



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

W.P(C) No.7317/2022

Parinita Patar, aged about 38 years, D/O- Ratiram Patar, resident of Kaahibari, P.O- Bhumuraguri, Charaibahi, Morigaon, Assam, PIN 782106

.....Petitioner

-Versus-

- 1. The State of Assam** represented by the Secretary to the Govt. of Assam, Education (Secondary) Department, Dispur, Guwahati-6
- 2. The Director of Secondary Education**, Assam, Khalipara, Guwahati-19
- 3. The Inspector of School**, Morigaon, District Circle, Morigaon, Dist-Morigaon
- 4. The Finance Department** represented by its Commissioner & Secretary, Dispur, Guwahati-6

.....Respondents

W.P(C) No. 6872/2022

Sufia Mahmuda, aged 43 Years, Daughter of Sukur Mahmud, Village

& P.O. Garemari, Dist: Barpeta,
Assam, PIN 781314

.....Petitioner

-Versus-

- 1. The State of Assam** represented by the Commissioner & Secretary to the Govt. of Assam, Secondary Education Department, Dispur, Guwahati-6
- 2. The Director of Secondary Education,** Assam, Khalipara, Guwahati-19
- 3. The Inspector of School,** Barpeta, Assam PIN 781301

.....Respondents

W.P(C) No. 7246/2022

Paban Rahang, aged 49 years,
S/O Satya Rahang, resident of
Village: Mitani Nonke (Part), P.S.
Sonapur, Sub-division- Guwahati,
District: Kamrup(M), Assam, PIN No.
782402

.....Petitioner

-Versus-

- 1. The State of Assam** represented by the Secretary to the Govt. of Assam, Education (Secondary) Department, Dispur, Guwahati-6
- 2. The Director of Secondary Education,** Assam, Khalipara, Guwahati-19
- 3. The Inspector of School,** Kamrup District Circle, Kamrup(M), Dist- Kamrup(M)
- 4. The Finance Department** represented by its Commissioner & Secretary, Dispur, Guwahati-6

.....Respondents

W.P(C) No. 7319/2022

Diganta Deka, aged 47 years, S/O
Naren Deka, resident of Mahipal
Kuchi, Balikuchi, Kamrup, Assam,
PIN 781381

.....Petitioner

-Versus-

- 1. The State of Assam** represented by the Secretary to the Govt. of Assam, Education (Secondary) Department, Dispur, Guwahati-6
- 2. The Director of Secondary Education**, Assam, Khalipara, Guwahati-19
- 3. The Inspector of School**, Darrang District Circle, Darrang, Dist-Darrang
- 4. The Finance Department** represented by its Commissioner & Secretary, Dispur, Guwahati-6

.....Respondents

W.P(C) No. 7357/2022

Tulukan Bharali, aged about 49
years, S/O Suren Bharali, Resident
of – Bar Bhaluki, Bhaluki, Bajali,
Barpeta, Assam, PIN 781371

.....Petitioner

-Versus-

- 1. The State of Assam** represented by the Secretary to the Govt. of Assam, Education (Secondary) Department, Dispur, Guwahati-6
- 2. The Director of Secondary Education**, Assam, Khalipara, Guwahati-19
- 3. The Inspector of School**, Barpeta District Circle, Barpeta, Dist-Barpeta
- 4. The Commissioner & Secretary, Finance Dept. Assam**

.....Respondents

W.P(C) No. 7369/2022

Shahidul Islam aged about 43 years, S/O Atabuddin Ahmed, resident of Khalonibil, Burhaburi, Morigaon, Assam, PIN 782411

.....Petitioner

-Versus-

1. The State of Assam represented by the Secretary to the Govt. of Assam, Education (Secondary) Department, Dispur, Guwahati-6

2. The Director of Secondary Education, Assam, Khalipara, Guwahati-19

3. The Inspector of School, Morigaon District Circle, Morigaon, Dist-Morigaon

4. The Commissioner & Secretary, Finance Dept. Assam

.....Respondents

W.P(C) No. 7374/2022

Lakshi Kanta Sarma aged about 41 years, S/O Bhuban Sarma, resident of Village: Bagharagaon, Morigaon, Assam, PIN 782105

