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

Case No. : WP(C)/2896/2021

ISAHAQUE ALI MONDAL
S/O JOYNAL ABDIN
VILLAGE BALARCHAR, PO KIRTANPARA, DIST BONGAIGAON, ASSAM
782105

VERSUS

THE STATE OF ASSAM AND 3 ORS
THROUGH THE SECRETARY TO THE GOVT. OF ASSAM, ELEMENTARY EDUCATION,DISPUR GUWAHATI 06

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GHY 19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BONGAIGAON
DISTRICT BONGAIGAON
ASSAM

4:THE DISTRICT SCRUTINY COMMITTEE
BONGAIGAON

REPRESENTED BY ITS CHAIRPERSON CUM DEPUTY COMMISSIONER
BONGAIGAON
ASSA

Advocate for the Petitioner : MR M H AHMED, MS. N SULTANA

Advocate for the Respondent : GA, ASSAM, SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

18.06.2026

Heard Mr. M.H. Ahmed, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned Standing Counsel, Elementary Education Department appearing for respondent Nos. 1 to 3 and Mr. J. U. Laskar, learned counsel for respondent No. 4.

2. Aggrieved by the non-provincialisation of the service of the petitioner as Arabic teacher in 3 No. Balarchar M.E. Madrassa, the present writ petition has been instituted seeking a direction to the respondent authorities to consider the case of the petitioner for provincialisation of his service in accordance with the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (in short, "Act of 2017").

3. The case of the petitioner, in brief, is that he was appointed as Arabic Teacher by order dated 01.02.2001 in 3 No. Balarchar M.E. Madrassa by the Managing Committee of the school. Accordingly, he joined his service on 05.02.2001 and has been serving continuously in the said school. The 3 No. Balarchar M.E. Madrassa was established by local people on 01.01.1992 and was subsequently recognized by order dated 29.12.2005 by the Director of Elementary Education, Assam in terms of the Assam Elementary Education (Provincialisation) Act, 1974.

4. The District Scrutiny Committee, Bongaigaon recommended the name of 3 No. Balarchar M.E. Madrassa for provincialisation of the school and the services of teachers and staff including the petitioner as Arabic teacher. The recommendation of the District Scrutiny Committee shows that five teachers in the subjects of

English, Social Science, Mathematics & Science, Assamese and Arabic including the petitioner were found eligible for provincialisation. Consequently, the services of three teachers in English, Social Science, and Mathematics & Science subjects have been provincialised.

5. It is the contention of the petitioner that since his name was recommended along with four other teachers, his service ought to have been provincialised in terms of the provisions of the Act of 2017 and the Right of Children to Free and Compulsory Education Act, 2009 (in short, "Act of 2009").

6. Mr. M.H. Ahmed, learned counsel for the petitioner submits that although services of three teachers have already been provincialised in Science & Mathematics, Social Science and English subjects, the proviso to Section 3(1)(xi) of the Act of 2017 provides that for additional posts, consideration shall be made in accordance with the norms and standards stipulated under Sections 19 and 25 of the Act of 2009. He submits that since 3 No. Balarchar M.E. Madrassa has enrolment of more than 100 students in the relevant subject, the authorities are duty bound to consider the provincialization of additional posts in accordance with the said norms. Therefore, prays for consideration of the petitioner for provincialization of his service as Arabic teacher.

7. Although no affidavit has been filed on behalf of the State respondents, Mr. B. Kaushik, learned Standing Counsel, Elementary Education Department submits that once three teachers in three subjects namely- Science & Mathematics, Social Science and Language are provincialised, there is no mandatory requirement for appointment of additional teachers. He submits that the proviso regarding additional posts is only enabling in nature and not mandatory. He further submits that even if additional teacher is to be considered, the same has to be in accordance with the Act of 2009. In the present case, although five teachers were

recommended by the District Scrutiny Committee, the teachers at Serial Nos. 1, 2 and 3 have already been provincialised, the petitioner, being at Serial No. 5, does not have any indefeasible right to claim provincialisation as an additional teacher. More so, there is one more teacher, whose name is recommended but not provincialized ,who is senior to the petitioner. In the event, an additional teacher is required to be appointed, the first preference would be given to the senior whose name has been recommended at Serial No.4, whereas, the petitioner is at Serial No.5 of the recommendation of the District Scrutiny Committee.

8. I have considered the submissions made by learned counsel for the parties and perused the materials available on record.

9. In view of Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 having been declared unconstitutional, the State Legislature enacted the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 for provincialisation of services of teachers and tutors of Venture Educational Institutions and for re-organization of educational institutions in the State. The claim of the petitioner, therefore, is required to be examined in the light of the provisions of the Act of 2017.

10. Section 3(1)(xi) of the Act of 2017 provides that in case of Venture Upper Primary School there shall be a minimum of three teachers or tutors, at least one each for (a) Science and Mathematics, (b) Social Studies, and (c) Languages, with a proviso that for additional posts, consideration shall be made in accordance with the norms and standards stipulated under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009.

11. Section 3(1)(xi) of the Assam Education Provincialization Act, 2017 is reproduced herein below:-

> "*3. Eligibility criteria for selection of educational institution for*

provincialisation of services of teachers/tutors:- (1) Subject to the provisions of Article 30 of the Constitution of India, the following categories of Venture Educational Institutions shall be eligible for being considered for provincialisation of the services of their teachers and tutors:-

(i) ……..

…….(xi) 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: Provided that for additional posts it shall be considered in accordance with the norms and standard stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009)"

12. Bare perusal of the above provisions shows that for a Venture Upper Primary School there shall be a minimum of three teachers or tutors at least one teacher each for Science and Mathematics, Social Studies and Languages and for additional posts it shall be considered in accordance with the norms and standards stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009. Thus, it is clear that for each Venture Upper Primary School there shall be minimum three teachers or tutors at least one teacher each for Science & Mathematics, Social Studies and Languages. On consideration of the above provision, it is seen that there may a scope for additional teachers. However, such additional posts shall be considered in accordance with the norms and standard as per the Right of Children to Free and Compulsory Education Act, 2009.

13. In the present case, it is not in dispute that three teachers corresponding to the three subjects have already been provincialised whose names appeared at Serial Nos. 1, 2 and 3 of the recommendation list. The petitioner is placed at Serial No. 5, and one teacher at Serial No. 4 is admittedly senior to the petitioner.

14. Although the institution shows higher enrolment and there may be scope for

consideration of additional teacher(s) under the Act of 2009, the same does not confer any enforceable right upon the petitioner to claim provincialisation as an additional teacher. The decision to create or appoint additional posts lies within the domain of the respondent authorities depending upon requirement and applicability of norms.

15. Having considered that the services of 3 (Three) teachers have been provincialized including one Language Teacher, I am of the view that ordinarily, the petitioner may not have an enforceable right to claim provincialization of his service as Language Teacher. However, the proviso to Section 3(1)(xi) of the Assam Education Provincialization Act, 2017, provides for a scope of additional post, in addition to a minimum three teachers or tutors at least one teacher each for each of the subjects and out of the three subjects including the languages, the respondent authorities may reconsider the case of the petitioner, as the provisions provides for a scope to provincialized additional teachers as per the standards stipulated in the schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009, as it appears that no consideration has been made in that direction.

16. Thus, this Court is of the considered opinion that the respondent authorities may reconsider the case of the petitioner in the light of the provisions contained in Section 3(1)(xi) of the Assam Education Provincialization Act, 2017, particularly with regard to the scope for provincialization of additional teachers in accordance with the prescribed norms and standards, as it appears that no consideration has been made in that regard.

17. In view of what has been discussed herein above, I am of the considered view that the petitioner would not have any indefeasible right to claim for provincialization of service as Arabic teacher in terms of the Provision of Section 3(1)(xi) of the Act of 2017 as such, as the respondent authorities have already provincialized the services of three teachers in

three subjects whose name appeared at Serial No. 1, 2 and 3, nevertheless, the authorities may consider the case of the petitioner strictly in accordance with the provision of Section 31(xi) of the Act of 2017 as there may be scope to appoint additional teachers/tutor under Section 3(1)(xi) of the Act of 2017.

18. Writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant