GAHC010174202020

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

Case No. : WP(C)/5303/2020

NIVA KAKATI
W/O SRI GIRISH BARAUH
RESIDENT OF PATHALI PAHAR, PO PATHALI PAHAR, PS BIHPURIA,
DIST LAKHIMPUR, ASSAM. 786148

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
F ASSAM, EDUCATION (SECONDARY) DEPARTMENT, DISPUR , GUWAHATI
6

2:THE DIRECTOR
SECONDARY EDUCATION ASSAM
KAHILIPARA
GUWAHATI 19

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE
REPRESENTED BY THE DEPUTY COMMISSIONER
LAKHIMPUR
ASSAM

4:THE INSPECTOR OF SCHOOLS
NORTH LAKHIMPUR
DIST LAKHIMPUR
ASSAM

5:THE SCHOOL MANAGING COMMITTEE
REPRESENTED BY THE PRESIDENT
THE DIKRONG CHAPORI HIGH SCHOOL
PATHALI PAHAR
LAKHIMPUR

PO PATHALI PAHAR
DIST LAKHIMPUR
ASSAM

6:SRI KIRITI PHUKAN CUM SECRETARY
THE HEADMASTER
THE DIKRONG CHAPORI HIGH SCHOOL
PATHALI PAHAR
LAKHIMPUR
PO PATHALI PAHAR
DIST LAKHIMPUR
ASSAM

7:SMTI SUM SUM HAZARIKA
W/O SRI KIRITI PHUKAN
RESIDENT OF MOTIA CHAMUA GAON

PO PATHALI PAHAR
PS BIHPURIA
PS BIHPURIA
DIST LAKHIMPUR
ASSA

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 16-12-2020

Heard Mr. PJ Saikia, learned counsel for the petitioner. Also heard Mr. R Majumdar, learned counsel for the Secondary Education Department, Assam.

2. Considering the nature of the order proposed to be passed, we deem it appropriate that notices to respondents No.5, 6 and 7 are not required for the present.

3. The petitioner is working as an Assistant Teacher (Arts) in the Dikrong Chapori High School,

Pathali Pahar under Lakhimpur district. Since her appointment by the Managing Committee on 10.03.2009, the teaching staff of the school are being subjected to a process for provincialisation under the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (for short, Act of 2017).

4. The petitioner was aggrieved to the extent that the District Level Scrutiny Committee (for short, the DLSC) had not forwarded the name of the petitioner before the appropriate authority for a consideration of her provincialisation. In the circumstance, an appeal was preferred by the petitioner under Section 14 of the Act of 2017.

5. The grievance of the petitioner is that the provincialisation process may be completed at an early date, but the appeal of the petitioner has not been given a consideration till date.

6. Mr. R Majumdar, learned counsel for the Secondary Education Department has pointed out that the appeal preferred by the petitioner is maintainable before the State Level Scrutiny Committee or the Government which has to be understood to be the Commissioner and Secretary to the Government of Assam in the Secondary Education Department. But in the instant case, the appeal was directed to be placed by the petitioner before the Director of Secondary Education, Assam.

7. We have perused the appeal preferred by the petitioner which is annexed as Annexure-8 to the writ petition, which infact indicates that it was addressed to the Director of Secondary Education, Assam. In the aforesaid circumstance, we direct the Director of Secondary Education, Assam to transmit the appeal filed by the petitioner before the appropriate authority i.e. either before the State Level Scrutiny Committee or the Government meaning thereby before the Commissioner and Secretary to the Government of Assam in the Secondary Education Department for doing the needful while entertaining an appeal under Section 14 of the Act of 2017.

8. The Director shall forthwith transmit the appeal before the appropriate authority as indicated above and the appellate authority shall give a consideration to the same within a period of 1(one) month thereof and any decision that may be taken by the appellate authority be communicated to the

petitioner.

9. The claim for provincialisation of the petitioner shall be subject to the outcome of the appeal and for the purpose the respondent authorities may act in any manner to ensure that in the event the appeal goes in favour of the petitioner, appropriate order for provincialisation can be passed in favour of the petitioner.

10. In any event, the respondents are precluded from taking the stand that in the meantime, the process for provincialisation is over and, therefore, the services of the petitioner cannot be provincialised, even if the appeal goes in her favour and for the purpose the respondent may do the needful.

11. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant