GAHC010188742020

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

Case No. : WP(C)/5643/2020

RINA PARBIN AND ANR
D/O- MIR GUL MAZAHAR, W/O- JAMIRUL ISLAM, VILL- GUABARI, P.O. FAKIRAGRAM, P.S. FAKIRAMRAM, DIST.- KOKRAJHAR, BTAD, ASSAM, PIN- 783345

2: RUSHDI MUSHAHIDA
D/O- LT. MOMTAZ UDDIN AHMED
W/O- ROFIQUL ISLAM
VILL- GUABARI
P.O. FAKIRAGRAM
P.S. FAKIRAGRAM
DIST.- KOKRAJHAR
BTAD
ASSAM
PIN- 78334

VERSUS

THE STATE OF ASSAM AND 10 ORS
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR, GHY-06

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (ELEMENTARY) DEPTT.
DISPUR
GHY-06

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE CHAIRMAN
STATE LEVEL SCRUTINY COMMITTEE
REP. BY THE COMM. AND SECY. TO GOVT. OF ASSAM

EDUCATION (ELEMENTARY) DEPTT.
DISPUR
GHY-06

5:THE MEMBER SECRETARY
STATE LEVEL SCRUTINY COMMITTEE
ASSAM
DISPUR
GHY-06

6:THE CHAIRMEN
DISTRICT LEVEL SCRUTINY COMMITTEE REP. BY THE DY. COMMISSIONER
KOKRAJHAR
BTAD
ASSAM
PIN- 783337

7:THE MEMBER SECRETARY
DISTRICT LEVEL SCRUTINY COMMITTEE REP. BY THE DISTRICT ELEMENTARY EDUCATION OFFICER
KOKRAJHAR
BTAD
ASSAM
PIN- 783337

8:THE PRINCIPAL SECRETARY
BTAD
KOKRAJHAR
BTAD
ASSAM
PIN- 783337

9:THE SECRETARY OF BTC
EDUCATION DEPTT.
KOKRAJHAR
BTAD
ASSAM
PIN- 783337

10:THE DIRECTOR ELEMENTARY
BTAD
KOKRAJHAR
BTAD
ASSAM
PIN- 783337

11:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM

FINANCE DEPTT.
DISPUR
GHY-0

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 21-12-2020

Heard Mr. I.H. Khan, learned senior counsel for the petitioners. Also heard Ms. N. Phukan, learned counsel for the Elementary Education Department, Mr. S.R. Barua, learned counsel for the respondents No.1, & 5 as well as Mr. B. Choudhury, learned counsel appearing for the respondents No.6, 7, 8, 9 and 10 and Mr. A. Chaliha, learned counsel for the respondent Finance Department.

2. The petitioners who were working in Goabari VLP School in the district of Kokrajhar is aggrieved to the extent that although the district level scrutiny committee had made a recommendation in their favour for provincialisation of their services under the Assam Education (Provincialisation of Services of Teachers & Re-organization of Educational Institution) Act, 2017 (in short Act of 2017) but while the said recommendation was forwarded to the Director of Elementary Education, it was not acted upon on the ground that earlier in the year 2013, the claim of the petitioners for provincialisation under the Assam Venture Education Institutions (Provincialisatlion of Services) Act, 2011 (in short Act of 2011) was refused.

3. Being aggrieved, the petitioners have filed an appeal under Section 14 of the Act of 2017 before the Commissioner & Secretary to the Govt. of Assam in the Elementary Education Department which is dated 09.12.2020.

4. The apprehension of the petitioners is that as the process of provincialisaltion is in the final stage, their cases would again left out if the appeal is not given a consideration within a specific time.

5. As regards the other aspect not to provincialise the service of the petitioners as the earlier it was not done so under the Act of 2011, we require the Commissioner & Secretary to the Govt. of Assam to specifically look into the question as to whether the earlier refusal or non provincialisation can be a

ground not to provincialise under the Act of 2017.

6. A plain reading of the Act of 2017 does not indicate any such provision which debars a person who was earlier not provincialise under the Act of 2011.

7. In any view of the matter, the Commissioner & Secretary to give a final consideration to the appeal dated 09.12.2020 within a period of 15 days from the date of receipt of the certified copy of the order and in the event, the appellate order goes in favour of the petitioners, the petitioners be not deprived of any benefit of provincialisation merely because the process may have been complete in the meantime.

Writ petition stands disposed of.

JUDGE

Comparing Assistant