

GAHC010039232020



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

Case No. : WP(C)/1324/2020

SUBHASH CHANDRA SAH AND ANR.
S/O LT. JAGGI SAH, R/O VILL-DISAU BIHARI BASTI, P.O.-MAILO BAZAR,
P.S.-KHERONI, DIST-WEST KARBI ANGLONG (ASSAM), PIN-782446

2: INOR DEW CHAUHAN
S/O KHALIPA CHAUHAN
R/O VILL-UPAR MAILO
P.O.-MAILO
P.S.-KHERONI
DIST-KARBI ANGLONG (ASSAM)
PIN-78244

VERSUS

THE STATE OF ASSAM AND 5 ORS.
ELEMENTARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-781006

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EDUCATION DEPARTMENT DISPUR GUWAHATI-781006

3:THE DIRECTOR OF ELEMENTARY EDUCATION DEPARTMENT
GOVT. OF ASSAM KAHILIPARA GUWAHATI PIN-781019

4:THE KARBI ANGLONG AUTONOMOUS COUNCIL
THROUGH THE PRINCIPAL SECRETARY DIPHU PIN-782460

5:THE SECRETARY/ DIRECTOR EDUCATION DEPARTMENT
KARBI ANGLONG AUTONOMOUS COUNCIL
THROUGH THE PRINCIPAL SECRETARY DIPHU PIN-782460

6:THE COMMISSIONER/SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT DISPUR GUWAHATI-78100

Advocate for the Petitioner : MR. R P SARMAH
Advocate for the Respondent : SC, ELEM. EDU

Linked Case : WP(C)/1339/2020

MOHAN RAJBHAR AND ANR.
S/O- LT. SAMBHU RAJBHAR
R/O- VILL. RONGIA BASTI
P.O. JENGKHA
P.S. KHERONI
PIN- 782446
DIST.- KARBI ANGLONG (ASSAM).

2: ARADHANA RAJBHAR
D/O- UDAY NARAYAN RAJBHAR CHAUHAN
R/O- VILL. KHERONI KACHARI GAON
P.O. AND P.S. KHERONI
PIN- 782446
DIST.- KARBI ANGLONG (ASSAM).

VERSUS

1. THE STATE OF ASSAM AND 5 ORS.
ELEMENTARY EDUCATION DEPTT.
DISPUR
GHY.- 781006.

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION DEPTT. DISPUR GHY. 781006.

3:THE DIRECTOR OF ELEMENTARY EDUCATION DEPTT.
GOVT. OF ASSAMKAHILIPARA GUWAHATI PIN- 781019.

4:THE KARBI ANGLONG AUTONOMOUS COUNCIL
THROUGH THE PRINCIPAL SECY. DIPHU PIN- 782460.

5:THE SECY./ DIRECTOR THE KARBI ANGLONG AUTONOMOUS COUNCIL
THROUGH THE PRINCIPAL SECY. DIPHU PIN- 782460.

6:THE COMMISSIONER/ SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPTT. DISPUR GHY.- 781006.

Advocate for : MR. R P SARMAH
Advocate for : SC ELEM. EDU appearing for THE STATE OF ASSAM AND 5 ORS.

Linked Case : WP(C)/1529/2020

ANJALEE ACHARJEE AND ANR.
D/O. SUDHANGSHU ACHARJEE
VILL. HAWAIPUR BAZER
P.O. HAWAIPUR BAZAR

P.S. KHERONI
PIN-782446
DIST. KARBI ANGLONG
ASSAM.

2: RUPA DAS
D/O. NIBARAN DAS
VILL. HAWAIPUR BAZER
P.O. HAWAIPUR BAZAR
P.S. KHERONI
PIN-782446
DIST. KARBI ANGLONG
ASSAM.

VERSUS

1. THE STATE OF ASSAM AND 5 ORS.
ELEMENTARY EDUCATION DEPTT.
DISPUR GUWAHATI-781006.

2:THE COMMISSIONER AND THE SECRETARY
TO THE GOVT. OF ASSAM
EDUCATION DEPTT. DISPUR GUWAHATI-781006.

3:THE DIRECTOR OF ELEMENTARY EDUCATION DEPTT.
GOVT. OF ASSAM KAHILIPARA GUWAHATI PIN-781019.

4:THE KARBI ANGLONG AUTONOMOUS COUNCIL
THROUGH THE PRINCIPAL SECRETARY DIPHU PIN-782460.

5:THE SECRETARY/DIRECTOR EDUCATION DEPTT.
KARBI ANGLONG AUTONOMOUS COUNCIL
THROUGH THE PRINCIPAL SECRETARY
DIPHU PIN-782460.

6:THE COMMISSIONER/SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI-781006.

Advocate for : MR. R P SARMAH
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 5 ORS.

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

ORDER

Date : 24.04.2024

Heard Mr. R. P. Sarmah, learned senior counsel, assisted by Mr. S. P. Chetry, learned counsel appearing on behalf of the petitioners. Also heard Mr. S.M.T. Chistie, learned standing counsel, Elementary Education Department, appearing on behalf of respondents No. 1, 2 & 3; Mr. J. Chutia, learned standing counsel, Karbi Anglong Autonomous Council(KAAC), appearing on behalf of respondents No. 4 & 5; and Mr. A. Chaliha, learned standing counsel, appearing on behalf of respondent No. 6.

2. The issue as arising in the 3(three) writ petitions being WP(c)1324/2020, WP(c)1339/2020 and WP(c)1529/2020 under consideration, in the present order, pertains to the grievance of the petitioners therein, who are working in schools situated within the jurisdiction of the Karbi Anglong Autonomous Council(KAAC), with regard to non-consideration of their cases for provincialization of their services although the schools wherein the petitioners are presently serving, are all "Venture Educational Institutions".

