

GAHC010040662024



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

Case No. : WP(C)/6892/2023

ANIL CHANDRA ROY
SON OF LATE MAHESHWAR PRODHANI

VILLAGE- TALLI
PART-I

P.O.- BELGURI
DISTRICT- DHUBRI

ASSAM
PIN- 783335.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF SCHOOL EDUCATION

DISPUR
GUWAHATI- 781006.

2:THE STATE OF ASSAM
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM

FINANCE DEPARTMENT
DISPUR

GUWAHATI- 781006.
3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

4:THE STATE LEVEL SCRUTINY COMMITTEE
REPRESENTED BY THE CHAIRMAN-CUM-THE DIRECTOR OF ELEMENTARY
EDUCATION
ASSAM

KAHILIPARA
GUWAHATI-781019.

5:THE DISTRICT LEVEL SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN-CUM-DISTRICT COMMISSIONER
DHUBRI

ASSAM
PIN- 783330.
6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
DISTRICT- DHUBRI
ASSAM.
PIN- 783330.

Advocate for : MR. K I MAZUMDER
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 5 ORS

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

Judgment & Order (Oral)

Date : 01.04.2024

Heard Mr. J. Abedin, learned counsel for the petitioner. Also heard Mr. P. K. Bora, learned Standing Counsel for the Elementary Education Department representing the respondent nos. 1, 3 & 4 and Mr. D. Gogoi, learned Standing Counsel for the Finance Department as well as Mr. B. Deori, learned Government Advocate representing the respondent no. 5.

2. The petitioner by way of instituting the present proceedings, has

presented a challenge to an order dated 01.11.2023, issued by the Director of Elementary Education, Assam towards cancelling the provincialisation of services effected in his case. The order dated 01.11.2023 came to be so passed basing on an order dated 06.05.2022, passed by this Court in WP(C)/2302/2021.

3. This Court, vide the order dated 29.11.2023 while issuing notice in the present matter was pleased to stay the effect and operation of the said order dated 01.11.2023 with a further clarification that the petitioner herein would deemed to be in service as a provincialised employee.

4. This Court, vide the Judgment and Order (Oral) dated 20.03.2024 had given a final consideration to the WP(C)/2359/2022, instituted by one *Arup Kumar Saha*, assailing the provincialisation as effected in the case of the petitioner herein as a Language Teacher in Gokarpara M.E. School, Dhubri.

5. This Court, upon consideration of the issues arising in the said WP(C)/2359/2022, proceeded to dispose of the same interfering with the provincialisation of the services of the petitioner herein. However, this Court had provided that the petitioner be paid his due salaries for the period he had served as a provincialised employee w.e.f. 01.01.2021 till 30.11.2023. The relevant paragraphs of the said Judgment and Order (Oral) dated 20.03.2024 passed in WP(C)/2359/2022 are extracted herein below:-

10. In the case on hand; a dispute has arisen only because of the fact that 2(two) teachers teaching Language subjects in the school, in question, came to be provincialized and thereby, leaving-out the petitioner, herein, from the purview of such provincialization although he having taught the Social Science subject in the school, was, in terms of the provisions of Section 3(xi) of the said Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017; required to be provincialized in his services against the subject of Social Science in the said school.

11. In view of the said position; it is held that both the Respondents No. 5 & 6 could not have been provincialized in their services solely basing on their service seniority in the school and amongst the Respondents No. 5 & 6, only 1(one) could have been so provincialized in his services. The Respondents No. 5 & 6, both being Language Teachers, and amongst them, the Respondent No. 5 being senior in service; it would be the Respondent No. 5 whose services would be eligible to be provincialized along with the services of the petitioner herein, and said Taher Ahmed and thereby, fulfill the mandate of Section 3(xi) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017.

12. For the purpose of implementing the provisions of Section 3(xi) of the said Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, the serving Teachers of a venture educational institution is to be so identified basing on the

subjects taught by them in the school and it is seen that the Committees empowered in this connection i.e. the District Level Scrutiny Committee(DLSC) and State Level Scrutiny Committee(SLSC) have been recommending the names of the serving Teachers in respect of the Venture Upper Primary Schools basing on the subjects taught by such teachers in their respective schools. In view of the said position; the petitioner not being disputed to be teaching the Social Science subject; the petitioner's service was mandated to be provincialized against one of the 3(three) minimum posts required to be provincialized in a Venture Upper Primary School i.e. against the post meant for Social Science subject.

13. In view of the conclusions reached hereinabove; the provincialization of the services of the Respondent No. 6 as a Language Teacher in the said school, cannot be held to be in consonance with the Section 3(xi) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, and accordingly, the same cannot be sustained.

14. In that view of the matter; the provincialization of the services of the Respondent No. 6 being in violation of the provisions of Section 3(xi) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017; is hereby interfered with by this Court.

15. At this stage, the submission made by Mr. Abedin, learned counsel for the Respondent No. 6, to the effect that the services of the

Respondent No. 6 was provincialized in the said school vide an order, dated 05.05.2021, w.e.f. 01.01.2021 and in pursuance thereof, he was continuing in his services as a provincialized Teacher in the said school till the date of superannuation which occasioned on 30.11.2023. It is the further contention of Mr. Abedin, learned counsel, that in pursuance to the interim directions passed by this Court in the present proceedings vide an order, dated 06.05.2022, the provincialization as effected in case of the services of the petitioner came to be cancelled vide an order, dated 01.11.2023 and being so aggrieved; the petitioner, herein, had instituted WP(c)6892/2023 before this Court and this Court, vide an order, dated 29.11.2023, was pleased to keep in abeyance the order, dated 01.11.2023.

16. In view of the above factual position obtaining in the matter, Mr. Abedin, learned counsel for the Respondent No. 6, submits that the pay and allowances that were drawn by the Respondent No. 6 and would be so due to the Respondent No. 6 for the period of his provincialized services in the said school w.e.f. 01.01.2021 till 30.11.2023, may not be recovered from the Respondent No. 6. The said contention of Mr. Abedin, learned counsel, has been duly considered by this Court and on appreciating the fact that the Respondent No. 6 was provincialized in his services w.e.f. 01.01.2021 and had continued in his services in the said school and he was also paid his salaries for a period of 7(seven) months thereafter; this Court in view of the peculiar facts and circumstances as existing in the present proceedings; directs that the salaries of the Respondent No. 6 for the period he had so served as a provincialized Teacher in the said school w.e.f. 01.01.2021 till the date of his superannuation i.e. on 30.11.2023, be released to him. The respondent

authorities shall release to the Respondent No. 6, the arrears of his salaries as was due to him for the period w.e.f. 01.01.2023 till 30.11.2023.

17. In view of the said conclusion arrived at by this Court with regard to the manner in which the services of the Respondent No. 6 is to be treated; it is hereby directed that the petitioner's services now would be provincialized w.e.f. 01.01.2021 but he would not be entitled to the arrear salaries till 30.11.2023 and thereafter, the respondent authorities shall release to the petitioner his due salaries either as a Teacher and/or as a Tutor w.e.f. 01.12.2023."

6. In view of the said decision of this Court in the case of *Arup Kumar Saha (supra)* and the right of the present petitioner having been determined therein, the directions as passed in the case of *Arup Kumar Saha (supra)* shall also cover the issues arising in the present proceeding.

7. Accordingly, the writ petition stands disposed of in terms of the directions as passed by this Court in the above case of *Arup Kumar Saha (supra)*.

JUDGE

Comparing Assistant