

GAHC010005512024



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

Case No. : WP(C)/190/2024

KRISHNA BHUYAN
SON OF LATE DEBEN BHUYAN, VILLAGE- DHANPUR,
P.O.- PATHALIPAM, DISTRICT- LAKHIMPUR, ASSAM, PIN- 787056.

VERSUS

1: THE STATE OF ASSAM AND 6 ORS REPRESENTED BY THE SECRETARY
TO THE GOVERNMENT OF ASSAM, DEPARTMENT OF SCHOOL
EDUCATION, DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-19.

3:THE STATE LEVEL SCRUNITNY COMMITTEE REPRESENTED BY ITS
CHAIRMAN ELEMENTARY EDUCATION DEPARTMENT ASSAM
KAHILIPARA GUWAHATI- 781019.

4:THE DISTRICT SCRUTINY COMMITTEE REPRESENTED BY ITS
CHAIRMAN-CUM-DEPUTY COMMISSIONER LAKHIMPUR ASSAM
PIN- 787001.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
LAKHIMPUR PIN- 787001.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER (BEEO)
LAKHIMPUR PIN- 787001.

7:THE HEADMASTER CUM SECRETARY OF SCHOOL MANAGING
COMMITTEE RUPAHI RAJGARH ADIVASI M.E. SCHOOL VILLAGE- RUPAHI
RAJGARH P.O.- PATHALIPAM DISTRICT- LAKHIMPUR ASSAM PIN- 787001

Advocate for the Petitioner : MR N SARMA

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 24-01-2024

Heard Mr. N. Sarma, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned standing counsel, Education (Elementary) Department, representing the respondent Nos.1, 2, 3, 5 & 6 and Mr. B. Deori, learned Junior Government Advocate, Assam, representing the respondent Nos.4.

In view of the nature of order being passed in the present proceeding, notice upon the respondent No.7 is not deemed necessary.

The petitioner was initially appointed as an Assistant Teacher in Rupahi Rajgarh Adivasi M.E. School, Lakhimpur. At the time of said appointment of the petitioner, the School was in the venture stage. The petitioner was so engaged for teaching the subject of Social Science in the School. After the enactment of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (for short, "2017 Act"), the case of the petitioner and other teachers of the School were forwarded for consideration of their cases for provincialisation of their services. The services of the Headmaster and the Science Teacher of the School were provincialised vide an order dated 05.02.2021, however, in the order of provincialisation, the name of the petitioner did not figure. Further, there was no provincialisation effected against the subject of Social Science in the said School.

The name of the petitioner being left out from the purview of provincialisation, the Headmaster of the said School submitted a representation on 01.09.2021 to the District Elementary Education Officer, Lakhimpur highlighting that the petitioner, who was in service in the said School and

teaching Social Science subject, has been left out from the purview of provincialisation. The process as initiated led to the case of the petitioner being again placed before the District Scrutiny Committee.

The jurisdictional District Scrutiny Committee, in its meeting held on 21.12.2021, reconsidered the case of the petitioner and on arriving at a conclusion that the case of the petitioner was kept in the non-recommended list without assigning any specific reason, proceeded to recommend the name of the petitioner for provincialisation of his services. Thereafter, the matter was placed before the Director of Elementary Education, Assam and as projected in the writ petition, the Headmaster of the School was also called for a hearing before the Director on 19.10.2022 with regard to certain clarifications sought in respect of the case of the petitioner.

As the process was not taken to its logical conclusion, the petitioner approached this Court by way of filing WP(C) No.3172/2022. This Court, on consideration of the matter, was pleased to dispose of the said writ petition vide order dated 18.05.2022 holding that the petitioner being a Social Science Teacher has a right to be provincialised against the post of Social Science Teacher of the School concerned. Such conclusion was drawn on account of the fact that in an Upper Primary School, 3(three) posts, including the post of Social Science Teacher was required under the provisions of the 2017 Act to be so provincialised. This Court by recording its said conclusion remanded back the matter to the Director of Elementary Education, Assam to examine the case of the petitioner by consulting the contemporaneous records available in the School as well as the recommendation of the District Level Committee, Lakhimpur and thereafter to pass a reasoned order in favour of the petitioner for provincialisation of his services. It was also provided that if the Director is of

some other view, a reasoned order be also passed in such situation.

The said order not having been complied with, the petitioner instituted a contempt petition being Cont. Case (C) No.578/2023.

During pendency of the said proceeding, the Director of Elementary Education, Assam, issued an order dated 10.10.2023 and therein arrived at a conclusion that for the purpose of implementing the provisions of the 2017 Act, an advertisement was issued on 17.05.2017 requiring submission of applications by the Head of the Institutions of eligible candidates. Thereafter, such applications were considered and with the approval of the Government for creation of posts, the provincialisation of services of such eligible persons were effected. It was the conclusion of the said authority that no fresh proposal for provincialisation of the services can be accepted by the Directorate after the last date as mentioned in the advertisement. Accordingly, basing on the said conclusion, the case of the petitioner was rejected. The said order dated 10.10.2023 is under challenge in the present proceeding.

The case of the petitioner was admittedly submitted to the concerned authorities in pursuance to the said advertisement dated 17.05.2017 and his case was also duly considered by the District Level Scrutiny Committee but for reasons not disclosed, his name was placed in the non-recommended list. The case of the other teachers found eligible for provincialisation of the services of the School in question by the District Level Scrutiny Committee were further considered in the manner prescribed under the 2017 Act and orders provincialising their services came to be issued on 05.02.2021.

It is also to be noted that in terms of the provisions of Section 3(1)(xi) of the 2017 Act, it is mandated that there shall be minimum 3(three) teachers

or tutors with at least 1(one) teacher each for **(a)** Science and Mathematics, **(b)** Social Studies, and **(c)** Languages. While issuing the provincialisation order dated 05.02.2021, only 2(two) posts came to be provincialised and the mandatorily required third post against the subject of Social Studies was not incorporated in the said provincialisation exercise.

From the minutes of the meeting of the jurisdictional District Level Committee dated 21.12.2021, it is apparent that the case of the petitioner was kept in the non-recommended list without assigning any reason and accordingly, the said Committee had on a review meeting proceeded to recommend the name of the petitioner for such provincialisation.

This Court vide order dated 18.05.2022 passed in WP(C) No.3172/2022 had also noticed that the petitioner being a Social Science Teacher has a right to be provincialised against that post in terms of the provisions of Section 3(1)(xi) of the 2017 Act.

The Director of Elementary Education, Assam, while issuing the order dated 10.10.2023, failed to appreciate the facts as available in the matter as well as the discrimination meted out to the petitioner by the initially constituted District Scrutiny Committee in keeping his case in the non-recommended list without assigning any reasons. The said authority also ignored the findings as recorded in the order dated 18.05.2022 passed by this Court in WP(C) No.3172/2022. The present being a case wherein the consideration made in pursuance to the advertisement dated 17.05.2017 was reviewed again and on correction of the error made, the case of the petitioner came to be recommended for provincialisation of his services. The order dated 10.10.2023 also indicates that the case of the petitioner was also placed before the State

Level Committee. The conclusion arrived at by the Director of Elementary Education with regard to the recommendation, as made by the District Scrutiny Committee in its meeting held on 21.12.2021 is not in consonance with the facts of the case as well as the provisions of the 2017 Act. It is to be noted here that the 2017 Act also has provisions of appeal against the decisions of District Scrutiny Committee or the State Level Scrutiny Committee as provided for under Section 14 of the 2017 Act. In case of a teacher being aggrieved by certain inconsistencies or irregularities committed by any of the prescribed Committees can approach the Appellate Authority under the said provision and in a situation where the Appellate Authority requires reconsideration of the case of such teachers by the District Scrutiny Committee and thereafter, on recommendations made, the matter is to be placed before the Director again and in such a situation, if the conclusions reached by the Director in the order dated 10.10.2023 is held to be correct, the appellate provision as available in Section 14 of the 2017 Act would be rendered nugatory inasmuch as the said stand would mean that the prescribed Committees cannot after having made its initial recommendation, although there exists apparent inconsistencies, review or revise or have a fresh consideration of cases of such teachers that may be directed in the matter by the Appellate Authority or by a Court of law.

In the said view of the matter, the conclusions of the Director of Elementary Education, Assam as recorded in the order dated 10.10.2023 in case of the petitioner is not sustainable. The said conclusions vitiates the order dated 10.10.2023 and accordingly, the same stands interfered with. The Director of Elementary Education, Assam is now required to take on record the recommendations made in case of the petitioner by the District Scrutiny Committee in its meeting held on 21.12.2021, which was forwarded to the said

authority by the District Elementary Education Officer, Lakhimpur, vide his communication dated 07.02.2022, and thereafter have the matter processed. On such processing being made and there being no other impediment in law, the Director of Elementary Education, Assam shall pass appropriate orders towards provincialisation of the services of the petitioner with effect from the date the services of other 2(two) teachers of Rupahi Rajgarh Adivasi M.E. School, Lakhimpur were so provincialised with all consequential benefits of pay, seniority, etc. The said exercise shall be initiated and completed by the Director of Elementary Education, Assam, within a period of 2(two) months from the date of receipt of a certified copy of the order. To facilitate the above process, the petitioner shall furnish a certified copy of this order along with a forwarding to the Director of Elementary Education, Assam on or before 05.02.2024.

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

JUDGE

Comparing Assistant