.....Petitioner

-Versus-

1. The State of Assam represented by the Secretary to the Govt. of Assam, Education (Secondary) Department, Dispur, Guwahati-6

2. The Director of Secondary Education, Assam, Khalipara, Guwahati-19

3. The Inspector of School, Morigaon District Circle, Morigaon, Dist-Morigaon

4. The Commissioner & Secretary, Finance Dept. Assam

.....Respondents

W.P(C) No. 7684/2022

Mukul Sarma aged about 53 years, S/O Ambika Prasad Sarma, Barbhag, Nalbari, Assam, PIN 781325

.....Petitioner

-Versus-

- 1. The State of Assam** represented by the Secretary to the Govt. of Assam, Education (Secondary) Department, Dispur, Guwahati-6
- 2. The Director of Secondary Education,** Assam, Khalipara, Guwahati-19
- 3. The Inspector of School,** Nalbari District Circle, Nalbari, Dist-Nalbari
- 4. The Commissioner & Secretary** to the Govt of Assam, Department of Finance, Dispur, Guwahati-6

.....Respondents

W.P(C) No. 7711/2022

- 1. Paresh Bezbaruah,** aged about 53 years, S/O Dharmeswar Bezbaruah, resident of Nalbari Town, Ward No. 10, Nalbari, Assam, PIN 781335
- 2. Nizam Uddin Ahmed,** aged about 44 years, S/O Maseb Ali, Resident of Simaliya, Mularkuchi, Nalbari, Assam, PIN 781303

.....Petitioners

-Versus-

- 1. The State of Assam** represented by the Secretary to the Govt. of Assam, Education (Secondary) Department, Dispur, Guwahati-6
- 2. The Director of Secondary Education,** Assam, Khalipara, Guwahati-19
- 3. The Inspector of School,** Nalbari District Circle, Nalbari, Dist-Nalbari

.....Respondents

W.P(C) No. 7843/2022

Ismail Hussain, aged about 39 years, S/O Abdus Sobhan Ahmed, Resident of – Sonkuchi, P.O

Sonkuchi, Donakuchi, Barpeta,
Assam, PIN 781314

.....Petitioner

-Versus-

1. The State of Assam represented by the Secretary to the Govt. of Assam, Education (Secondary) Department, Dispur, Guwahati-6

2. The Director of Secondary Education, Assam, Khalipara, Guwahati-19

3. The Inspector of School, Barpeta District Circle, Barpeta, Dist-Barpeta

4. The Commissioner & Secretary to the Govt of Assam, Department of Finance, Dispur, Guwahati-6

.....Respondents

W.P(C) No. 7853/2022

1. Dr. Gitanjali Talukdar, aged about 39 years, D/O Kandarpa Nath Talukdar, Resident of H.No. 22, Kailashpur, Near Lankeswar, P.O. Guwahati University, Kamrup (Metro), Assam, PIN 781014

2. Tripti Moni Das, aged about 38 years. C/O Sabitri Das, Resident of H. No. 60, Lakhimi Path, Lakhimi Tent House, Beltola Tiniali, Beltola, Kamrup(Metro), Assam, PIN 781028

.....Petitioners

-Versus-

1. The State of Assam represented by the Secretary to the Govt. of Assam, Education (Secondary) Department, Dispur, Guwahati-6

2. The Director of Secondary Education, Assam, Khalipara, Guwahati-19

3. The Inspector of School, Kamrup District Circle, Kamrup, Dist-Kamrup

4. The Commissioner & Secretary to the Govt of Assam, Department of Finance, Dispur, Guwahati-6

.....Respondents

- B E F O R E -
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioners : Mr. J. Abedin, Adv,
Mr. S.K. Das, Adv

Advocate for the respondents : Mr. R. Mazumdar, SC, Secondary Education
Ms. D. Muchahary, SC, Secondary Education
Mr. R. Borpujari, SC, Finance

Date of Judgment & Order: : **08.02.2024**

JUDGMENT AND ORDER (ORAL)

These writ petitions are filed by the petitioners who are Subject Teachers in their respective Senior Secondary Schools. The factual position in all the writ petitions are largely similar bearing the individual dates for appointments and Provincialization and grant of salary etc.

