GAHC010268952023

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

Case No. : WP(C)/6951/2023

PRAFULLA KALITA
S/O SRI CHENIRAM KALITA, R/O VILL-MOHIMABORI, P.O.-MOHIMABORI, BLOCK-TITABOR, DIST-JORHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY DEPARTMENT OF SCHOOL EDUCATION, GOVT. OF ASSAM, DISPUR, GHY-06

2:THE STATE LEVEL SCRUTINY COMMITTEE
REPRESENTED BY THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GHY-19
KAMRUP (M)
ASSAM

3:THE DISTRICT SCRUTINY COMMITTEE
JORHAT DISTRICT
REPRESENTED BY DEPUTY COMMISSIONER
JORHAT DISTRICT

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
JORHAT DISTRICT
ASSAM

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
TITABOR BLOCK
JORHAT DISTRICT

6:SURYA BORTHAKUR
HEAD MASTER OF SONARAM SARMA BALYA BIDYAPITH ME SCHOOL

R/O VILL-MOHIMABORI
BLOCK- TITABOR
DIST-JORHAT
ASSA

Advocate for the petitioner ; Mr. B.K Das

Advocate for the respondent(s) : Mr. P.N Sharma, SC
Ms. D.D Barman, R/No. 3
Mr. Deba Sarmah, R/No. 6

Date on which judgment is reserved. : **02.02.2026**

Date of pronouncement of Judgment. : **23.02.2026**

Whether the pronouncement is of the operative part of the judgment? : NA

Whether the full judgment has been pronounced? : Yes

BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

JUDGMENT & ORDER (CAV)

Date : 23-02-2026

Heard Mr. B.K Das, learned counsel appearing for the petitioner. Also heard Mr. P.N Sharma, learned Standing counsel, Department of School Education, Ms. D.D Barman, learned counsel for the respondent No.3 and Mr. Deba Sarmah, learned counsel appearing for the respondent No. 6.

2. This petition has been filed by the petitioner being aggrieved by the

fact that his case for provincialisation has been rejected by the order dated 07.11.2023 by the Secretary to the Government of Assam, Department of School Education. The petitioner and the respondent No. 6 are teachers in Sonaram Sarma Balya Bidyapith School in Jorhat district. The petitioner was appointed on 01.01.1995 whereas the respondent number 6 came to be appointed on 06.05.2002. When the petitioner was superseded by respondent No. 6 during consideration for provincialisation, the petitioner had approached this Court by filing WP(C) No. 2203 of 2025.

2(a). Pertinent to mention here that the respondent No. 6 came to be provincialised by the order dated 5th of February 2021 under the provisions of the Assam Education (Provincialisation of Services of Teachers & Re-organization of Educational Institutes) Act 2017.

3. The case of the petitioner is that as per the data capture format report signed by the respondent No. 6 himself, the petitioner was shown to have been appointed in the year 01.01.1995 and the respondent No. 6 had been allowed to join as the headmaster of the school on 06.05.2002. The case of the employees of the school having been taken up for consideration for provincialisation, the recommendation from the Director of Secondary Education was made in favour of respondent No. 6 to be provincialised as a tutor. This recommendation was given effect by the order dated 05.02.2021.

4. WP(C) No. 2203/2021 filed by the petitioner herein was disposed of on 31.08.2022 requiring the petitioner to file an appeal as provided for under section 14 of the Act of 2017. The petitioner having done so, the appeal was considered by the department of school education holding that since the District Scrutiny Committee, Jorhat did not recommend the name of the petitioner for provincialisation of service, therefore the petitioner could not be recommended

for provincialisation under the Act of 2017. Accordingly, the claim of the petitioner for provincialisation was rejected. The provincialisation of the respondent No. 6 as Tutor and the rejection of the case of the petitioner are the bone of contention in this writ petition.

5. It is the case of the petitioner herein that the petitioner being the senior most language teacher and the respond number six, having being appointed as headmaster and who was teaching English as a language teacher, the consideration of the respondent No. 6 is not in accordance with law and therefore the same needs interference of this Court.

