



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

WP(C) No.622 of 2022

Bhaben Chandra Kalita,
Son of Late Sukhana Ram Kalita,
Resident of Village: Nijnamati, PO: Nijnamati,
PS: Tihu, District: Nalbari, Assam, PIN – 781355.

.....Petitioner

-Versus-

1. The State of Assam, through the Commissioner & Secretary to the Government of Assam, Education (Higher) Department, Dispur, Guwahati - 781006.
2. The Director of Higher Education, Assam, Kahilipara, Guwahati - 781019.
3. The State Level Scrutiny Committee, represented by its Chairman-cum-Director of Higher Education, Assam, Kahilipara, Guwahati - 781019.
4. The District Scrutiny Committee, represented by its Chairman-cum-Deputy Commissioner, Baksa, Village, PO & District: Baksa, Assam, PIN – 781372.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. I.H. Saikia, Advocate.

For the Respondents : Mr. A.R. Tahbildar, Standing Counsel, Education (Higher) Department, for respondent Nos.1, 2 & 3.

: Mr. B. Deori, Junior Government Advocate,
Assam for respondent No.4.

Date of Judgment : 23.04.2024.

JUDGMENT & ORDER (ORAL)

Heard Mr. I.H. Saikia, learned counsel for the petitioner. Also heard Mr. A.R. Tahbildar, learned Standing Counsel, Education (Higher) Department, appearing for the respondent Nos.1, 2 & 3 and Mr. B. Deori, learned Junior Government Advocate, Assam, appearing for the respondent No.4.

2. The petitioner, by way of instituting the present proceedings, has raised a grievance with regard to non-consideration of his case for provincialisation of his services as a Librarian in Gyandeep Degree College, Nikashi. The petitioner claims that his services are required to be directed to be provincialised w.e.f. 01.01.2013 in terms of the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (hereinafter referred to as "Act of 2011").

3. The petitioner herein contends that he possesses the requisite qualifications for appointment against the post of Librarian in a College of the State of Assam. Accordingly, noticing the qualifications possessed by the petitioner, the Managing Committee of Gyandeep Degree College, Nikashi, Baksa, vide an order dated 20.09.1999, appointed the petitioner as the Librarian in the said College. The petitioner joined his services in the said College in terms of the appointment so made

in his case w.e.f. 25.09.1999 and he is working therein as on date. It is to be noted that at the time of appointment of the petitioner in the said College, the College was in its venture stage.

4. As projected in the writ petition, on the enactment of the provisions of the said Act of 2011, the cases of the eligible teaching and non-teaching staff of the College in question was placed before the jurisdictional District Scrutiny Committee as constituted in the matter for verification of their service particulars and making recommendation in their case for provincialisation of their services. It is contended that the jurisdictional District Scrutiny Committee, on consideration of the case of the petitioner, had recommended his case for provincialisation of his services. However, when the final list of teachers eligible for provincialisation was so published, the name of the petitioner was shown therein with the remark "under qualified". The petitioner thereafter preferred a representation on 05.04.2013 for inclusion of his name in the list of eligible teachers, however, the same was not considered.

5. The services of the eligible teaching and non-teaching staff of the said College came to be provincialised vide an order dated 20.01.2014 w.e.f. 01.01.2013. The case of the petitioner not having been provincialised, he repeatedly approached the respondent authorities for reconsideration of his case and for provincialisation of his services w.e.f. 01.01.2013 in the manner the other teaching and non-teaching staff of the said College were so provincialised. However, in view of the fact that the said

Act of 2011 was held to be *ultra vires* by this Court and set aside vide the judgment & order dated 23.09.2016 passed in WP(C) No.5825/2012, further processing of the case of the petitioner under the provisions of the said Act of 2011 could not be taken forward. It is contended by the petitioner that upon enactment of the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (hereinafter referred to as "Act of 2017"), he submitted representations before the authorities for consideration of his case. However, the consideration as required to be made in his case not having been so made, the present proceedings have been instituted by the petitioner.

6. It is to be noticed that with regard to provincialisation of the services of non-teaching staff of venture educational institutions, the authorities had enacted the Assam Education (Provincialisation of Services of Non-Teaching Staff of Venture Educational Institutions) Act, 2018 (hereinafter referred to as "Act of 2018") and the post of Librarian having been included within the purview of the said Act of 2018, the case of the petitioner would now be mandated to be considered in terms of the provisions of the said Act of 2018.

7. The petitioner basing on the projection as made in the writ petition to the effect that his case on being duly considered by the respondent authorities, his name was included in the list of teaching and non-teaching staff of the College in question, as published by the respondent authorities, found to be eligible for provincialisation although with the remark "under qualified", has

contended that the case of the petitioner having been so considered and finalized under the provisions of the Act of 2011 and the remark as made against his name of being "under qualified" being so made erroneously, the case of the petitioner is required to be directed to be so considered for provincialisation to his services under the provisions of the Act of 2011. Accordingly, it is contended by the petitioner that he is entitled to have his services provincialised w.e.f. 01.01.2013 in terms of the said Act of 2011.

