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

Case No. : WP(C)/2830/2025

HAREN KHOUND
S/O- LATE JATIN KHOUND, VILL- VERAKI, PO AND PS- PANIGAON, DIST- LAKHIMPUR ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REP BY COMM AND SECY TO THE GOVT OF ASSAM, ELEMENTARY EDU DEPTT, DISPUR, GHY- 06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA GUWAHATI 19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
LAKHIMPUR
NORTH LAKHIMPUR ASSAM

4:THE DEPUTY INSPECTOR OF SCHOOLS LAKHIMPUR
NORTH LAKHIMPUR

5:THE DISTRICT COMMISSIONER
LAKHIMPUR
NORTH LAKHIMPUR

6:THE HEAD MASTER OF ALICHIGA KHABALI JANAJATI M E SCHOOL
VILL ALICHIGA KHABALI PO KUHIARBARI PS PANIGAON DIST LAKHIMPUR ASSAM

7:MOHARI PEGU
S/O H PEGU VILL BORBOBI MAHARI CHUK PO KUHIYABARI PS PANIGAON DIST LAKHIMPUR ASSA

Advocate for the Petitioner : MR MINTU SAIKIA, MR J FIRDAUS,MS R DUTTA

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

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

17.11.2026

Heard Mr. M. Saikia learned counsel for the petitioner. Also heard Mr. P. K. Bora learned Standing Counsel for the Respondents.

2. Notices have been issued in the matter as far back as on 04.08.2025. Office note reflects that the service is complete to the Respondents. The State Respondents is represented by the learned Standing Counsel. Inspite of opportunities being granted, the Respondents have failed to file their response by way of any affidavit. By earlier order dated 05.10.2016, the Department of Elementary Education was granted 2 (two) weeks time to file their affidavit, and failing of which the Court will proceed to hear the matter on the basis of the pleadings available on record.

3. Today, when the matter is called up, Mr. P. K. Borah, learned Standing Counsel, Elementary Education renews his prayer for further time to file the affidavit.

4. In view of the order passed earlier on 05.10.2026, the prayer of the Respondent counsel stands rejected and the Court proceeds to hear the matter

on the basis of the pleading available on record.

5. This writ petition is filed by the petitioner challenging the rejection of the petitioner's prayer for provincialisation vide order dated 22.05.2023. The facts projected before this Court is that the petitioner was appointed as an Assistant Teacher in Alichiga Khabali Janajati M.E. School in village Alichiga Khabali, P.O.: Kuhiarbari, P.S.: Panigaon, District: Lakhimpur. The petitioner was appointed by the Managing Committee vide Resolution No. 2 dated 23.02.2003. The said school was established by the local residence of the area on 25.12.1982. Since the date of the appointment of the petitioner, he had been regularly discharging his duties. In the inspection undertaken by the Block Elementary Education Officer (BEEO), Nowboicha, Lakhimpur, petitioner's name appeared at Serial No. 6 and he is shown to be posted as the Assistant Teacher in the Inspection Report submitted by the BEEO, Nowboicha, Lakhimpur. Because of the absence of the Private Respondent No. 7, who was also appointed as an Assistant Teacher in the said school, for the period August 2006 to March 2007, the petitioner's name appeared in the Attendance Register as the 2nd Assistant Teacher. However, the Headmaster of the Alichiga Khabali Janajati M.E. School submitted a proforma list of teachers before the Block Elementary Education Officer, wherein the name of the petitioner was shown at Serial No. 3, whereas the name of the Respondent No. 7 was shown at Serial No. 2.

6. At the relevant point in time, under the provisions of the Assam Venture Educational Institution (Provincialization of Services) Act, 2011, and as per circular issued by the Education Department, Government of Assam, Headmaster of Venture Schools, which were established before the year 2000

were required to submit atleast names of 5 (five) teachers as per seniority and 1 (one) Grade-IV staff for the purposes of provincialization of the Schools under the said Act. In response to that the Headmaster of the Alichiga Khabali Janajati M.E. School prepared a proforma list of the teachers, showing the date of establishment of the school as far back as 25.12.1982, and in the list of teachers that was submitted, the petitioner's name was shown as the 2nd Assistant Teacher in the School. However, in the list of teachers, which was submitted to the District Elementary Education Officer (DEEO), the name of the petitioner stood excluded.

