

GAHC010276302023



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

Case No. : WP(C)/7110/2023

DAKHIN DHAUKAKHANA HIGH SCHOOL
SITUATED AT VILLAGE- NARAYANPUR, P.O. OGURIDANGDHARA,
DISTRICT- LAKHIMPUR, ASSAM, REPRESENTED BY THE HEADMASTER-
CUM-SECRETARY OF THE SCHOOL SRI KHAGEN KONWAR AGED ABOUT
56 YEARS, S/O- LATE BABULA KONWAR, RESIDENT OF VILLAGE-
NARAYANPUR, P.O. OGURIDANGDHARA, DISTRICT- LAKHIMPUR, ASSAM,
PIN- 787053

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE SECRETARY
SECONDARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

5:THE INSPECTOR OF SCHOOLS
LAKHIMPUR DISTRICT CIRCLE
DISTRICT- LAKHIMPUR
ASSA

For the Petitioner(s) : Ms. R. Devi, Advocate
For the Respondent(s) : Mr. B. Kaushik, Standing Counsel
: Mr. P. Nayak, Standing Counsel

Date of Hearing : **18.04.2024**

Date of Judgment : **18.04.2024**

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

JUDGMENT AND ORDER (ORAL)

Heard Mrs. R. Devi, learned counsel appearing for the petitioner. Also heard Mr. B. Kaushik, learned Standing counsel for the Secondary Education Department appearing on behalf of the Respondent Nos. 1, 2, 3 and 5 and Mr. P. Nayak, learned Standing counsel for the Financial Department appearing for the Respondent No.4.

2. The present writ petition has been instituted by the Headmaster-cum-Secretary of Dakhin Dhakuakhana High School on behalf of the eligible serving teachers of the said school praying for a direction upon the respondent authorities for provincialization of their respective services w.e.f. 01.01.2013 in terms of the provisions of Assam Venture Educational Institutions (Provincialization of Services) Act, 2011 (for short "Act of 2011").

3. The Petitioners in the writ petition has projected that the Dakhin Dhakuakhana High School was found to have satisfied the eligibility criteria as mandated under the said Act of 2011 for having the services of the serving teachers therein provincialized, but the said school was let out from the purview

of such consideration on account of interim directions passed by this Court in WP(C) No.6283/2012, filed by two serving teachers of the said school claiming seniority. This Court vide an order dated 29.07.2013 passed in Misc. Case No.1857/2013 modified the interim directions as operating by permitting the consideration of the cases of the serving teachers by the District Scrutiny Committee. However, it was directed that two posts of Assistant Teachers be not filled up in the meantime. Thereafter, the said writ petition was taken up for final consideration and vide an order dated 31.10.2013 noticing that disputed questions of fact are involved in the matter, this Court proceeded to dispose of the said writ petition by directing the Inspector of Schools, Lakhimpur to place the matter before the District Scrutiny Committee towards resolution of the dispute raised in the writ petition.

4. It is contended by the writ petitioner that in terms of the directions passed by this Court, the cases of the eligible serving teachers in the said school were placed before the District Scrutiny Committee and the recommendations as made by the District Scrutiny Committee came to be forwarded by the jurisdictional Inspector of Schools vide a communication dated 02.01.2014 to the Director of Secondary Education, Assam for further necessary action in the matter.

5. It has been highlighted in the writ petition that upon due scrutiny being made by the Director of Secondary Education, Assam, the said authority vide communication dated 29.01.2016 proceeded to forward the case of the serving teachers of the said school to the Government in the Secondary Education Department for creation and sanction of the posts for the purpose of provincialization of the services of the teachers so found eligible in the said school. However, as no action having been taken in pursuance to the said

communication dated 29.01.2016, the present proceedings have been initiated.

6. The learned counsel for the Petitioner Mrs. R. Devi submitted that the case of the eligible serving teachers having been recommended by the jurisdictional District Scrutiny Committee and such recommendation upon scrutiny by the Director of Secondary Education, Assam having been forwarded to the Government vide the communication dated 29.01.2016, the services of the petitioners have to be deemed to have been provincialized and accordingly it was prayed that in view of the processing as made in the case of the petitioners, this Court is called upon to direct the respondent authorities to issue appropriate orders towards provincializing the services of the petitioners under the provisions of the Act of 2011 w.e.f. 01.01.2013 with all consequential benefits.