2. The writ petitioners claimed to be working in their respective schools since the venture stage which were earlier known as Junior colleges and now re-nomenclatured as Senior Secondary Schools. The Government of Assam are provincialised the services of Teachers and/or Tutors of those institutes under the Assam Educational (Provincialization of Services of Teachers and Reorganization of Educational Institution) Act, 2017 (in short "*the Act of 2017*"). The eligibility criteria for selection

of educational institutions for provincialization of the services of the teachers/tutors are specified under Section 3. Proviso to Section 3 (i) specifies *inter alia* that concurrence for first year Higher Secondary classes in respect of those schools are to be received from the Government on or before 01.01.2006. On the basis of such permission, concurrence or recognition required to be received by the respective schools from the Government prior to 01.01.2006. The orders for provincialization of services of teachers and tutors will be issued under this Act. It is also provided that any order issued after 01.01.2006 in respect of permission, recognition or concurrence by the Government shall not be considered for the purpose of provincialization of the services of any such teachers with any retrospective effect. Under Section 3(2), it is provided that recognition, affiliation or concurrence, minimum enrollment and performance are to be in respect of each subjects with or without major, as the case may be, and the services of the teachers appointed or engaged in connection with such subject or subjects shall be considered for provincialization under the provisions of the Act.

3. The petitioners having been appointed in their respective schools and rendering their services in the various subjects since the venture

stage of the schools, their cases for provincialization were put up before the Government along with other teachers from the said school. Pursuant thereto, orders were passed on 04.02.2021 by the competent authority in the Government, whereby the petitioners were provincialized in their respective schools in the subjects mentioned. Pursuant to the order dated 04.02.2021, the petitioners have been receiving their salaries as per the scale prescribed in the provincialization order.

4. While the petitioners were rendering services, the Director of Secondary Education issued the impugned order dated 30.04.2022 on the following writ petitions:

W.P.(C) No. 7317/2022; W.P.(C) No. 7246/2022; W.P.(C) No. 7357/2022 and W.P.(C) No. 7853/2022 in respect of petitioner No. 2

Similarly, the Director of Secondary Education also issued the impugned order dated 15.07.2022 on the following writ petitions:

W.P.(C) No. 7319/2022; W.P.(C) No. 7369/2022; W.P.(C) No. 7374/2022; W.P.(C) No. 7684/2022; W.P.(C) No. 7711/2022; W.P.(C) No. 7843/2022; W.P.(C) No. 6872/2022 and W.P.(C) No. 7853/2022 in respect of petitioner No. 1

By the said impugned orders, the salaries of the writ petitioners were stopped on the ground that their provincialization is contrary to the provisions of the Assam Educational (Provincialization of Services of Teachers and Reorganisation of Educational Institution) Act, 2017 as it has been found subsequently that the subject concurrence/affiliation were accorded after 01.01.2006. It is submitted that the petitioners are still working and rendering their services in their respective schools however without receiving any salaries. It is submitted that such an order passed by the Director is contrary to the provisions of the Act as the process for provincialization is a continuous process and the authorities concerned had all submitted the necessary relevant documents prior to 01.01.2006. But the orders came to be issued for concurrence by the Government in respect of each of the petitioners only after 01.01.2006.

5. The learned counsel for the petitioners submits that once the provincialization order is issued after due verification of the relevant documents and the criteria prescribed by the authorities concerned, the impugned order(s) could not have been issued by the Director stopping their salaries. There is no provision under the Act of 2017 for stopping of salaries and therefore the impugned orders dated 30.04.2022 and

15.07.2022 is arbitrary and is required to be suitably interfered with and set aside.