3. The facts requisite for adjudication of the issue as arising in the present proceedings is noticed, as under:

The petitioners in the said writ petitions, contend that they were appointed as teachers in "Venture Educational Institutions" as established in

their respective areas, which fall within the jurisdiction of the Karbi Anglong Autonomous Council(KAAC). It is the contention of the petitioners that by the virtue of being situated in remote areas, requisite steps in respect of consideration of their cases for provincialization of their services under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, could not be taken up by the authorities and also the petitioners could not pursue their such claim with the authorities.

However, upon enactment of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; an expectation had arisen with regard to their services being provincialized under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, but, in view of the provisions of Section 2(zd) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; which while defining "Venture Educational Institutions" had excluded such institutions falling in areas covered under the Sixth Schedule of the Constitution of India, unless a separate Notification for inclusion of such "Venture Educational Institutions" in such areas, is issued by the Government in the Official Gazette. The requisite steps for considering the cases of the petitioners in the above-noted writ petitions for provincializing their services, having not been taken; the present proceedings were initiated by them before this Court.

4. It is the contention of the petitioners that although they are similarly placed like the serving teachers of other "Venture Educational Institutions"

situated in non-scheduled areas of the State, the petitioners were discriminated against in-as-much as an opportunity to have their services provincialized under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, on account of the provisions of Section 2(zd) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, was denied to them.

5. Accordingly, a contention was raised by the petitioners that in the event, the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, is not extended to the areas covered under the Sixth Schedule of the Constitution of India, the services of the petitioners are required to be directed to be so considered under the provisions of the Assam Elementary Education (Provincialization) Act, 1974, which Act is contended to hold the field till date.

6. The authorities of the Karbi Anglong Autonomous Council (KAAC) have filed an affidavit-in-opposition in WP(c)1339/2020 and have contended therein, that the Primary and Secondary Education being transferred subjects in terms of the provisions of Sixth Schedule of the Constitution of India; the Karbi Anglong Autonomous Council(KAAC) is vested with the executive powers of the State of Assam with regard to such transferred subjects.

7. It was further contended by the authorities of Karbi Anglong Autonomous Council(KAAC) that in terms of the provisions of Section 2(zd) of the Assam

Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; no Notification was issued by the competent authority extending the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, to the areas covered under the Sixth Schedule of the Constitution of India. Accordingly, the Karbi Anglong Autonomous Council(KAAC) has enacted the Karbi Anglong(Provincialization of Services of Teachers and Reorganization of Education Institutions) Act, 2018, and the same was sent to the Government of Assam for taking further necessary steps for its enforcement. It was further contended by the authorities of the Karbi Anglong Autonomous Council(KAAC) that the assent as required to be accorded to the Karbi Anglong (Provincialization of Services of Teachers and Reorganization of Education Institutions) Act, 2018, by the competent authority in terms of the Sixth Schedule of the Constitution of India, having not been accorded; the provisions of the same could not be brought into force.

8. Today, when these writ petitions were taken-up for final consideration, Mr. Chutia, learned standing counsel, Karbi Anglong Autonomous Council(KAAC), has placed before this Court, a copy of the Notification, dated 11.01.2023, published in the Assam Gazette, dated 04.02.2023, by which the Governor of Assam was pleased to bring the "Venture Educational Institutions" as existing in the Sixth Scheduled areas in the hill districts within the purview of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

9. The said Notification, dated 11.01.2023, further indicates that the Government in the Education Department was satisfied that the circumstances exists which render it necessary for it to bring the "Venture Educational Institutions" as existing in the Sixth Scheduled areas in the hill districts under the purview of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, for provincialization of services of the teachers working in such schools.

10. In view of the Notification, dated 11.01.2023; the mandate of Section 2(zd) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, has been complied with and in pursuance thereof, the "Venture Educational Institutions" as existing in the areas covered under the Sixth Schedule of the Constitution of India, would now be also included within the definition of "Venture Educational Institutions" as provided under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; and the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, would also now apply to the "Venture Educational Institutions" situated in the areas which fall within the jurisdiction of the Karbi Anglong Autonomous Council(KAAC).

11. In view of the said position and the specification as made in the Notification, dated 11.01.2023, this Court, having noticed that the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, would now stand extended

to the areas wherein the schools of the petitioners, herein, are situated; is of the considered view that the petitioners in the above-noted writ petitions would now be eligible to have their cases considered for provincialization of their services under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

12. In view of the above conclusions reached in the matter in the light of the Notification, dated 11.01.2023; this Court hereby directs the Secretary, Education Department, Karbi Anglong Autonomous Council(KAAC), to initiate steps as would be required for having the cases of the petitioners in the above-noted writ petitions, considered, for provincialization of their services under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

13. The authorities of the Karbi Anglong Autonomous Council (KAAC), more particularly, the Secretary, Education Department, Karbi Anglong Autonomous Council(KAAC), shall now initiate the requisite steps as mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and afford a fair consideration to the cases of the petitioners, herein, for having their services provincialized under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

14. For the purpose of facilitating processing of the cases of the petitioners for provincialization of their services; the petitioners are now required to submit

a detailed representation enclosing therein, their respective service particulars school-wise, before the Secretary, Education Department, Karbi Anglong Autonomous Council(KAAC), within a period of 30(thirty) days from today along with a certified copy of this order.

15. The exercise as would now be required to be carried-out in terms of the directions passed by this Court hereinabove, shall be so initiated and completed by the Secretary, Education Department, Karbi Anglong Autonomous Council(KAAC), within a period of 6(six) months from the date of receipt of the representation to be submitted by the petitioners, herein, along with a certified copy of this order.

16. With the above directions and observations, all the 3(three) writ petitions stand disposed of.

JUDGE

Comparing Assistant