



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

WP(C) No.310 of 2024

1. Smti. Indira Thakuria,
Daughter of Late Ishan Thakuria,
Wife of Shri Lohit Chandra Das,
Resident of Village: Chaygaon Bihdia,
PO: Chaygaon, PS: Chaygaon, District:
Kamrup, Assam, PIN – 781124.

2. Shri Abdus Salam,
Son of Late Jaynal Abdin,
Resident of Village & PO: Bhauria
Bhitha, District: Kamrup, Assam, PIN –
781136.

3. Smti. Dipti Thakuria,
Wife of Shri Dip Kumar Das,
Resident of House No.29, Mahanagar
Path, Narbam, Barsojai Lalmati,
Basistha, Kamrup (Metro), Guwahati –
781029.

.....Petitioners

-Versus-

1. The State of Assam represented by
the Commissioner & Secretary to the
Government of Assam, Secondary
Education Department, Dispur,
Guwahati – 781006.

2. The Director to the Government of
Assam, Secondary Education
Department, Kahilipara, Guwahati –
781019.

3. The State Level Scrutiny Committee represented by its Chairman, Office of the Director to the Government of Assam, Secondary Education Department, Kahilipara, Guwahati – 781019.

4. The Head Master, Uparhali Higher Secondary School, PO: Uparhali, Kamrup, Assam.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioners : Mr. R.M. Deka, Advocate.

For the Respondents : Mr. B. Kaushik, Standing Counsel, Education (Secondary) Department, for respondent Nos.1, 2 & 3.

Date of Hearing : 22.01.2024.

Date of Judgment : 22.01.2024.

JUDGMENT & ORDER (ORAL)

Heard Mr. R.M. Deka, learned counsel for the petitioners. Also heard Mr. B. Kaushik, learned standing counsel, Education (Secondary) Department, representing the respondent Nos.1, 2 & 3.

2. In view of the nature of order to be passed in the present proceeding, notice upon the respondent No.4 is not deemed necessary.

3. The petitioners, by way of the present writ proceeding, have assailed the speaking order dated

09.05.2023 passed by the Director of Secondary Education, Assam, by which the case of the petitioners for provincialisation of their services was rejected on the ground that the names of the petitioners did not figure in the UDISE.

4. The petitioners are all Subject Teachers in Uparhali Higher Secondary School and were appointed in the said School when the School was in its venture stage. Thereafter, in terms of the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (for short, "2017 Act"), cases of the petitioners and other teachers of the said School were taken up for consideration for provincialisation of their services. Accordingly, the case of the petitioners and other eligible teachers of the said School came to be placed before the jurisdictional District Scrutiny Committee. The District Scrutiny Committee, on consideration of the cases of the petitioners and others, recommended the names of the petitioners along with that of other eligible teachers of the said School for provincialisation of their services.

5. The said process was taken up further and on the said recommendation being considered by the State Level Scrutiny Committee, the services of one Smti. Minu Das Talukdar, PGT (Assamese) of the said School, came to be provincialised vide an order dated 30.11.2021. The cases of the petitioners not being considered for provincialisation of

their services, they had approached this Court by way of instituting WP(C) No.1275/2022.

6. This Court, on consideration of the matter, vide order dated 25.02.2022, directed the Director of Secondary Education, Assam to consider the recommendation of the District Scrutiny Committee made in favour of the petitioners and to pass appropriate orders with regard to provincialisation of their services if there is no legal impediment in the matter. It was also provided in the said order that if there is any legal impediment with regard to provincialisation of the services of the petitioners, a reasoned order be passed and the same be communicated to the petitioners. Accordingly, vide a speaking order dated 05.05.2022, the Director of Secondary Education, Assam, on consideration of the matter, rejected the claim of the petitioners by holding that the names of the petitioners did not figure in the UDISE Data and accordingly, the State Level Scrutiny Committee could not consider the case of the petitioners for provincialisation of their services.