6. The respondents, Director of Secondary Education has filed their counter affidavits. Mr. R. Mazumdar, learned Standing Counsel, Secondary Education and Mr. R. Borpujari, learned Standing Counsel appearing for the Finance Department submit that there is no infirmity in the order of the Director inasmuch as it is the mandate of the Act, more particularly, Section 3(2), which provides that the concurrence or the affiliation must be granted to the college prior to 01.01.2006. It is submitted that there is no dispute that the concurrence was not granted prior to 01.01.2006 as the pleadings in the writ petitioners revealed that the petitioners admit that the concurrence was granted after 01.01.2006. Therefore, the provincialization of the petitioners being contrary to the provisions of section 3(2) of the Act, 2017, there is no infirmity in the orders passed by the Director dated 30.04.2022 and 15.07.2022, whereby the salaries of the petitioners were stopped.

7. The learned counsel for the parties have been heard. Pleadings on record have been carefully perused. Provisions of the Assam Educational (Provincialization of Services of Teachers and Reorganisation of Educational Institution) Act, 2017 has also been perused.

8. In the counter affidavit filed by the department, there is a categorical averment that the concurrence in respect of the subjects *vis-a-vis* the petitioners were received after 01.01.2006 and that being contrary to the provisions of the Act of 2017, the petitioners are not entitled to their provincialized scale of pay and therefore, the salaries have been stopped and the matter at present has been referred to the Government seeking instructions for cancellation of the provincialization services of the petitioners. Although this affidavit was filed on 23.11.2023, the learned counsel for the department for Secondary Education Department submits that he has no instructions if the Government has taken a decision in the matter in the meantime.

9. The petitioners have also filed a rejoinder affidavit reiterating their contentions raised in the writ petitions. While there is no quarrel with the mandate of the Act of 2017 that the concurrence, the recognition etc are required to be obtained by the concerned Institute prior to 01.01.2006. The fact remains that the orders passed in favor of the petitioners have been passed after due scrutiny at the various levels in the Department. There is no averment in the affidavit that these orders were passed on the basis of documents which were falsified or incorrect. As such, the government is required to take a decision in the matter as

to the status of the provincialization granted to the petitioners in terms of the provisions of the Act of 2017. The particulars of all the petitioners vis-a-vis the writ petitions filed by them and the subjects, along with the particulars of the school and the school concurrence and subject concurrence are reflected below:

Case No	Name	Initial appointment	Subject	School	School concurrence	Subject concurrence	Salary stopped order
W.P.(C) No. 7246/2022	Paban Rahang	03.09.2004	PGT Anthropology	Mayabari Sr. Secondary School, Kamrup(M)	16.03.2005	06.05.2010	30.04.2022
W.P.(C) No. 7317/2022	Parinita Patar	11.10.2010	PGT Advance Hindi	Nellie Sr. Secondary School, Morigaon	31.03.2005	06.05.2010	30.04.2022
W.P.(C) No. 7319/2022	Diganta Deka	20.07.2002	PGT Logic & Philosophy	Pashim Darrang Sr. Secondary School, Darrang	2003	30.11.2010	15.07.2022
W.P.(C) No. 7357/2022	Tulukan Bharali	24.08.1999	PGT Logic & Philosophy	Srimanta Sankar Madhab Sr. Secondary School, Barpeta	18.08.2005	06.05.2010	30.04.2022
W.P.(C) No. 7369/2022	Shahidul Islam	29.08.2006	PGT Arabic	Mohan Bashi Das Sr. Secondary School, Norigaon	2005	30.12.2015	15.07.2022
W.P.(C) No. 7374/2022	Lakshi Kanta Sarma	25.11.2006	PGT Geography	Nagalbandha Sr. Secondary School, Morigaon	28.03.2005	30.11.2010	15.07.2022
W.P.(C) No. 7684/2022	Mukul Sarma	13.12.2005	PGT Geography	Nalbari Girls Sr. Secondary School, Nalbari	06.06.2005		15.07.2022
W.P.(C) No. 7711/2022	1. Paresh Bezbaruah 2. Nizam Uddin Ahmed	19.08.2002 01.11.2004	PGT Hindi PGT Arabic	Paschim Nalbari Sr. Secondary School, Nalbari	01.03.1994	19.12.2007 19.12.2007	15.07.2022
W.P.(C) No. 7843/2022	Ismail Hussain	26.10.2008	PGT Logic & Philosophy	Uttar Berpara Sr. Secondary School, Barpeta	26.08.2005	30.11.2010	15.07.2022
W.P.(C) No. 7853/2022	1. Dr. Geetanjali Talukdar 2. Tripti Monni Das	15.11.2010 08.11.2010	PGT Advance Assamese PGT Logic & Philosophy	Pub-Bongsor Sr. Secondary School, Kamrup	31.03.2005	30.11.2010	15.07.2022 30.04.2022
W.P.(C) No. 6872/2022	Sufia Mahmuda	02.01.2008	PGT Mathamatics	Srimanta Sankar Madhab Jr. College	18.08.2005	06.05.2010	15.07.2022