7. Having noticed the exclusion of his name, the petitioner filed representations before the Director of Elementary Education, who in turn directed the District Elementary Education Officer (DEEO) to submit a report. Thereafter, the District Elementary Education Officer (DEEO) instructed the Block Elementary Education Officer (BEEO) to cause an enquiry and submit a report. The BEEO thereafter submitted an enquiry report dated 19.02.2013. In terms of the said enquiry report it was stated that the petitioner had signed in the Teacher's Attendance Register for the year 2006 as the 2nd Assistant Teacher, and from January 2007, he had signed as the 3rd Assistant Teacher of the school, and in the year 2009, he had signed as the 4th Assistant Teacher of the School. Although, the name of the Respondent No. 7 did not appeared in the Teacher's Attendance Register of the year 2006, but for the year 2007, he was allowed to sign as Assistant Teacher. However, despite the report being submitted by the BEEO, although the Alichiga Khabali Janajati M.E. School was provincialized on 05.03.2013, the name of the petitioner was excluded.

8. Being aggrieved, he had approached the High Court by filing WP(C) No. 2054/2013. This Court, vide order dated 04.08.2014 disposed of the writ petition on consent, directing the Director of Elementary Education to cause an enquiry by the Appointed Committee(s) as per the provisions of the Act of 2011 and the notification dated 30.01.2013 towards resolving the disputes raised in the writ petition. Opportunity of being heard was directed to be provided to the parties involved, and accordingly the writ petition stood disposed of.

9. According to the writ petitioner, it may be mentioned here that by order dated 11.04.2013, at the time of issuance of notice, this Court had directed that provincialisation benefits to Respondent No. 7 should not be granted on the strength of the impugned notification. The petitioner approached this Court for a second time by filing WP(C) No. 4510/2015, seeking for a direction to appoint him against the vacant post of the 2nd teacher, which according to the petitioner was already kept vacant by virtue of the order passed earlier dated 11.04.2013 in WP(C) No. 2054/2013. However, subsequently the said writ petition came to be withdrawn by order dated 03.02.2023, permitting the writ petitioner to approach the appropriate forum with an appropriate petition. Pursuant to the withdrawal of the writ petition, the petitioner submitted representation before the Director of Elementary Education, Assam as also to the Secretary of the Education Department, Government of Assam. This representation thereafter came to be rejected by the impugned order dated 22.05.2023. This impugned order was again challenged by filing WP(C) No. 5378/2023, which again came to be withdrawn by order dated 28.02.2025, permitting the petitioner to withdraw the writ petition with liberty to approach this Court by filing appropriate petition.

10. The submission of the learned counsel for the petitioner is that under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act of 2011, petitioner's case ought to have been put up for provincialisation by the concerned Headmaster and consider his case for provincialisation in view of the findings by the BEEO's enquiry report dated 19.02.2013 that petitioner was in regular service of the school and had been signed as the 2nd, 3rd and 4th teacher at different points in time. The learned counsel for the petitioner therefore submits that this clearly establishes that the petitioner was in continuous service at the time when the school was provincialised, and under the Scheme of the Act of 2014, there were 4 (four) Assistant Teachers who were required to be provincialised by the School and if that be so, the writ petitioner's name ought to have been considered by the appropriate Authority.