7. Mr. B. Kaushik, learned Standing counsel for the Secondary Education Department by drawing the attention of this Court to the provisions of Section 10(4) of the said Act of 2011 has submitted that although the proposal for creation of post for provincialization of the services of eligible serving teachers of the said school was so made by the Director of Secondary Education, such proposal was not considered by the Government and no notification was issued in this connection by the Government as mandated under the provisions of Section 10(4) of the said Act of 2011. Accordingly, it is submitted that the said Act of 2011 having been set aside by this Court before the process as initiated in the matter could be taken to its logical conclusions insofar as it concerns the case of the eligible serving teachers in the school in question, the petitioners herein are not entitled to have their services provincialized under the provisions of the Act of 2011 rather they would now be eligible for consideration of their cases in terms of the provisions of the Assam Education (Provincialization of

Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

8. I have heard the learned counsel for the parties and also considered the materials available on record. While it is an admitted position that the cases of the serving eligible teachers of the school in question upon being recommended by the jurisdictional District Scrutiny Committee was further considered by the Director of Secondary Education, Assam and on the conclusion of the requisite consideration as mandated in the matter vide communication dated 29.01.2016, a proposal was submitted before the Government of Assam in the Secondary Education Department for creation of the post so mandated for provincialization of the services of the eligible serving teachers of the said school, however the said process as mandated could not be taken to its logical conclusion before setting aside of the said Act by this Court.

9. The submissions as made by the learned counsel for the parties gives rise to an issue as to whether the case of the serving teachers of the school in question can be deemed to have been provincialized under the provisions of the said Act of 2011. In this connection, the provisions of Section 10(4) of the said Act of 2011 being relevant is extracted herein below:

“10(4) *The District Scrutiny Committee shall forward the verified list of eligible teachers school-wise in accordance with the number of posts specified in the Schedule appended to this Act, to the concerned Director who shall, after making such further scrutiny as may be required, shall forward the same to the concerned Department of the State Government for consideration and for issuing Notification in respect of the eligible institutions and employees eligible for getting their services provincialized.”*

10. A perusal of the provisions of Section 10(4) reveals that the District Scrutiny Committee on consideration of the list of eligible teachers of the school in

question in accordance with the number of posts specified in the Schedule appended to the Act shall forward such list to the concerned Director who shall after making further scrutiny as may be required, forward the same to the concerned Department of the State Government for consideration and for issuing notification in respect of the eligible institutions and employees eligible for getting their services provincialized. It is only upon the notification being so issued by the State Government i.e. after creation of the requisite number of posts that an order of provincialization of the services of such teachers found eligible shall be issued under the provisions of Section 4 of the said Act of 2011.

11. In the case on hand, the Government having not sanctioned the posts as per the proposal submitted by the Director of Secondary Education, Assam vide the communication dated 29.01.2016, it cannot be held that the case of the petitioners for provincialization of their services under the said Act of 2011 had been finalized and a vested right had already accrued to the petitioners for having their services provincialized under the Act of 2011 w.e.f. 01.01.2013. The provisions of Section 10(4) of the said Act of 2011 being mandatory in nature, till the said process is completed in accordance with the said provision, no right for provincialization of services of a teacher can be said to have accrued upon such teacher.

12. This Court in the case of ***Dipak Kumar Das Vs. the State of Assam and 8 Others reported in 2016 (1) GauLR 757*** has held that the provisions of Section 10(4) of the said Act of 2011 to be mandatory in nature. In view of the above proposition and the case of the serving teachers of the said school having not been considered in terms of the provisions of Section 10(4) of the said Act of 2011, the prayer as made in the present proceedings by the serving teachers of the school in question for having their cases considered for provincialization

under the Act of 2011 does not merit acceptance.

13. The conclusions as reached hereinabove with regard to the prayer of the petitioner for a direction for provincialisation of the services of the eligible serving teachers in the school in terms of the provisions of the said Act of 2011 notwithstanding, it is seen that pursuant to the enactment of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, a right has accrued to the serving teachers of the petitioner school to have their cases considered under the provisions of the said Act of 2017 and the respondent authorities are duty bound to extent to the said teachers such consideration.

14. Accordingly, it is directed that the Headmaster of the petitioner school shall within a period of 1 (one) month submit a representation in the matter before the Director of Secondary Education, Assam enclosing therewith the detailed particulars of the serving teachers of the school.

15. The Director of Secondary Education, Assam on receipt of the representation along with the particulars of the serving teachers of the school from the Headmaster of the petitioner school shall require the Inspector of Schools, Lakhimpur District Circle, Lakhimpur to place the same before the jurisdictional District Level Scrutiny Committee for verification of the particulars of the serving teachers of the school. Thereafter, on receipt of the recommendations from the District Level Scrutiny Committee, the Director of Secondary Education, Assam shall place the same before the State Level Scrutiny Committee (SLSC) for scrutiny. On receipt of the recommendation of the SLSC, the Director of Secondary Education, Assam shall further process the matter in accordance with the provisions of the Act of 2017 and take the matter to its logical conclusion.

16. The exercise as now required to be carried out by the Director of Secondary Education, Assam shall be initiated expeditiously and concluded within a period of 6 (six) months from the date of receipt of the representation along with the particulars of the serving teachers from the Headmaster of the petitioner school.

17. The Headmaster of the petitioner school shall along with representation, now required to be filed in terms of the directions as contained hereinabove also submit a certified copy of this order before the Director of Secondary Education for taking the matter forward.

18. With above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant