

GAHC010283012023



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

Case No. : WP(C)/7593/2023

KABITA GAYAN
D/O- SRI MAHANANDA GAYAN,
VILLAGE- SUNDARIDIA,
PO- SUNDARIDIA,
DIST.- BARPETA, ASSAM- 781314.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS
BARPETA DISTRICT CIRCLE
BARPETA
ASSAM
PIN- 784509.

4:THE PRINCIPAL
FAKHRUDDIN ALI AHMED MEMORIAL SR. SECONDARY SCHOOL
BARPETA
ASSAM

Advocate for the Petitioner : MD S HOQUE

Advocate for the Respondent : SC, SEC. EDU.

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

ORDER

Date : 03.01.2024

Heard Mr. S. Hoque, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1 to 3.

Considering the nature of the order that is proposed to be passed today, notice upon respondent No. 4 is not considered necessary.

As agreed to by the learned counsels appearing for the parties; this writ petition is taken-up for disposal at the motion stage itself.

The petitioner by way of instituting this writ petition, has presented a challenge to the speaking order, dated 12.04.2022, issued by the Director, Secondary Education Department, Government of Assam, by which, her claim for provincialization of service was rejected on the ground that she did not fulfill the provisions of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, in-as-much as only 8(eight) students had appeared for the HSSLC Examination conducted by the Assam Higher Secondary Education Council in the year 2016.

The petitioner, herein, was appointed as a PG Teacher in Anthropology on 11.10.2010 at Fakhruddin Ali Ahmed Senior Secondary School, Barpeta, by its Governing Body and the petitioner is continuing in the said capacity till date.

The cases of all the teaching and non-teaching staff of Fakhruddin Ali Ahmed Senior Secondary School, Barpeta, was taken-up for consideration for provincialization of their services under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and accordingly, vide order, dated 04.02.2021, the services of the eligible teaching and non-teaching staff of the said school, came to be provincialized. However, the case of the writ petitioner was not considered for such provincialization. The petitioner being aggrieved, had approached this Court by way of instituting a writ petition being WP(c)5067/2021 and this Court, vide order, dated 30.09.2021, disposed of the said writ petition, holding that the petitioner fulfilled the requirements of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and accordingly, remanded the matter to the Director, Secondary Education Department, to arrive at a factual conclusion as to whether the petitioner was working in the school continuously and whether the subject Anthropology had more than 10(ten) students appearing in the last final examination and if the factual determination in respect of both the aforesaid aspects were in favour of the petitioner, to pass appropriate orders for provincialization of the service of the petitioner. Accordingly, the Director, Secondary Education Department, vide order, dated 12.04.2022, on consideration the case of the petitioner, arrived at a conclusion that as only 8(eight) students had appeared against the subject Anthropology in HSSLC Examination held in the year 2016, the petitioner had not fulfilled the requirements of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and as such, it was held that the service of the petitioner could not be provincialized. Hence, this writ petition.

The provision of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, being of relevance, is extracted hereinbelow:

“Section 3(1)(vii): In addition to the provision under clause (v) above, at least 10 students must have appeared in the last final examination in any subject in case of Venture High School, Venture High Madrassa, or Venture Higher Secondary School or Venture Junior College. At least 15 students in any subject must have appeared in case of Venture Degree College in the last final Examination.”

The controversy in the present case is only with regard to the meaning which can be assigned to the expression “last final examination” as appearing in the provision of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. The respondents have construed the meaning of the expression “last final examination” to be the HSSLC Final examination held in the year 2016 whereas, according to the petitioner, the expression “last final examination” refers to the HSSLC Final examination held in the year 2017.

The above issue is no longer *res-integra* in-as-much as this Court, vide order, dated 19.09.2023, passed in WP(c)730/2023 [Jachimuddin Chowdhury v. State of Assam & ors.], had considered the said issue and decided as follows:

“12. The rival contentions advanced by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined. The relevant provision of law has already been extracted above. The controversy in this case is only with regard to the meaning which can be assigned to the expression “last final Examination”. The expression used namely “last final Examination” is not qualified by any other provision which may give the Department to contend that it is the examination held in the previous year. When the statute in question is plainly worded, there is no scope to give any other meaning than the one which appears from a plain reading of the statute. Under the principles of interpretation of statute, it is the plain meaning which is required to be taken into consideration unless such plain reading does not make any reasonable construction. In the instant case, there is no dispute with regard to the fact that the examination of the Higher Secondary Examination of the year 2017 was held between February, 2017 to March, 2017 and the expression used in the statute is with regard to appearance of at least 10 students. The Department has not disputed the data produced in this case with regard to the number of students which have been projected to be 13.

13. Under those circumstances, this Court is of the opinion that denial of the benefit of provincialisation of service by giving an incorrect meaning to the provisions of law is not at all justified.”

In view of the said decision rendered by this Court in the case of Jachimuddin Chowdhury(supra), the facts in the present case, is being considered.

It is an admitted position that in the year 2016, the enrollment position of the students in the subject Anthropology in Fakhruddin Ali Ahmed Senior Secondary School, Barpeta, was 8(eight), however, it is on record that in the year 2017, the number of students appearing in the subject Anthropology in the last final examination i.e. HSSLC Final Examination of 2017, was 11(eleven) and all the 11(eleven) candidates had passed the said examination.

In that view of the matter and the meaning given to the expression "last final examination" in the case of Jachimuddin Chowdhury(supra); it is hereby held that the petitioner has fulfilled the requirements of the provisions of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and accordingly, the petitioner is eligible for provincialization of her service.

The above being the position, the speaking order, dated 12.04.2022, cannot be sustained and accordingly, it is hereby set aside.

This writ petition now stands disposed of by directing the respondent No. 2 i.e. Director, Secondary Education Department, Government of Assam, to verify the contention of the petitioner that in the HSSLC Final Examination of 2017 against the subject Anthropology; 11(eleven) students had appeared in the last final examination of 2017. In the event, on verification of the said fact, if it is found that

10(ten) or more students had appeared in the subject Anthropology in the HSSLC Final Examination of 2017 from Fakhruddin Ali Ahmed Senior Secondary School, Barpeta; the respondent No. 2 viz. Director, Secondary Education Department, Government of Assam, shall pass appropriate orders for provincialization of the service of the petitioner and such provincialization shall be effected w.e.f. 01.01.2021, as was done in respect of other teaching and non-teaching staff of Fakhruddin Ali Ahmed Senior Secondary School, Barpeta.

The exercise as required hereinabove, be initiated and completed within a period of 2(two) months from the date of receipt of a certified copy of this order.

As regards the claim for salaries for the period; the petitioner, if so advised, may file appropriate application before the competent authority which may be considered in accordance with law.

With the above directions and observations; the writ petition stands disposed of at the motion stage itself.

JUDGE

Comparing Assistant