

GAHC010039572023



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

Case No. : WP(C)/1024/2023

MD. SOFIQUL ISLAM AND 6 ORS

A/T OF KADAMONI GAON ASOR ALI L.P. SCHOOL, S/O MD. HAFIZ UDDIN AHMED R/O VILL. BATAMARI P.O. BATAMARI P.S BATADRAVA DIST. NAGAON ASSAM

2: AMDADUL HUSSAIN ANSARY

A/T NIZ DHING BALIGAON MUKUT BALIKA MUKTAB SCHOOL S/O LT. ABDUL KHALEQUE R/O VILL. KHALEQUE R/O VILL. HATIMURIA P.O. AND P.S MOIRABARI DIST. MORIGAON ASAM

3: MD. RAKIBUR RAHMAN MOLLIK

A/T OF HAIDUBI SAHARIA L.P. SCHOOL S/O LT. NURUL AMIN MOLLIK R/O VILL. HAIDUBIR P.O. BATAMARI P.A BARDUWA DIST. NAGAON ASSAM

4: MOZIBUR RAHMAN

A/T OF KADAMONI GAON MAIN UDDIN L P SCHOOL
S/O MD. AKBOR ALI R/O VILL. DHANIABHETI PATHER P.O. LALUNG GAON P.S. BATADRAVA DIST. NAGAON ASSAM

5: JAHIRUL ISLAM

A/T OF HAIDUBI BATAMARI BALIKA L P. SCHOOL
S/O MD. SAIDUL ISLAM R/O VILL. HAIDUBI P.O. BATAMARI P.S BARDUWA DIST. NAGAON ASSAM

6: NAZIMA AKHTARA

A/T OF MODHYA SALAPATHER SAMSUDDIN AHMED L P SCHOOL W/O MD. BADRUL ISLAM R/O VILL. SOLAPATHER P.O. SOLAPATHER P.S BATADRAVA DIST. NAGAON ASSAM

7: RUMENA KHATUN

A/T HAIDUBI SAHARIA LP SCHOOL VILL. HAIDUBIR PO. BATAMARI DIST. NAGAON PIN 782122 ASSA

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
EDUCATION ELEMENTARY DEPTT. DISPUR GUWAHATI 6 ASSAM

2:THE DIRECTOR
ELEMENTARY EDUCATION ASSAM KAHILIPARA GUWAHATI 19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
NAGAON ASSAM

Advocate for the Petitioner : MS D BORGOHAIN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 02.05.2024

Heard Ms. Dipika Borgohain, learned counsel for the petitioners. Also heard Mr. Bedanta Kaushik, learned standing counsel, Elementary Education Department, appearing on behalf of all the respondents.

2. The grievance as raised by the petitioners in the present proceedings is with regard to non-provincialization of their services as Assistant Teachers in the school, in question, inspite of there being favourable field verification report submitted in the matter by the district level officers recommending the cases of the petitioners for provincialization of their respective services.

3. The petitioners, herein, are working in different Lower Primary Schools situated in the District of Nagaon. The petitioners, herein, were all initially appointed as 3rd Assistant Teachers in their respective schools. At the time of the appointment of the petitioners, their respective schools were all, in its

venture stage. Upon enactment of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; the cases of the petitioners along with other serving teachers in their respective schools, were taken-up for consideration of their cases for provincialization of their services. On conclusion of the process of examination as mandated in the matter, the respondent authorities under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, proceeded to provincialize the services of 2(two) teachers serving in the school of the petitioners.

4. The petitioners, being aggrieved, had approached the respondent authorities for a re-verification with regard to their cases for provincialization of their services in their respective schools and when the cases of the petitioners were under consideration; the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, on a challenge being presented to it before this Court, was set aside by this Court. It is the contention of the petitioners that their services were necessitated in their respective schools with a view to maintain the Pupil-Teacher Ratio(PTR).

5. Being aggrieved by the deprivation as meted-out to the petitioners, herein; the petitioners approached this Court by way of instituting a writ petition being WP(c)1689/2017, praying for releasing to them, their respective salaries. The said writ petition was considered by this Court and vide order, dated 19.04.2017, the same was dismissed on the ground that the setting aside of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, did not afford a cause of action to the petitioners to launch a fresh litigation to claim their salaries from the State Government when the petitioners, herein, were

admittedly appointed by the respective Managing Committees of their respective schools and it was the Managing Committees of their respective schools, who were paying their salaries. It was further held that as the petitioners were not provincialized in their services, they were not eligible for being paid any salaries by the State Government. Being aggrieved by the said order, dated 19.04.2017; the petitioners assailed the same by way of instituting a writ appeal being WA No. 293/2017 before this Court.

6. The petitioners also assailed the provisions of Section 8(2) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, which restricted the release of salaries to the persons found eligible for provincialization of their services with prospective effect only and that they would not be entitled to receive any benefit in respect of the past services rendered by them before provincialization of their services. The Division Bench of this Court analogously proceeded to hear WP(c)6703/2017 along with WA No. 293/2017 and thereafter, on consideration of the issues arising in the present proceeding, was pleased vide order, dated 05.03.2019, to dispose of both the said writ petition and the writ appeal.

This Court, while proceeding to consider the issues raised in the proceedings before it, was pleased to observe that the petitioners, herein, will have to establish their claim for provincialization of their services in the schools where they claim to work. It was further observed that the decision by the competent authority is to be taken in the matter with regard to the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and in the said process, the number of teachers/staff to be provincialized, is to be as per the provisions as contained

therein. The petitioners, herein, were afforded an opportunity to make an appropriate application/ representation before the Government of Assam in the Education (Elementary) Department, staking a claim for provincialization of their services and the said authority was directed to consider such application/representation in accordance with law.

7. With regard to the prayers made in WP(c)6703/2017; it was held that basing on the conclusions arrived in the said writ appeal as heard along with the said matter and there being no material on record to indicate the provincialization of the services of the appellants therein, the prayer made in WP(c)6703/2017, assailing the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, was held to be premature and the prayer made, therein, was held to merit no consideration.

8. It is the contention of the petitioners, herein, that in terms of the liberty granted by the Division Bench of this Court vide the order, dated 05.03.2019; they submitted their respective applications before the concerned authorities now competent to consider the matter.

9. It is further contended by the petitioners that the matter was placed before the district level officers and in pursuance thereof, on a scrutiny being made by the District Elementary Education Officer(DEEO), Nagaon, vide his communication, dated 21.12.2022, submitted a report in the matter along with a para-wise comments pertaining to the contentions raised in the proceedings of

WP(c)6703/2017.

10. It is the contention of the petitioners that the enrollment status of the students in their respective schools were also brought on record by the District Elementary Education Officer (DEEO), Nagaon.

11. It is also projected by the petitioners in the writ petition that inspite of the directions passed by this Court as well as the materials brought on record by the District Elementary Education Officer(DEEO), Nagaon; the process for consideration of the cases of the petitioners under the Assam Education(Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, has not been taken-up and the petitioners continued to be deprived of the benefits as would now flow to them on provincialization of their services in terms of the procedures as mandated under the provisions of the said Act of 2017. Accordingly, the petitioners have instituted the present writ petition praying for a direction upon the respondent authorities for provincializing their services as teachers in their respective schools.

12. As noticed hereinabove; it is admitted that the cases of the petitioners were not taken-up for consideration in terms of the procedures as provided for under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. The Act of 2017 having laid down a procedure for verification of the services of the particulars of the serving teachers of eligible "Venture Educational Institutions"

for provincialization of their services, initially, by the District Level Scrutiny Committee (DLSC) and thereafter, by the State Level Scrutiny Committee(SLSC); the said process must be followed before the services of a serving teacher in any "Venture Educational Institutions", is to be provincialized.

13. In the case on hand; the materials as brought on record does not reveal that the cases of the petitioners were so recommended by the jurisdictional District Level Scrutiny Committee(DLSC) and thereafter, scrutinized and approved by the State Level Scrutiny Committee (SLSC). In the said view of the matter; no direction can be issued to the respondent authorities in the present proceedings, solely, basing on the reports as submitted in the matter by the District Elementary Education Officer (DEEO), Nagaon, for provincialization of their services in their respective schools.

14. In view of the above conclusions; this Court directs the petitioners, herein, to submit individual representations before the Director, Elementary Education Department, Government of Assam, and therein, by enclosing their service particulars, as well as other particulars as mandated for ascertaining the possession by the petitioners of the eligibility criterias as mentioned in the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, for the purpose of provincialization of their services, stake a claim for such provincialization of their services.

15. The Director, Elementary Education Department, Assam, on receipt of the

said individual representations from the petitioners, herein, shall cause the same to be verified and thereafter, finding that the cases of the petitioners are eligible for being 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; require the same to be placed initially before the jurisdictional District Level Scrutiny Committee (DLSC).

16. The jurisdictional District Level Scrutiny Committee (DLSC), shall, on receipt of such proposal from the Director, Elementary Education Department, Assam, or the District Elementary Education Officer (DEEO), Nagaon, shall proceed to verify the service particulars of the petitioners, herein, and thereafter, make its recommendations in the matter. On receipt of the recommendations of the District Level Scrutiny Committee(DLSC); the same shall be, thereafter, placed before the State Level Scrutiny Committee(SLSC) for further scrutiny as mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

17. On conclusion of the process of verification/scrutiny by the designated Committees and basing on the recommendations as would now be made in respect of each of the petitioners, herein, by the State Level Scrutiny Committee (SLSC); the Director, Elementary Education Department, Assam, shall proceed to process the matter further as per the mandate of the provisions of the Assam Education(Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, for issuance of orders towards provincializing the services of the petitioners, herein, so found eligible for the purpose.

18. The exercise as now required to be carried-out in terms of the directions passed by this Court hereinabove, shall be so initiated and concluded by the Director, Elementary Education Department, Assam, within a period of 6(six) months with effect from the date of receipt of representations, now required to be submitted in the matter by the petitioners in terms of the directions passed by this Court hereinabove, along with a certified copy of this order.

19. The petitioners, herein, are required to submit their individual representations as directed hereinabove along with a certified copy of this Court before the Director, Elementary Education Department, Assam, for taking the matter forward.

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

JUDGE

Comparing Assistant