6. It is the case of the respondent No.6 that having been appointed in the school, since at that point of time, the school did not have a qualified headmaster. Therefore, since he was the first qualified person to be appointed in the school, he had a better stake for consideration of provincialisation. The respondent No.6 does not dispute the seniority position of the petitioner above him on the basis of the date of joining in the school, but has relied upon the minutes of the District Scrutiny Committee, Jorhat to emphasize that since the DSC had resolved to forward the names of the serving Headmasters as social science teachers, his name has been recommended and thereafter his services were provinciallised.

7. The undisputed facts in the present writ petition are that the petitioner had joined the services of the school on 01.01.1995, whereas the respondent No. 6 had joined the school on 06.05.2002. As recorded in the order dated 07.11.2023, which is impugned in the writ petition, the District Scrutiny Committee had admittedly forwarded the name of the respondent No. 6 to the higher authorities for consideration for provincialisation by considering the respondent No.6 as an English Teacher. Two other teachers were considered as

Maths & Science and Hindi teacher respectively. There is also a observation to the effect that the District Scrutiny Committee had decided to recommend the Head Master as Social Science teachers. Thus, the name of the petitioner was not recommended by the District Scrutiny Committee and therefore, by the order under challenge, the claim of the petitioner came to be rejected.

8. In **Abu Khayer S.K.** -Versus- **The State Of Assam**, in WP(C) No. 5702 of 2021 (Decided On : 09-05-2022), this Court had held thus:

> " *12. This Court further would like to deal as regards the entitlement of the petitioner vis-a-vis the respondent No. 6. It is an admitted fact even from materials which have been placed by the Respondent No. 6 that the petitioner joined his service on 01.01.1986 and taught English Language whereas the Respondent No. 6 joined on 01.04.2010 and taught Assamese Language. In terms with Section 19 of the Right of Children to Free and Compulsory Education Act, 2009, no school shall be established, or recognized, under Section 18 unless it fulfils the norms and standards specified in the Schedule. A perusal of the said Schedule to the said Act of 2009 would show that for Class VI to Class VIII, there should be at least one teacher per class so that there shall be at least 1 (one) teacher each for (i) Science and Mathematics, (ii) Social Studies and (iii) Languages. From the definition of Section 2(za) which is Venture M.E. School and Section 2(zc) which defines Venture Upper Primary School, these schools impart education from Class VI to Class VIII and would come within the ambit of 1(b) of the Schedule to the Act of 2009.*
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> *13. Section 3(1)(xi) of the Act of 2017, stipulates that in case of Venture Upper Primary School there shall be minimum 3 (three) Teachers or Tutors, at least 1 (one) teacher each for (a) Science and Mathematics, (b) Social Studies and (c) Languages. The proviso to Section 3(1)(xi) stipulates that for additional post, which shall be considered in accordance with the norms and standards stipulated in the Schedule under Sections 19 and 25 of the Act of 2009. At this stage, a further look of Serial No. 1(b) of the Schedule to the Act of 2009, it would transpire from Clause (3) of Serial No. 1(b) that when the number of children for admission is above 100, there shall be a full time Head Teacher as well as part time instructors for (A) Art Education; (B) Health and Physical Education and (C) Work Education.*
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> *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.

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."

9. Thus this Court has held that a senior language teacher would have the first opportunity to be considered for provincialisation.

10. Again in the case of **Md. Abul Hasen** -Versus- **The State of Assam** in WP(C) No. 4881, WP(C) No. 4564 of 2023 (Decided On : 01-08-2024), this Court had held as follows;

"*46. The date of joining of the petitioner as well as the respondent no. 9 in WP(C)/4564/2023 in the school, as reckoned by the Director of Elementary Education, Assam, for determining their inter-se seniority in the order dated 26.06.2023 as well the dates so recorded in the statement of service particulars submitted by the petitioner, herein as the Headmaster of the school, is disputed by the petitioner to the extent that his date of joining has to be so reckoned on 16.03.1993 and that of the respondent no. 9, on 14.01.1993, respectively.*

47. Ignoring the other contentions so raised, even reckoning the date of joining of the petitioner and the respondent no. 9, as contended by the petitioner i.e., 16.03.1993 and 14.01.1993 respectively, it has to (be) so held that it is the respondent no. 9, who would be senior to the petitioner, herein; and accordingly, it is the respondent no. 9 who would be entitled to have his services provincialised in the said school against

the post of Language Teacher."

