

GAHC010044952021



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

Case No. : WP(C)/1608/2021

TARUN CHANDRA NATH
S/O DIMBESWAR NATH, R/O VILL. KHAGA, P.O. KHAGA, P.S. PANIGAON,
DIST. LAKHIMPUR, ASSAM, PIN 787052

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, EDUCATION DEPTT. (HIGHER), DISPUR, GUWAHATI 6

2:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 19

3:THE DEPUTY DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 19

4:THE INSPECTOR OF SCHOOLS

LAKHIMPUR DIST. CIRCLE
DIST. LAKHIMPUR
ASSAM
PIN 787001

5:THE DIST. SCRUTINY COMMITTEE

LAKHIMPUR

REPRESENTED BY ITS CHAIRMAN
DIST. LAKHIMPUR
ASSAM
PIN 787001

6:THE PRINCIPAL

TELAHI TUWARAM NATH COLLEGE
KHAGA
P.O. KHAGA
DIST. LAKHIMPUR
ASSAM
PIN 787052

7:RUPAK NATH

S/O LATE JALIRAM NATH
R/O VILL. ACHARIKHANA
P.O. SONORDHEKI
DIST. LAKHIMPUR
ASSAM
PIN 787052

8:RANJIT GOSWAMI

S/O LATE TARUN GOSWAMI
R/O VILL. KHAGA
P.O.KHAGA
DIST. LAKHIMPUR
ASSAM
PIN 78705

Advocate for the Petitioner : MR. I H LASKAR

Advocate for the Respondent : SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 18.03.2024

Heard Mr. P. K. Das, learned counsel for the petitioner. Also heard Mr. S. Das, learned Standing Counsel for the Higher Education Department representing the respondents no. 1, 2 & 3 and Ms. D. Das Barman, learned Addl. Senior Government Advocate for respondent no. 5 as well as Ms. S. G. Baruah, learned counsel appearing for the respondents no. 7 & 8.

2. The petitioner, by instituting the present proceeding has assailed the provincialisation of the services of the respondents no. 7 & 8 as Junior Assistants of Telahi Tuwaram Nath College vide the order dated 05.02.2021. The petitioner, vide an order of appointment dated 26.06.2010 was appointed as a Junior Assistant in Telahi Tuwaram Nath College and he had joined his services on 26.06.2010. It is the projection of the petitioner that the respondent no. 7 was appointed as Junior Assistant of the said college on 26.06.2010 and he had joined his services on 28.06.2010. It is also projected in the writ petition that one Dinamoni Nath was appointed as a Junior Assistant on 12.12.2008 and he has joined his duty on 13.12.2008. Insofar as the respondent no. 8 is concerned, it is the contention of the petitioner he was appointed as a Library Assistant vide an order of appointment dated 12.12.2008.

Thereafter, on the *Assam Education (Provincialisation of Services of Non-Teaching Staff of Venture Educational Institutions) Act, 2018* coming

into force, the cases of the non-teaching staff of the College were taken up for provincialisation of their services. In terms of the provisions of the said Act, more particularly, the schedule thereof, 2(two) Junior Assistants are entitled to be provincialised in their services along with one Library Assistant.

3. The Principal of the College vide his communication dated 15.02.2019, submitted the particulars of the non-teaching staff of the said College for provincialisation of their services. In the particulars so submitted, the petitioner was denoted as a Junior Assistant along with the respondent no. 7 and said Mr. Dinamoni Nath. The respondent no. 8 was shown to be working in the College as Library Assistant. The respondent authorities having processed the matter, proceeded to issue an order dated 05.02.2021, provincialising the services of the non-teaching staff of the said school. Accordingly, the services of said Dinamoni Nath, respondent no. 7 and respondent no. 8 came to be provincialised as Junior Assistants in the College. The name of the petitioner having been dropped from the list of persons found eligible for provincialisation of their services and the services of the respondent no. 7, being a person junior to him, having been provincialised, the petitioner has instituted the present proceeding.

4. At the outset, it is to be noted here that a dispute has arisen in the matter with regard to the post to which the respondent no. 7 was appointed, while it is the contention of the petitioner that the respondent

no. 7 was so appointed as a Junior Assistant, the respondent no. 7 by way of filing an affidavit in the matter has taken a specific stand that he was so appointed as a Library Assistant in the college. Further, the respondent no. 7 has contended that he had joined the college on 26.06.2010, while the petitioner had joined his services as a Junior Assistant only on 28.06.2010. The authorities have also contended that the respondent no. 8 was initially appointed as a Grade-III post and was working as a Junior Assistant and not as a Library Assistant.

5. The respondent no. 7, in his affidavit has also brought on record an order dated 05.02.2021, wherein the respondent no. 7, has been shown to have been provincialised as a Library Assistant while Dinamoni Nath and the respondent no. 8 have been shown to be provincialised as Junior Assistants. However, on perusal of the order dated 05.02.2021 relied upon by the respondent no. 7 in his affidavit, it is not reflected as to whether the same is the original order or, is an order issued by modifying the order dated 05.02.2021 available at Page-35 to the writ petition, wherein the services of Dinamoni Nath as well as the respondent no. 7 & 8 were all shown to have been provincialised as Junior Assistants in the said college.

6. The contentions as raised by the parties to the proceeding have brought to the forefront disputed question of fact. The posts against which the petitioner as well as the respondents no. 7 & 8 were initially appointed cannot be concluded with certainty. Further, it is seen that there exists two copies of the order dated 05.02.2021, wherein in one of the copy the

services of the respondents no. 7 & 8 and one Dinamoni Nath have been shown to have been provincialised against the post of Junior Assistant, while in the other copy, the services of the respondent no. 8 and said Dinamoni Nath were shown to have been provincialised against the post of Junior Assistant and the services of the respondents no. 7 against the post of Library Assistant. Accordingly, basing on the affidavits filed by the parties to the proceeding the said disputed question of fact cannot be resolved.

7. In view of the above position, the petitioner herein is directed to approach the jurisdictional Educational Tribunal and therein establish his claim for provincialisation of his services. The petitioner shall array as party respondents the authorities of the College as well as any other person whose interest would be affected in the event the claim of the petitioner for provincialisation of his services is allowed by the jurisdictional Educational Tribunal.

8. In the event, any such proceeding is instituted by the petitioner herein; the jurisdictional Educational Tribunal shall consider the same, strictly, in accordance with law and on its own merit.

9. The said proceeding be instituted by the petitioner within a period of one month from the date of receipt of a certified copy of this order. It is expected that the jurisdictional Educational Tribunal shall consider and dispose of the proceeding as to be instituted by the petitioner,

expeditiously.

10. In view of the above, the interim directions passed vide order dated 10.03.2021, in the present proceedings shall stand vacated. The respondents no. 7 & 8 would be released their due salaries in terms of the provincialisation of their services effected vide the order dated 05.02.2021. However, it is provided that the provincialisation of the services of the respondents no. 7 & 8 shall be subject to the outcome of the proceedings required to be instituted by the petitioner before the jurisdictional Educational Tribunal.

11. With the above directions and observations, the writ petition is disposed of.

JUDGE

Comparing Assistant