10. Upon careful perusal of the provisions of the Act, it is seen that there is no provision for stoppage of salary by the Director. Under Section 20, the power of interpretation and removal of difficulties is bestowed of the State Government and whose decision is final as has also been stated in the affidavit that the matter is presently pending before the competent authority, the Government, namely the Secretary to the Government of Assam, Department of Secondary Education.

11. During the course of hearing and upon perusal of the pleadings on record, it is seen that in the concurrence issued to the writ petitioners in WP(C) No. 7317/2022 vide order dated 06.05.2010 for the subject in Advance Hindi, this communication is stated to have been issued in continuation of the department's letter number ASE.82/2005/70 dated 31.03.2005. This communication No. ASE.82/2005/70 dated 31.03.2005 is the communication of the Department conveying the Government concurrence to the Director in respect of the petitioners' school. The subject in which the concurrence has been granted is also specified therein. The subject of Hindi or Advance Hindi, of course, is not mentioned in the said of communication.

In W.P(C) No. 7246/2022, the School Concurrence was given on 16.03.2005 and the Subject Concurrence was given on 06.05.2010 on the subject PGT Anthropology in respect of Mayabari Sr. Secondary School, Kamrup (M) vide communication dated 06.05.2010.

In W.P(C) No. 7319/2022, the School Concurrence was given in the year 2003 and the Subject Concurrence was given on 30.11.2010 on the subject PGT Logic & Philosophy in respect of Pashim Darrang Sr. Secondary School, Darang.

In W.P(C) No. 7357/2022, the School Concurrence was given on 18.08.2005 and the Subject Concurrence was given on 06.05.2010 on the subject PGT Logic & Philosophy in respect of Srimanta Sankar Mahhab Sr. Secondary School, Barpeta.

In W.P(C) No. 7369/2022, the School Concurrence was given in the year 2005 and the Subject Concurrence was given on 30.12.2015 on the subject PGT Arabic in respect of Mohan Bashi Das Sr. Secondary School, Morigaon.

In W.P(C) No. 7374/2022, the School Concurrence was given on 28.03.2005 and the Subject Concurrence was given on 30.11.2010 on the subject PGT Geography in respect of Nagalbandha Sr. Secondary School, Morigaon.

In W.P(C) No. 7684/2022, the School Concurrence was given on 06.06.2005 on the subject PGT Geography in respect of Nalbari Girls Sr. Secondary School, Nalbari.

In W.P(C) No. 7711/2022, the School Concurrence was given on 01.03.1994 and the Subject Concurrence was given on 19.12.2007 on the subject PGT Hindi and PGT Arabic in respect of Pashchim Nalbari Sr. Secondary School, Nabari.

In W.P(C) No. 7843/2022, the School Concurrence was given on 26.08.2005 and the Subject Concurrence was given on 30.11.2010 on the subject PGT Logic & Philosophy in respect of Uttar Berpara Sr. Secondary School, Barpeta.