11. Thereafter, in term of the order passed by the Court, vide order dated 04.08.2014, in a writ petition filed by the petitioner being WP(C) No. 2054/2013, the Respondent Authorities were directed to cause an enquiry by the Appointed Committee(s) as per the provisions of the Act of 2011 and the notification dated 30.01.2013 towards resolving the dispute raised by the petitioner. However, that was not processed or carried out by the Respondent Authorities. In the meanwhile, the Act of 2011 came to be struck down as being unconstitutional vide judgment and order dated 23.09.2016 passed in WP(C) No. 5825/2012 and other connected cases, by the Division Bench of this Court. Subsequent thereto, a Review Petition was preferred by the State. In Review Petition No. 167/2016, wherein by order dated 02.01.2017, the Division Bench of this Court held that the rights of the employees who have been benefited under the struck down

statute can be taken care of by giving retrospective effect to the proposed legislation, if the legislature so desires, and till such time the services of the provincialised category and their status as Government employees shall not be disturbed, and they be continue to receive of benefits, which they were getting under the provincialisation Act of 2011, and which was struck down and the Review Petition was closed. The State of Assam thereafter enacted the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017.

12. The case projected before this Court by the petitioner is that in view of the protection granted by the Review Court, by order dated 02.01.2017, the petitioner had accrue a right to be considered for provincialisation by the State under the Act of 2011. That not been done, the Respondents are liable to be directed to consider the claim of the petitioner, more particularly considering the fact that under initial order passed by the Court on 11.04.2013 in WP(C) No. 2054/2013, the respondents were directed to not grant the benefit of provincialisation to the Private Respondent No. 7 herein, and as a consequence thereof one of the post of Assistant teacher was not filled up.

13. The learned counsel for the respondents submit orally that the impugned order is an order passed by the Respondent Authority upon due enquiries made. The Court has given due considerations to the submissions made as also the averments made in the pleadings available on record. As per the impugned decisions, under the erstwhile Act of 2011, which was struck down by the High Court on 23.09.2016, passed in WP(C) No. 5825/2012 and other connected matters, there was provision for 3 (three) teachers to be provincialised

considering the enrolment position of the students. However, insofar as the Alichiga Khabali Janajati M.E. School is concerned under the Lakhimpur District, already 4 (four) number of teachers have already been provincialised. Under such circumstances, the claim of the writ petitioner stood rejected.

14. The projection sought to be made by the petitioner that in view of the petitioner's case being under consideration at the time when the Act of 2011 was struck down and a subsequent Act being notified read with the protection given by the Division Bench of this Court by order dated 02.01.2017, passed in Review Petition No. 167/2016, the case of the petitioner ought to have been considered for provincialisation under the Act of 2011. This argument made by the petitioner is absolutely unacceptable inasmuch as the petitioner's claim was duly found to be considered by the Respondents and in view of the Act of 2011 being struck down as unconstitutional, the case of the petitioner will now have to be considered under the existing enactment of the Act of 2017. However, even under the new Act of 2017, depending on the number of teachers to be provincialised is 3 (three) and the petitioner has not been able to place any material before the Court to show that any directions warranted from this Court to the Respondent authorities to provincialise the services of the writ petitioner in place of the Private Respondent No. 7.

15. Although the petitioner had approached this Court earlier by the writ petition filed before this Court, there is no judicial finding that the provincialisation of Private Respondent No. 7 was contrary to law and that the writ petitioner ought to have been provincialised in place of Private Respondent No. 7. The first writ petition came to be disposed of with a direction to the State

Authority to place the matter before the concerned Committee. As the claims of the petitioner were not decided by this Court and no discussion is apparent in the order passed by this Court, the prayer of the petitioner will be deemed to have been rejected by this Court. The petitioner accepted the order passed by this Court. No appeal was filed by the petitioner against such as order.

16. The subsequent two writ petitions thereafter came to be withdrawn by the petitioner, and no judicial finding was arrived at by the Court. The petitioner has not been able to satisfy the Court that there was any right, which had accrue to the petitioner under the erstwhile Act of 2011 and which is required to be made available to the petitioner under the subsequent enactment of 2017. It is not a case that the petitioner has not been able to place any material to show that his case was duly recommended for being provincialised by the Appropriate Authority.

17. Under such circumstances, as there is no merit in the writ petition, the same therefore stands dismissed.

18. No order as to cost.

19. Interim order(s), if any, stands vacated.

20. Pending I.A.(s), if any, are also dismissed.

JUDGE

Comparing Assistant