7. The petitioners thereafter assailed the said speaking order dated 05.05.2022 before this Court by way of instituting WP(C) No.4594/2022. This Court, vide order dated 18.07.2022, on considering the matter and drawing a conclusion that the petitioners, who were so serving in Senior Secondary School, are not required to be included in the UDISE Data, disposed of the said writ petition remanding back the matter to the Director of Secondary

Education, Assam to reconsider the claim of the petitioners for provincialisation of their services in terms of the provisions of 2017 Act. The speaking order dated 05.05.2022 was came to be interfered with by this Court.

8. The said order dated 18.07.2022 passed by this Court in WP(C) No.4594/2022 came to be placed before the Director of Secondary Education, Assam and thereafter the said authority, vide speaking order dated 09.05.2023, reconsidered the case of the petitioners and again rejected their case on the ground that since the names of the petitioners not figured in the UDISE Data, the State Level Scrutiny Committee could not consider their cases. The ground as taken in the speaking order dated 09.05.2023 being the same as was taken by the said authority in the speaking order dated 05.05.2022, which was interfered with by this Court, the petitioners being aggrieved had again instituted the present proceeding before this Court.

9. The petitioners, admittedly, are working in a Higher Secondary School and in terms of the provisions of the 2017 Act, the names of the teachers working in the Venture High School or Venture Higher Secondary School are not required to be captured in the DISE Code or UDISE Code. The definition of "Venture High School" and "Venture Higher Secondary School" can be seen in Section 2(x) and 2(y) of the 2017 Act, which are reproduced herein below:-

"2.(x) 'Venture High School' means High School imparting education up to class X and established by

the people of the locality prior to 1.1.2006 which has received permission from the State Government and recognition from the Board of Secondary Education, Assam on or before 1.1.2006 and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far;

(y) 'Venture Higher Secondary School' means a Higher Secondary School imparting education up to Class XII and established by the people of the locality prior to 1.1.2006 which has received permission from the State Government on or before 01.01.2006 and whereof the services of teachers have not been provincialised under any Act earlier enacted by the State legislature so far."

10. This Court further at this stage finds it relevant to take note of two other definitions, i.e. definition of "Venture M.E. School" including "Venture M.E. Madrassa and "Venture Lower Primary School" or "Venture L.P. School", which have been defined in Section 2(za) and 2(zb) of the 2017 Act. The said definitions, being relevant, are also quoted herein below:-

"2(za) 'Venture ME School' including 'Venture ME Madrassa' means an Upper Primary School imparting education from class VI up to class VII and established by the people of the locality prior to 1.1.2006 which has received recognition from the competent authority on or before 01.01.2006 and captured in the DISE Code up to 2009-10 and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far: Provided that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialisation of services of any employee of the institution;

2(zb) 'Venture Lower Primary School' or 'Venture LP School' means a School imparting education up to Class V and established by the people of the locality prior to 1.1.2006 whose name figure in the DISE Code up to

2009-10 and prior to that and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far: Provided that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialisation of services of any employee of the institution.”

11. From the above extracted definitions, it transpire that Section 2(x) defines “Venture High School” to mean such School imparting education up to Class-X and established by the people of the locality prior to 01.01.2006, which has received permission from the State Government and recognition from the Board of Secondary Education, Assam on or before 01.01.2006 and whereof the services of the teachers have not been provincialised under any Act enacted by the State Legislature so far. The definition of “Venture Higher Secondary School” as would be seen from Section 2(y) of the Act of 2017 is similar to “Venture High School”. However, the difference in the definitions between Venture High School and the Venture Higher Secondary School is that in Venture High School, the School imparts education up to Class-X whereas in Venture Higher Secondary School, the School imparts education up to Class-XII. Further, in “Venture Higher Secondary School” only the permission from the State Government on or before 01.01.2006 is required.