11. Thus, in view of the position settled by this Court, the senior most language teacher would stake a first claim for being considered for provincialisation. This Court has noted that the respondents has not filed any affidavit in opposition and the District Scrutiny Committee has also not given any reason for rejecting the case of the petitioner for recommendation for provincialisation. Admittedly a resolution was adopted at the District Scrutiny level to recommend Head Master as Social Science teacher, however, the respondent No. 6 was admittedly as an English teacher and not a Social Science teacher. The same is also reflected in the order dated 07.11.2023. The order dated 07.11.2023 does not reflect that the appellate authority had considered the projected seniority of the petitioner vis-à-vis the respondent No. 6 and the only reason given for rejecting the appeal of the petitioner is stated that since it was observed that the DSC Jorhat did not recommend the name of the petitioner for provincialisation, hence the petitioner could not be recommended for provincialisation. No reasons have been recorded as to why the DSC Jorhat has not recommended the name of the petitioner. The order dated 07.11.2023 does not reflect any reason for rejecting the case of the petitioner by the DSC, Jorhat. No reasons have been given why as to the respondent No.6 had been given the benefit of provincialisation as a tutor when he was admittedly a junior language teacher (English). The order dated 07.11.2023 does not discuss the legality or otherwise of the suo moto decision of the DSC, Jorhat to recommend all Headmasters as "Social Science teachers". Such umbrella decisions, naturally, would affect Social Science teacher who were senior to the Headmaster.

12. Thus, in the opinion of this Court, the order dated 07.11.2023 is devoid of any reason cogent to the issue raised by the petitioner and thus, deserves an interference at the hands of this Court. The order dated 07.11.2023 is

accordingly set aside and quashed.

13. The respondent No.6 is admittedly junior in service to the petitioner and therefore, in view of the law settled by this Court, the respondent No.6 could not have been preferred over and above the petitioner during recommendations being made by the DSC, Jorhat. It is also not the case of the respondent No.6 that he was a language teacher in the school. In the affidavit in opposition, the respondent No. 6 has referred to himself as the Headmaster of the School as well as the "Subject teacher" of the said school. The documents annexed to the writ petition and also to the affidavit-in-opposition do not indicate the respondent No.6 to be senior than the petitioner. In such circumstances, there is no reason before this Court to justify the recommendation for provincialisation in favor of the respondent No.6 to the exclusion and detriment of the petitioner. Thus, this recommendation of the DSC, Jorhat being devoid of reasons, is declared non-est in law and all consequential action of the said illegal order including the order dated 05.02.2021, does not stand the scrutiny of law and is accordingly set aside.

14. The respondent No.6, in his attempt to resist the case put up by the petitioner, had referred to the eligibility of another teacher, namely Jibon Jyoti Kakoty, who is not a party to this litigation. No litigation initiated by said Jibon Jyoti Kakoty is brought to the notice of this Court. The assertion of the petitioner, that no other teacher except the respondent No.6 had been provincialised, remained un-rebutted. The controversy is between the petitioner and the respondent No.6.

15. The District Scrutiny Committee shall now take up the case of the petitioner for recommendation for provincialisation, and in case the petitioner is found eligible in all other aspects, he shall be considered as senior language

teacher *vis-à-vis* the respondent No.6, in the event the respondent No.6 is also considered for provincialisation as a language teacher. This order shall not preempt the respondent No.6 for being considered for provincialisation as per his eligibility and seniority in accordance with law. In the event, the petitioner is found eligible for provincialisation, the consequential steps leading up to the issuance of the appropriate order by the Director of Elementary Education, Assam in accordance with the provisions of the relevant Act of 2017 shall be completed within a period of 6(six) months from the date of receipt of a certified copy of this order. In case the petitioner is not found eligible, the petitioner shall be informed about the same within a period of 3(three) months from the date of receipt of a certified copy of this order.

16. The respondent authorities shall take note that this Court has observed that despite liberty and opportunity being granted by the order dated 28.01.2026, the records on the basis of which the order dated 07.11.2023 had been passed were not produced before the Court. Rather, a communication dated 20.03.2025 issued by the District Elementary Education Officer, Jorhat with regard to the WP(C) No. 4152/2021 and WP(C) No. 6980/2022 had been placed before the Court.

17. This writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant