

GAHC010294622023



2024:GAU-AS:9134

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

Case No. : WP(C)/126/2024

HAMIDA KHATUN
W/O- MOYNUL HOQUE, VILL- NAYERALGA, P.O. NAYERALGA, P.S.
BILASIPARA, DISTRICT- DHUBRI, ASSAM, PIN- 783348

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GHY-6

2:THE SECRETARY TO THE GOVT. OF ASSAM
EDUCATION DEPARTMENT
DISPUR
GHY-6

3:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE DEPUTY COMMISSIONER
DHUBRI
ASSAM
P.O.
P.S. AND DIST. DHUBRI
PIN- 783301

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
ASSAM PIN- 783301

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
BILASIPARA

DIST.- DHUBRI
ASSAM PIN- 783348

7:THE PRINCIPAL
NAYERALGA HS SCHOOL
NAYERALGA
P.O.- NAYERALGA
P.S.- BILASIPARA
DIST.- DHUBRI
ASSAM
PIN- 783348

8:THE TREASURY OFFICER
BILASIPARA
DIST.- DHUBRI
ASSAM

9:SHEIKH MEHBUB ALOM
S/O- LT. IBRAHIM ALI SHEIKH
VILL- KAJAIKATA PT. VI
P.O. KAJAIKATA
P.S. BILASIPARA
DIST.- DHUBRI
ASSAM
PIN- 78334

Advocate for the Petitioner : MR. M U MONDAL, MR A ALIM SK,R KHATUN,MR K ISLAM,MS. N NASRIN

Advocate for the Respondent : SC, ELEM. EDU, MS C MEDHI (R-9),MR. P. NAIK SC, FINANCE,MR. M A SHEIKH (R-9),GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

13-09-2024

Heard Mr. M. U. Mondal, learned counsel for the petitioner and Mr. G. Pegu, learned Government Advocate, Assam for the respondent Nos. 1 and 4. Also heard Ms. S. Chutia, learned Standing Counsel, Education (Elementary) Department for the respondent Nos. 2, 3, 5 and 6; Mr. A. Chaliha, learned Standing Counsel, Finance Department for the respondent

No.8 as well as Mr. M. A. Sheikh, learned counsel for the respondent No.9.

2) It is to be noted herein that pursuant to the Government's order No.EPD-16/Provn-UP(Act, 2017)/2021/2352 and the provisions of *the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017*, the Director of Elementary Education, Assam by an order under No.EPD-16/Provn-UP(Act.2017)/2021/2352 dated 05.02.2021 provincialised the service of the petitioner, a Teacher of Nayer Alga Girls M E Madrassa, under Bilasipara Education Block of District-Dhubri as a Tutor under the provisions of said 2017 Act and attached her with Nayer Alga Higher Secondary School.

3) The respondent No.9 also served as a teacher in said Nayer Alga Girls M E Madrassa since its venture stage. Though he is senior to the petitioner but, as his service was not provincialised under the said 2017 Act, respondent No.9 preferred a writ petition - WP(C) No. 1949/2021, wherein the present petitioner was arrayed as respondent No.7.

4) Pursuant to the orders passed in said WP(C) No. 1949/2021 that was preferred by the respondent No.9; the Director of Elementary Education, Assam by an order under No.EPDH-11/81/2021-401 dated 01.11.2021 cancelled the provincialisation of service of the petitioner as Tutor that was provincialised earlier by the said authority vide order dated 05.02.2021, noted above.

5) Aggrieved, the petitioner has preferred this writ petition.

6) Pursuant to the order of the Court passed yesterday i.e., on 12.09.2024, Ms. S. Chutia, learned Standing Counsel, Education (Elementary) Department have placed the records in original relating to File No.EPD/H/89/2022 relating to WP(C) No. 1949/2021.