12. From the definitions of “Venture High School”, “Venture Higher Secondary School”, “Venture M.E. School” and a “Venture Lower Primary School”, as quoted

hereinabove, it is evident that it is only in respect of the Venture M.E. School and a Venture Lower Primary School that the requirement of the names of the teachers being captured in the DISE Code upto 2009-10 has been provided for. In respect of a Venture High School or a Venture Higher Secondary School, as defined under Section 2(x) and 2(y) of the 2017 Act, such prescription is admittedly absent and accordingly, it can be construed that the requirement of a DISE Code is only applicable in case of a Venture Primary or a Upper Primary School.

13. This Court, while disposing of WP(C) No.4594/2022 vide order dated 18.07.2022, had categorically held that in respect of a Venture Higher Secondary School, there can be no requirement of the names of the teachers therein to be captured in the DISE Code or the UDISE Code. The Director of Secondary Education, Assam, inspite of such categorical findings of this Court, as recorded in the said order dated 18.07.2022, had ignored the same and reiterated vide the speaking order dated 09.05.2023 that the case of the petitioners could not be considered by the State Level Scrutiny Committee on account of the fact that their names were not found in the UDISE Data.

14. The said conclusion of the Director of Secondary Education is contrary to the 2017 Act inasmuch as the said 2017 Act does not mandate any teacher working in a Venture High School and/or a Venture Higher Secondary

School to have their names captured in the DISE Code upto the year 2009-10. The Director of Secondary Education, Assam, vide the speaking order dated 05.05.2022, rejected the case of the petitioners for provincialisation of their services only on the ground that their names were not found in the UDISE Data and such findings having been interfered with by this Court in the proceedings in WP(C) No.4594/2022, it was not open for the Director of Secondary Education, Assam to again, after interference with such conclusions by this Court, to reiterate the same vide the speaking order dated 09.05.2023.

15. In view of the position as existing in the matter, the speaking order dated 09.05.2023 is held to be issued in clear violation of the directions as passed by this Court vide order dated 18.07.2022 in WP(C) No.4594/2022. Accordingly, the said speaking order dated 09.05.2023 is hereby set aside and quashed. The matter is now remanded back to the Director of Secondary Education, Assam, who is now required to place the recommendations made in favour of the petitioners by the District Scrutiny Committee before the State Level Scrutiny Committee. While placing the recommendations of the District Scrutiny Committee in favour of the petitioners before the State Level Scrutiny Committee, the Director of Secondary Education, Assam, shall specifically bring to the notice of the said Committee that the rejection of their case by the said Committee earlier on account of non-possession of UDISE Data has been interfered with by this Court and also

bring to the notice of the said Committee the conclusions of this Court that the teachers working in a High School and/or a Higher Secondary School are not required to have their names captured in the DISE Data and/or in the UDISE Data. Upon having the case considered by the State Level Scrutiny Committee, necessary orders as may be required with regard to provincialisation of the services of the petitioners be issued.

16. It is provided that in the event the State Level Scrutiny Committee has any apprehension with regard to the continuous nature of service of the petitioners, the said Committee is required to invoke the powers as conferred on it under the provisions of Section 13(11) of the 2017 Act. The said Committee, in terms of the provisions of Section 13(11) of the 2017 Act, shall cause physical verification of the Institution(s) of the petitioners and also inspect all documents and records as may be required for the purpose of consideration of the cases of the petitioners for provincialisation of their services and thereafter, render its recommendations in the matter. On receipt of the recommendations from the State Level Scrutiny Committee, the Director of Secondary Education, Assam shall proceed with the matter and take such proposal to its logical conclusion. The process, as required to be now carried out by the Director of Secondary Education, Assam, shall be so initiated and completed in terms of the directions passed hereinabove within a period of 3(three) months from the date of receipt of a certified copy of this

judgment & order. The petitioners, to facilitate the process, shall furnish a certified copy of this judgment & order along with a forwarding before the Director of Secondary Education, Assam.

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

J U D G E

Comparing Assistant