GAHC010005552026

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

Case No. : WP(C)/463/2026

ABU KHAYER SK
SO LT FULBAR ALI SK, RO VILL BISANDAI PT I, P.O-BISANDAI, P.S-GOLAKGANJ, DIST DHUBRI, ASSAM, PIN 783334

VERSUS

THE STATE OF ASSAM AND OTHRS
REPRESENTED BY THE SECRETARY TO THE GOVT OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GUWAHATI 06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 19

3:THE COMMISSIONER AND SECRETARY
GOVT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI- 06

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
PO DHUBRI
DIST DHUBRI
ASSAM
PIN 783301

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
GOLAKGANJ
PO GOLAKGANJ
DIST DHUBRI

ASSAM
PIN 78333

Advocate for the Petitioner : MR. M R KHANDAKAR, MR. A ROHMAN

Advocate for the Respondent : SC, ELEM. EDU, SC, FINANCE

– B E F O R E –

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner : Mr. M. R. Khandakar

Advocate for the respondents : Ms. N. Phukan,
S.C. Elementary Education

Date on which judgment is reserved : N/A
Date of pronouncement of judgment :15.07.2026
Whether the pronouncement is of the operative part of the judgment? : No.
Whether the full judgment has been pronounced? : Yes.

JUDGMENT AND ORDER (ORAL)

Heard Mr. M. R. Khandakar, learned counsel for the petitioner. Also heard Ms. N. Phukan, learned Standing Counsel, Elementary Education for the respondents.

2] The grievance of the petitioner is that the benefits granted by the Court by the judgment and order dated 09.05.2022 passed in WP(C) No.5702/2021, whereby the Court interfered with the provincialisation order passed in favour of the private respondent No.6 therein and a further direction was issued to the respondent authorities to consider the case of the petitioner for provincialisation

of the Language Teacher in Dakhin Bisandai M.E. School and the entire exercise was directed to be completed at the earliest and not later than 45 days from the date of certified copy of the order served on the respondent No.2. The same not being carried out within the period as directed by the Coordinate Bench the contempt petition being Contempt Petition No.431/2022 was filed. The said contempt petition came to be closed on 23.10.2025. However, the liberty was granted by the Contempt Court to agitate the order of provincialisation, if so advised.

3] In terms of the liberty granted, the present writ petition has been filed by the petitioner putting a challenge to the order dated 16.10.2025 to the extent that the provincialisation order was not granted with effect from the date of the judgment dated 09.05.2022 passed in WP(C) No.5702/2021 or at least with effect from the expiry of the period of 45 days from the date of the judgment as directed.

4] It is the submission of the learned counsel for the petitioner that pursuant to the judgment, the provincialisation of the private respondent No.6 therein came to be cancelled by order dated 17.09.2022. Therefore, it is submitted that the provincialisation of the writ petitioner ought to have been given effect to from the same date which is 17.09.2022. Failure to do so, the petitioner has deprived of the service benefits.

5] Ms. N. Phukan, learned Standing Counsel, Elementary Education submits that the petitioner's provincialisation has been given effect from the date of the order which is 16.10.2025 and there is no specific direction in the judgment and

order dated 09.05.2022 passed in WP(C) No.5702/2021 that the provincialisation must be given with retrospective effect.

6] The learned counsel for the parties have been heard and the pleadings available on record have been carefully perused.

7] The directions contained in the order dated 09.05.2022 passed in WP(C) No.5702/2021 are also perused. By the said judgment and order, this Court had allowed the writ petition with the following directions:

> "***14.*** *This Court is therefore posed with the question whether the Petitioner who is otherwise a Senior Language Teacher can be denied the benefit on the ground that the Petitioner is the Head Master of the School as there is no requirement of a Head Teacher on account of the enrollment being less than 100 in the School in question. This Court is of the opinion that the Petitioner is first a Language Teacher and by virtue of his seniority his services ought to have been provincialized. Being the Head Master of the School, the same would not disentitle the petitioner for his services from being provincialized. This opinion is based on a perusal of the provisions of the Act of 2017 as there is no embargo in a Head Master who is also a teacher and eligible to be provincialized.*
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> ***15.*** *Therefore, taking into consideration that the petitioner is the senior Language Teacher, the action of not recommending the petitioner by the District Scrutiny Committee which was approved by the State Level Scrutiny Committee on the ground that the petitioner was Head Master and as such not eligible for provincialization due to non-availability of required enrollment is on the face of illegal and arbitrary. Consequently, this Court therefore, interferes with the order of provincialization dated 05.02.2021 made in favour of the Respondent No.6 thereby setting aside the same and further directs the respondent authorities to consider the case of the petitioner for provincialization as a Language Teacher in Dakhin Bisandai M.E. School. The said exercise may be completed at the earliest and not later than 45 days from the date of certified copy of this order is served upon the Respondent No.2"*

8] Careful perusal of the directions contained therein reflects that while the Court interfered with the provincialisation of the respondent No.6 therein, there was no corresponding order passed by the Court directing provincialisation of the writ petitioner. Rather direction was issued to the respondents to consider

the case of the petitioner for provincialisation as a Language Teacher in Dakhin Bisandai M.E. School within a period not later than 45 days from the date of receipt of the certified copy of the order being served on the respondent No. 2. Reading the said directions of the Court, it is apparent that the Court did not specifically order for provincialisation of the writ petitioner in place of the respondent No. 6 therein. But the direction was issued to the respondent authority to consider the case of the petitioner for provincialisation.

9] It is submitted by the learned counsel for the petitioner that pursuant to the order, the Government had passed the order dated 17th September, 2022, cancelling the provincialisation of the respondent No. 6 and therefore, the order having been complied in part, it was duty bound to the respondent authorities to comply with the subsequent direction of the Court. However, the writ petitioner's provincialisation was effected from 16th October, 2025. Such submission of the learned counsel for the writ petitioner does not have any force and cannot be accepted inasmuch as the direction of the Court was to the respondents to consider the case of the writ petitioner for provincialisation. In so far as the respondent No.6 is concerned, the Court did not issue any direction to the respondents to pass appropriate orders cancelling the provincialisation of the respondent No. 6. Rather, the Court had interfered with the provincialisation of the respondent No. 6 by setting aside with the same. Therefore, the order dated 17th September, 2022 passed by the respondent authorities is in consequential as by virtue of the judgment and order dated 09.05.2022 passed in WP(C) No. 5702/2021, the provincialisation order in favour of respondent No. 6 had already been set aside and interfered with by the Court. The said judgment and order does not reveal that there was any

direction for retrospective provincialisation of the writ petitioner in place of respondent No. 6 therein from the date of the order cancelling the provincialisation of respondent No. 6 by the State respondents vide the order dated 17th September, 2022. Therefore, the claim of the petitioner for a direction to the respondents for retrospective provincialisation of the petitioner and consequential benefits is not found acceptable. The petitioner's case having already been considered by the respondents by granting provincialisation of the writ petitioner in terms of the direction of the Court vide order dated 09.05.2022 passed in WP(C) No.5702/2021, no further direction is called for, the writ petition therefore, being devoid of merit stands dismissed.

10] Interim order, if any, stands vacated.

11] Pending Interlocutory Application, if any, is also dismissed.

12] Needless to say, if the petitioner prefers an application seeking review of the judgment and order dated 09.05.2022 passed in WP(C) No. 5702/2021, and any consequential order is passed thereon, it shall be open to the competent authority to extend the consequential benefits to the writ petitioner in accordance with law.

JUDGE

Comparing Assistant