7) It is seen from the records that the State Level Scrutiny Committee (SLSC) after hearing the present petitioner as well as the respondent No.9 herein and on verification of the relevant records as been placed by the SSA, Assam found that in said Nayer Alga Girls M E Madrassa while provincialising the services of its teaching staff, it provincialised two of its Language Teachers though Section 3(1)(XI) of said 2017 Act provides that —*In case of Venture Upper Primary School there shall be minimum three teachers or tutors at least one*

teacher each for (a) Science and Mathematics (b) Social Studies and (c) Languages.

8) Pursuant to the orders of the Court passed in said WP(C) No. 1949/2021, the SLSC on due verification found that the petitioner is the junior most teacher and the 2nd Language Teacher, whose service has been provincialised as Tutor as been recommended by the District Scrutiny Committee, Dhubri and as forwarded by the District Elementary Education Officer, Dhubri; whereas the respondent No.9 who was the Social Studies Teacher in the said Girls M E Madrassa, is senior to the petitioner in the said Madrassa, who has been left out from the benefit of provincialisation under the provisions of said 2017 Act.

9) As such, after hearing the petitioner as well as the respondent No.9, considering all the relevant records including the report of the SSA, Assam with DISE Code and U-DISE Code of the relevant years of the said Nayer Alga Girls M E Madrassa and in pursuance of the orders of the Court passed in said WP(C) No. 1949/2021, the Director of Elementary Education, Assam by the impugned order dated 01.11.2021 cancelled the provincialisation of service of the petitioner as Tutor issued earlier by the said authority vide order dated 05.02.2021, noted above.

10) It is also seen from the provincialisation order of the petitioner dated 05.02.2021 (Annexure-4 to this writ petition) that certain terms and conditions have been incorporated by the DEE, Assam while provincialising the service of the petitioner and in terms and condition No.5 of said provincialisation order of the petitioner, it is very specifically provided that – *“If any of the information is found incorrect or false at a later stage, the order of provincialisation shall be cancelled.”*

11) In the case in hand, after verification of relevant records, hearing both the petitioner as well as the respondent No.9, the State Level Scrutiny Committee found that though the respondent No.9, who was the Social Studies Teacher in the said Nayer Alga Girls M E Madrassa and was senior to the petitioner and eligible teacher for provincialisation as per the provisions of Section 3(1)(xi) of the said 2017 Act, yet he was left out from the benefit of provincialisation, whereas the service of the petitioner was provincialised as a Tutor, although she was appointed as a second Language Teacher in the said Madrassa.

12) Section 14 of the said 2017 Act provides for Appellate Authority wherein it is stated

that – the State Level Scrutiny Committee shall be the appellate authority against any recommendation of the District Scrutiny Committee and the State Government in the concerned administrative department shall be the Appellate Authority against any recommendation of the State Level Scrutiny Committee.

13) In the case in hand, since the State Level Scrutiny Committee pursuant to the order of the Court passed earlier in said WP(C) No. 1949/2021, after due verification of the records cancelled the provincialisation of service of the petitioner as Tutor, needless, to say that the petitioner may approach the appropriate appellate forum for consideration of her, if so advised.

14. At this stage, Mr. M. U. Mondal, learned counsel for the petitioner submitted that the petitioner has already submitted an appeal under Section 14 of the said 2017 Act on 29.11.2023 before the Secretary to the Government of Assam in the Education (Elementary) Department, i.e., the respondent No.2, which is still pending for disposal.

15. The respondent No.2, i.e., the Secretary to the Government of Assam in the Education (Elementary) Department shall dispose of the appeal of the petitioner filed by her on 29.11.2023 at an early date, preferably within a period of 4 (four) months from the date of receipt of a certified copy of this order to be submitted by the petitioner before the said authority, obtaining necessary acknowledgement. The respondent No.2, i.e., The Secretary to the Government of Assam in the Education (Elementary) Department, i.e. concerned Appellate Authority shall inform the petitioner about the outcome of her said appeal.

16. With the above observations and directions and without entering into the merit of the case, this writ petition stands disposed of.

JUDGE

Comparing Assistant