effected of the eligible teachers in the said school was kept in abeyance by the Government that the petitioner came to be appointed by the Managing Committee of the school on 01.11.1990 as a Hindi Teacher therein.

5. It is to be further noted that after the appointment of the petitioner in the said school, further teachers were appointed and the appointment of all such teachers including that of the petitioner was approved by the District Elementary Education Officer (DEEO), Dhubri, vide his order, dated 06.10.2004. But a perusal of the particulars of the teachers as available in the said order, dated 06.10.2004, would reveal that the Headmaster of the said school viz. one Shri Ramjan Ali Siddique was appointed on 17.03.1976, and thereafter, Shri Abu Bakkar Siddique was appointed as an Assistant Teacher on 08.08.1983 and thereafter, the petitioner was appointed as a Hindi Teacher on 29.10.1990 and it is thereafter, only, that the other teachers whose services were approved vide order, dated 06.10.2004, came to be appointed in the said school.

6. It is also to be noted that at the time of the said approval i.e. on 06.10.2004, it is only the Headmaster i.e. Ramjan Ali Siddique who was continuing in the said

school as before 1980 when the services of the teachers of the school, were provincialized. All other teachers of the school were appointed after the year 1980. The Government, thereafter, in the year 2008, vacated the kept in abeyance order with regard to the provincialization of services of the incumbents in the said school and provincialized the services of the Headmaster, 2(two) Assistant Teachers, one Arabic Teacher, and one non-teaching staff. As noted hereinabove; other than the Headmaster, all other teachers whose services came to be provincialized were appointed after the petitioner was appointed in the said school and none of them were serving in the school as of 1980.

7. The petitioner being aggrieved had moved the respondent authorities praying for extension to her similar benefits that was granted to persons junior to her in the school and for provincialization of her services with retrospective effect. The said prayer of the petitioner was considered and the Government of Assam in the Elementary Education Department, vide communication, dated 22.12.2014, approved a proposal for appointing the petitioner against a vacant post of Hindi Teacher available at Berbhanggi M.E. Madrassa School under the District Elementary Education Officer (DEEO), Dhubri, by transferring the said post to Kaimari M.E. Madrassa School. In terms of the said approval granted vide the said communication, dated 22.12.2014; the Director, Elementary Education Department, Government of Assam, vide order, dated 10.03.2015, proceeded to regularize the services of the petitioner against the said post of Hindi Teacher transferred from Berbhanggi M.E. Madrassa School. Such regularization was so effected with prospective effect and the petitioner was held to be covered by the new pension scheme coming into force w.e.f. 01.02.2005. Thereafter, the petitioner approached the authorities for modification of the said order and for regularizing her such services with effect from the date of her initial appointment i.e. w.e.f. 01.11.1990

as was done in the case of teachers working in the said school and who were appointed after the date of such appointment being effected in the case of the petitioner. The said appeals of the petitioner was duly processed and the District Elementary Education Officer (DEEO), Dhubri, vide his communication, dated 20.10.2022, by highlighting that the services of all other teachers who were appointed by the School Managing Committee(SMC), have been regularized from the dates of their respective joining, however, the similar benefit was not granted to the petitioner; requested that the services of the petitioner be also considered for regularization with effect from the date of her initial appointment. The total financial implication involved in the event the services of the petitioner was regularized with effect from the date of her initial joining, was also computed and spelt-out.

8. The Director, Elementary Education Department, Government of Assam, vide his communication, dated 25.11.2022, basing on the report of the District Elementary Education Officer (DEEO), Dhubri, as forwarded vide communication, dated 20.10.2022, proceeded to forward the issue with regard to regularization of the services of the petitioner with effect from the date of her initial joining, to the Government in the Department of School Education, for consideration and therein, recommended that the case of the petitioner be also considered as other teachers working in the said school, whose services have been held to be regularized from the date of their initial joining.

9. The petitioner during the pendency of the process for consideration of her case for regularization of her services with effect from the date of her initial appointment, on reaching the age of superannuation, had retired from her services

w.e.f. 28.02.2023. The proposal as forwarded by the Director, Elementary Education Department, Government of Assam, vide communication, dated 25.11.2022, having not been taken to its logical conclusion, the petitioner has instituted the present writ proceeding.

10. Mr. Borah, learned standing counsel, Elementary Education Department, Government of Assam, in terms of the directions passed by this Court, requiring him to receive instructions as to whether the persons appointed in the said school after the appointment of the petitioner, were regularized/provincialized in their services; has produced before this Court, an instruction received by him from the Director, Elementary Education Department, Government of Assam, on 25.01.2024, wherein, it has been stated that the services of other teachers in the school except the writ petitioner, have been regularized from the dates of their initial appointment in the school.

11. The list of teachers as set-out in the instruction received by Mr. Borah, learned standing counsel, Elementary Education Department, Government of Assam, corresponds to the list as available in the order of approval of the District Elementary Education Officer (DEEO), Dhubri, dated 06.10.2004.

12. The materials available on record as well as the disclosure made in the instructions as furnished to this Court today, reflects that other than the Headmaster, who was appointed in the year 1976; all other teachers in the school were appointed after the date of the provincialization of the services of the teachers in the said school effected in the year 1980, which, as noted hereinabove, was kept in abeyance by the Government.

13. The services of all the teachers working in the school, in question, barring the petitioner, herein, and one Smt. Malati Bepari, came to be regularized with effect from the dates of their initial appointments on vacation of the said kept in abeyance order.

14. It is not understood as to why similar benefit was not extended to the petitioner although she was the second senior-most teacher after Shri Abu Bakkar Siddique in the school basing on the dates of their initial appointments.

What is to be noted further is that after the regularization of the services of the petitioner with prospective effect, vide order, dated 10.03.2015; the process for regularizing her services with effect from the date of her initial appointment, was initiated and on culmination of the process involved; the Director, Elementary Education Department, Government of Assam, had forwarded a proposal in this connection to the Government in the Department of School Education, vide communication, dated 25.11.2022. In the said proposal, the services of the petitioner was recommended for regularization with effect from the date of her initial appointment maintaining parity with the regularization/provincialization effected in respect of other teachers working in the said school.

It is also not understood as to why the said process has not been taken to its logical conclusion. The petitioner, in the meantime, as noted-above, had retired from her services w.e.f. 28.02.2023, on attaining the age of superannuation.

15. The facts involved in the present proceeding not been disputed and it being

clear that persons appointed in the school after the date of appointment of the petitioner, being considered for provincialization of their services, a right has also accrued to the petitioner for having her such services regularized/provincialized with effect from the date of her initial appointment and a proposal in this connection was also put-up by the District Elementary Education Officer (DEEO), Dhubri, vide communication, dated 20.10.2022.

16. In view of the said position and no reason being assigned for the denial to the petitioner of her regularization/ provincialization of services with effect from the date of her initial appointment; this Court is of the considered view that the petitioner, in the facts and circumstances involved, is entitled for regularization/provincialization of her services w.e.f. 01.11.1990.

17. In view of the said conclusion reached; this writ petition stands disposed of requiring the Secretary, Department of School Education, Government of Assam, to pass appropriate orders towards regularizing the services of the petitioner w.e.f. 01.11.1990 in terms of the proposal as put-up by the Director, Elementary Education, Government of Assam, vide communication, dated 25.11.2022.

The Secretary, Department of School Education, Government of Assam, shall also take note of the fact that teachers junior to the petitioner, working in the said school were considered for provincialization of their services with effect from the dates of their initial appointment which benefit was denied to the petitioner. Necessary orders as would be called for in the matter, be passed by the Secretary, Department of School Education, Government of Assam, within a period of 2(two) months from the date of receipt of a certified copy of this order.

The order as required to be passed by the Secretary, Department of School Education, Government of Assam, in terms of the directions contained hereinabove; shall hold the field and shall supersede the order, dated 10.03.2015, issued by the Director, Elementary Education, Government of Assam, towards regularizing the services of the petitioner with prospective effect.

18. The services of the petitioner now being directed to be regularized w.e.f. 01.11.1990, she would be entitled to the salaries as due to her from the said date and further, she would be covered by the provisions of the Assam Service (Pension) Rules, 1969, and would also be eligible for pension and pensionary benefits.

19. With the above directions and observations, this writ petition stands disposed of. However, there shall be no order as to costs.

JUDGE

Comparing Assistant