8. A perusal of the provisions of the Act of 2011 would reveal that the case of a person eligible for provincialisation of his services under the provisions of the same is to be considered at the initial stage by the District Scrutiny Committee as constituted under the Act and thereafter, such recommendation is to be forwarded to the concerned Director, who is now required to make further scrutiny as would be called for in the matter. On conclusion of the scrutiny, as made in the matter by the Director, a proposal in this connection is thereafter placed before the concerned Department of the State Government for consideration and for issuing notification in respect of eligible institutions and employees eligible for getting their services provincialised. The provisions of Section 10(4) of the said Act of 2011 being relevant, is extracted herein below:-

"10. District Scrutiny Committee –

- (1)
- (2)
- (3)

(4) The District Scrutiny Committee shall forward the verified list of eligible teachers school-wise in accordance with the number of posts specified in the Schedule appended to this Act, to the concerned Director who shall, after making such further scrutiny as may be required, shall forward the same to the concerned Department of the State Government for consideration and for issuing Notification in respect of the eligible institutions and employees eligible for getting their services provincialised.”

9. A perusal of the provisions of Section 10(4) of the Act of 2011 reveals that the recommendation, as made by the District Scrutiny Committee and/or the same as made by the jurisdictional Director, does not attach any finality to the provincialisation of services of the petitioner so found eligible by the said authorities.

10. In the case in hand, it is seen that the list as referred to by the petitioner in the present proceedings is a list as published by the Director of Education (Higher) Department on scrutiny made by him with regard to the eligibility of the teaching and non-teaching staff as recommended in the matter for provincialisation of their services by the jurisdictional District Scrutiny Committee. The petitioner in the said list, as published by the Director, having been denoted to be not eligible for such provincialisation of his services on account of being “under qualified”, it is to be held that the case of the petitioner was not considered beyond the stage of such consideration required to be made by the jurisdictional Director in terms of the provisions of Section 10(4) of the Act of 2011. The case of the petitioner not having been considered and approved by the Government in terms of the procedure as prescribed under Section 10(4) of the Act of 2011, it cannot be held that the case of the petitioner for

provincialisation of his services had attained finality in terms of the mandate of the provisions of the Act of 2011, more particularly, the provisions of Section 10(4) thereof. Accordingly, the case of the petitioner now cannot be directed to be considered in terms of the provisions of the Act of 2011 and hence, the petitioner would not be entitled to have his services provincialised w.e.f. 01.01.2013.

11. Having noticed that the petitioner is not eligible for a direction for having his services provincialised w.e.f. 01.01.2013, this Court notices that upon enactment of the Act of 2018, although the petitioner herein had submitted his representation for a consideration under the provisions of the said Act, such consideration have not been extended to the petitioner. It is to be noted that the petitioner has a vested right for having his case considered under the provisions of the Act of 2018 for provincialisation of his services.

12. In view of the above position, this Court hereby directs the petitioner herein to submit a representation before the Director of Higher Education, Assam staking a claim for consideration of his case for provincialisation of his services under the provisions of the Act of 2018. The petitioner along with the said representation shall enclose the particulars with regard to the services rendered by him in the College in question as a Librarian, along with the certificates pertaining to the educational qualifications as possessed by him. The Director of Higher Education, Assam, on receipt of such representation from the petitioner herein, shall consider the same and in the event it

is found that the petitioner is eligible for having his case considered for provincialisation under the provisions of the said Act of 2018, shall place the case of the petitioner before the jurisdictional District Scrutiny Committee as contemplated under the provisions of Section 7 of the said Act of 2018 and basing on the recommendation as may be made by the District Scrutiny Committee, have the case of the petitioner scrutinized by the State Level Scrutiny Committee and thereafter proceed to take further steps in the matter as per the recommendations as may be made in the case of the petitioner by the said constituted Committees under the provisions of the Act of 2018.

13. In the event basing on either the recommendations of the District Scrutiny Committee and/or the State Level Scrutiny Committee, it is found that the petitioner is not eligible for having his services provincialised in terms of the provisions of the Act of 2018, the Director of Higher Education, Assam shall, incorporating the reasons as existing in this connection, issue a speaking order and communicate the same to the petitioner.

14. The exercise as now required to be undertaken by the Director of Higher Education, Assam, in terms of the directions passed herein above, shall be so initiated and concluded within a period of 3(three) months from the date of receipt of the representation as now required to be submitted by the petitioner in terms of the directions passed herein above. The petitioner shall along with the representation now required to be submitted by him also submit a certified copy of this judgment & order

before the Director of Higher Education, Assam for taking the matter forward.

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

J U D G E

Comparing Assistant