In W.P(C) No. 7853/2022, the School Concurrence was given on 31.03.2005 and the Subject Concurrence was given on 30.11.2010 on the subject PGT Advance Assamese & PGT Logic & Philosophy in respect of Pub Bongsor Sr. Secondary School, Kamrup.

In W.P(C) No. 6872/2022, the School Concurrence was given on 18.08.2005 and the Subject Concurrence was given on 06.05.2010 on the subject PGT Mathematics in respect of Srimanta Sankar Madhab Jr. College.

12. What is not available before this Court on record, in spite of pleadings filed by the department, is whether the application for seeking concurrence in respect of the subjects in so far as the writ petitioners are concerned where concurrence was conveyed post 01.01.2006 were put up before the authorities along with the subjects in which concurrence was received prior to 01.01.2006. In the absence of such specific instructions or materials before the Court, it will not be conducive for the Court to embark on a journey to find out this aspect of the matter. Such information is stated to be not available with the petitioners at this stage. However, since the concurrence has been granted by the government, it is expected that all these information are available in the government records. Alternatively, the appropriate department can secure this information from the respective school authorities to verify whether the concurrence in respect of each of these petitioners which are stated to have been issued after 01.01.2006 wherein continuation of the concurrence which was issued in respect of the earlier subjects which were issued prior to 01.01.2006.

13. Under such circumstances, considering that the petitioners have not been receiving their salary in view of the impugned orders dated 30.04.2022 and 17.07.2022, this Court is of the considered view that the

matter should be disposed of at this stage with a specific direction to the Secretary of the department, namely, the Secretary to the Government of Assam, Education (Secondary Department) now re-nomenclatured as Department of School Education to expeditiously examine the matter and pass necessary orders.

14. One submission was made by the Government Counsel during the course of the argument that the impugned orders dated 30.04.2022 and 17.07.2022 stopping the salary read with the order dated 04.02.2021, namely the order granting provincialization, will mean that the provincialization of the petitioners stood cancelled with effect from the date the impugned orders dated 30.04.2022 and 17.07.2022 was issued. Such submission is made by the Government counsel by referring to Clause 5 of the order dated 04.02.2021, wherein it is stated that "*if any information is found incorrect or false at later stage, the order of provincializations stand cancelled immediately*". Such interpretation sought to be given cannot be accepted at this stage in view of the averments made by the Director in their affidavit that the matter is presently pending before the Government for specific instructions in respect of cancellation of Provincialisation of the petitioners. It therefore cannot be accepted that the services of the writ petitioners stood

terminated w.e.f from the date of impugned orders by deeming it to be so in view of Clause 5 of the order dated 04.02.2021.

15. Under such circumstances, the government is now required to examine and pass a speaking order in respect of each of these petitioners. If the order of provincialization was issued on the basis of correct documents wherein it is reflected that the subject concurrence was received after 01.01.2006, in the event, the government takes a decision that their provincializations are to be cancelled, then the petitioners will have to be put to a proper notice before such cancellation orders are to be issued. The respondents cannot rely on Clause 5 of the order dated 04.02.2021 to arrive at a conclusion that the order of provincialization of the petitioners have been deemed to be cancelled. In the event, the department finds that their provincialization is in contravention with the provisions of the Act, then the school management authority will be directed to pay the salaries of the petitioners and proposals afresh for seeking provincialization of the petitioners will be put up before the authority for necessary consideration.

16. With the above observations, the writ petitions stand disposed of. The authorities are directed to examine the matter and pass a speaking

order within a period of 45 (forty five) days from the date of receipt of certified copy of this order. Any order that is passed copies thereof will be furnished on the petitioners.

17. It is made clear that upon due verification if it is found that the petitioners have rendered services pursuant to their provincialization order and if it is found that the provincialization orders were passed in favor of the petitioners, although the subject concerned received concurrence after 01.01.2006 and such order was passed without any fault on the part of the petitioners, then the petitioners shall not be deprived of their salaries for the period of services rendered by them which they have stated to have worked in their respective schools till any final decision with regard to their Provincialisation of services has been arrived at by the Secretary to the Government of Assam, Department of School Education.

JUDGE

Comparing Assistant