

GAHC010002092023



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

Case No. : WP(C)/137/2023

AYESHA BEGUM
W/O- MOHI UDDIN,
VILL- SAGARPAR,
P.O- CHATAL, P.S AND DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY SECRETARY TO THE GOVT. OF ASSAM, DEPT. OF SCHOOL
EDUCATION, DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19

3:THE STATE LEVEL SCRUTINY COMMITTEE
REP. BY ITS CHAIRMAN

THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM.
KAHILIPARA
GUWAHATI-19

4:THE DISTRICT SCRUTINY COMMITTEE
REP. BY ITS CHAIRMAN
THE DEPUTY COMMISSIONER KARIMHANJ.
DIST- KARIMGANJ
ASSAM
PIN-788710.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KARIMGANJ DISTRICT

P.O.
P.S. AND DIST. KARIMGANJ
ASSAM
PIN-788710

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 21.06.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. A. Phukan, learned Standing Counsel for the Elementary Education, Assam representing the respondents no. 1, 2, 3 & 5 and Mr. P. Saikia, learned Government Advocate appearing for the respondent no. 4.

2. As agreed to by the learned counsels appearing for the parties; this writ petition is taken-up for final consideration and disposal.

3. The petitioner by way of instituting this present proceedings, has presented a challenge to an order, dated 30.03.2022, passed by the Director, Elementary Education Department, Government of Assam, towards rejecting the case of the petitioner for provincialization of her services under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011 on the ground that the petitioner at the time of her initial

appointment in the school in question, did not have the mandated educational qualifications for being appointed as an Assistant Teacher in the said category of schools.

4. As projected in the writ petition; the petitioner herein was appointed as an Assistant Teacher of Abdul M.E. Memorial L.P. School, on 01.02.2006 by the Managing Committee of the said school and the petitioner had joined her services on 06.02.2006. During the relevant point of time, the school, in question, was in its venture stage. Upon enactment of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; the cases of the eligible serving teachers of the said school was taken-up for consideration for provincialization of their services and accordingly, the case of the petitioner was also so forwarded for provincialization of her services.

5. It is contended by the petitioner in the writ petition that on a consideration being made by the Director, Elementary Education Department, Government of Assam, with regard to the proposal as submitted in case of the petitioner for provincialization of her services; the name of the petitioner was also notified in the website of the respondents and she was denoted to be eligible for provincialization of her services. However, when the provincialization of services of serving teachers of various primary schools were so effected; the name of the petitioner was dropped from the list and only the services of the Headmaster of the school, in question, came to be provincialized. Upon the setting aside of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011 by this Court; the State of Assam had enacted the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

6. Accordingly, the case of the petitioner not being considered under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, she instituted a writ petition being WP(C)/4725/2021 before this Court. This Court, vide an order, dated 23.09.2021, gave a final consideration to the said writ petition being WP(C)4725/2021 and noticing that 2(two) teachers in a Lower Primary School are liable to have their services provincialized and the second post in the school not being so filled-up; directions were issued to consider the case of the petitioner against the second post of teacher in the school, in question, by taking note of the provisions of Section 3(1)(x) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

7. It is to be noted that this Court, while passing the order, dated 23.09.2021, in WP(C)4725/2021, had noticed that the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, also mandates that services of teachers not having adequate qualification can also be provincialized, by provincializing their services not as teachers but as tutors with a condition to obtain the necessary qualification within a period of 5(five) years, thereafter.

8. The consideration as directed to be made by this Court vide order, dated 23.09.2021, passed in WP(C)4725/2021; was so made by the Director, Elementary Education Department, Government of Assam, and vide order, dated 30.03.2022, proceeded to reject the case of the petitioner, herein, on the ground that the petitioner at the time of her initial appointment not having acquired the Higher Secondary or equivalent passed; she was not

liable to have her services provincialized under the provisions of, either, the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, or, the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. Accordingly, the case of the petitioner for provincialization of her services came to be rejected.

9. A perusal of the order, dated 30.03.2022, reveals that the only ground on which the case of the petitioner was so rejected was that the petitioner did not possess the mandated qualification of Higher Secondary or equivalent passed at the time of her initial appointment, in the venture educational institution.

10. The case of the petitioner now being required to be so considered under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the relevant provisions therein, in this connection, is to be considered.

11. Section 2(u) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, defines a “tutor” to mean and include a teacher whose services cannot be provincialized as a teacher under the Act due to lack of his/her educational and professional qualification required as per the Right of Children to Free and Compulsory Education Act, 2009, as well as the National Council for Teachers Education Act, 1993 and the relevant rules and regulations framed thereunder.

12. Section 6 of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, mandates that services of a teacher in a venture educational institution from

primary level upto degree level shall be considered for provincialization against the post of teacher subject to fulfillment of the eligibility criterias relating to educational and professional qualification as laid down under the Acts mentioned therein.

13. Section 7 of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, relating to “tutors” mandates that a person provincialized in his/her services as a “tutor” must acquire the prescribed educational and professional qualification within a period of 5(five) years from the date of publication of the provincialization order in the official gazette of services of the teacher and/tutor of the concerned venture educational institution and it is only after upon acquiring such required qualification, their services shall be upgraded to the post of teacher in the appropriate cadre.

14. It is further provided under the provisions of Section 7(2) that if such “tutor” fails to acquire such prescribed qualification within a period of 5(five) years from the date of publication of the order of provincialization in the official gazette, their services shall not be considered for upgradation to the post of teacher after the lapse of 5(five) years from the date of the publication of the provincialization order in the official gazette and they shall continue to function as “tutor” as per the same terms and conditions which were applicable to them before provincialization of the concerned venture educational institutions.

15. Considering the order, dated 30.03.2022, in the light of the provisions as noted hereinabove existing in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act,

2017; it is found that the reasoning as advanced in the order, dated 30.03.2022, for rejecting the case of the petitioner, herein, is not in consonance with the prescriptions as made in this connection in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

16. The provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, does not mandate considering the educational and professional qualification possessed by a teacher working in a venture educational institution on the date of his/her initial appointment but mandates that such qualification shall be considered as on the date when the case of such teacher is considered for provincialization of his/her services under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

17. The petitioner in the writ petition has contended that she had appeared for the Higher Secondary Level Examination in the 2006, and had also cleared her D.El.Ed Degree in the year 2019. The petitioner in view of the said qualifications as acquired by her satisfies the requisite eligibility criterias as mentioned in the Acts as laid out in the provisions of Section 6(1) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and accordingly, the case of the petitioner was mandated to be considered on merit for provincialization of her services as a "Tutor" at least under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

18. The respondent authorities not having considered the case of the petitioner as mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, it is found that the order, dated 30.03.2022, was so passed clearly ignoring the provisions as existing in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, as well as the observations as made by this Court in the order, dated 23.09.2021, passed in WP(C)4725/2021.

19. In view of the above conclusions; this Court is of the considered view that the order, dated 30.03.2022, cannot be sustained and the same is accordingly interfered with.

20. In view of the interference made by this Court with the order, dated 30.03.2022, following directions are hereby issued:

(i). The petitioner is directed to submit a detailed representation before the Director, Elementary Education Department, Government of Assam, within a period of 30(thirty) days from today and therein, stake a claim for provincialization of her services under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, by bringing on record all requisite particulars pertaining to Higher Secondary and/or equivalent qualification as possessed by her along with the D.El.Ed. qualification as acquired by her.

(ii). The Director, Elementary Education Department, Government of Assam, on receipt of such representation from the petitioner, shall consider the same strictly in accordance with the provisions of the

Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and thereafter, in the event, it is found that the petitioner has acquired the prescribed qualification as mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; proceed to have the case of the petitioner considered in terms of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, for provincialization of her services as a Tutor and/or Teacher as the case may be.

(iii). The exercise as now required to be carried-out in terms of the directions as passed by this Court hereinabove, shall be so initiated and completed by the Director, Elementary Education Department, Assam, within a period of 3(three) months from the date of receipt of the representation to be submitted by the petitioner along with a certified copy of this order.

21. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant