

GAHC010042962022



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

**Case No. : WP(C)/1684/2022**

DIMBESWAR GOGOI  
S/O- LATE NOBIN GOGOI, R/O- VILL SARUPAAM JANJI, P.O- BETANIPAAM,  
P.S- SILAPATHAR, DIST- DHEMAJI, ASSAM-787059

VERSUS

THE STATE OF ASSAM AND 6 ORS.  
THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT,  
EDUCATION DEPARTMENT (ELEMENTARY)  
DISPUR, GUWAHATI - 781 006

2:THE DIRECTOR  
OF ELEMENTARY EDUCATION  
GOVERNMENT OF ASSAM  
KAHILIPARA  
GUWAHATI-781019

3:THE DEPUTY COMMISSIONER  
DIST- DHEMAJI  
ASSAM

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER  
DIST- DHEMAJI  
ASSAM

5:THE BLOCK ELEMENTARY EDUCATION OFFICER  
DIST- DHEMAJI  
ASSAM

6:DIPANDITA CHUTIA  
W/O- PUTUL GOGOI  
R/O- VILL SARUPAAM JANJI  
P.O- BETANIPAAM

P.S- SILAPATHAR  
DIST- DHEMAJI  
ASSAM-787059

7:DILIP KUMAR SAIKIA

ASSTT. TEACHER  
SARUPAAM GYANDIP M.E SCHOOL  
P.O- BETANIPAM  
DIST- DHEMAJI  
ASSA

**Advocate for the Petitioner : MR. M H LASKAR**

**Advocate for the Respondent : SC, ELEM. EDU**

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

**Judgment & Order(Oral)**

**Date: 30.04.2024**

Heard Mr. M. H. Laskar, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned Standing Counsel for the Elementary Education, Assam appearing for the respondents no. 1, 2, 4 & 5 and Mr. B. Deori, learned Junior Government Advocate for the State appearing for the respondent no. 3; Mr. M. Bora, learned counsel appears for the respondent no. 6 as well as Mr. P. D. Nair, learned counsel appearing for the respondent no. 7.

**2.** As agreed to by the learned counsels appearing for the parties; this writ petition is taken-up for final consideration and disposal.

**3.** The petitioners, by way of instituting the present proceeding has presented a challenge to an order dated 06.12.2021, issued by the Director of Elementary Education, Assam, by which his claim for provincialisation of his services as a Social Studies Teacher in Sarupam Gyandeep M. E. School was rejected.

**4.** As projected in the writ petition, the petitioner was appointed by the Managing Committee of the Sarupam Gyandeep M. E. School as an Assistant Teacher on 25.12.1992. The petitioner joined his services on 01.01.1993. The respondent no. 6 herein was contended to have joined the services of the School on 08.08.1994 as an Assistant Teacher while respondent the respondent no. 7 had so joined on **05.03.2008**. It is to be noted that when the petitioner, the respondent no. 6 and respondent no. 7 had joined their services in the said school, the school was in its venture stage. It is also projected in the petition that while the petitioner was teaching the Social Studies subject in the school, the respondent no. 6 was teaching the Assamese language. The respondent no. 7 was appointed as the Headmaster in the said school and was also teaching the English Subject therein. Pursuant to the enactment of the Assam Education (Provincialisation of Services of Teachers & Re-organisation of Educational Institutions) Act, 2017, the particulars of the serving teachers in the said school were submitted by the Headmaster before the departmental authorities for consideration of their cases for provincialisation of their services. Accordingly, the cases of the serving teachers in the school including the petitioner herein as well as the respondent no. 6 & 7 came to be placed before the District Scrutiny Committee, Dhemaji. The District

Scrutiny Committee, Dhemaji, on verification of the particulars of the serving teachers of the said school, proceeded to recommend the names of the petitioner herein, the respondent no. 6, respondent no. 7 along with 2(two) other serving teachers as eligible for provincialisation of their services. It is contended by the petitioner that after the said recommendation was so made by the District Scrutiny Committee and the matter was processed by the State Level Scrutiny Committee, his name was **dropped** from the purview of provincialisation and the services of the respondent no. 6 & 7 came to be provincialized in their services vide the order dated 05.02.2021 as tutors in the said school. The order dated 05.02.2021, while provincializing the services of the said teachers effected such provincialisation w.e.f. 01.01.2021 and on their such provincialisation, the teachers were directed to work in the Mazgaon Asomiya Lower Primary School, which was denoted as the Base School.

**5.** The petitioner being aggrieved for being left out from the purview of provincialisation exercise as undertaken with regard to the serving teachers of the said school, approached this court by way of instituting a writ petition being WP(C) No. 2585/2021, praying for provincialisation of his services. This Court, vide order dated 09.04.2021, on noticing the provisions of Section 3(1)(xi) of the Act of 2017, proceeded to direct the respondent authorities to bring the recommendations of the District Scrutiny Committee, recommending the petitioner for provincialisation of his services as a Social Studies teacher to its logical conclusion. Thereafter, the Director of Elementary Education, Assam vide his order dated 06.12.2021, on considering of the matter in terms of the directions passed by this Court,

proceeded to reject the claim of the petitioner for provincialisation of his services on the ground that his name was not so recommended by the District Scrutiny Committee, Dhemaji. Accordingly, being aggrieved, the petitioner has instituted the present proceedings.

**6.** Mr. M. H. Laskar, learned counsel for the petitioner has submitted that on being appointed in the said school, he was allotted with the duties of teaching the Social Studies subject. It is further contended that the respondent no. 6 was teaching the Assamese Language and the respondent no. 7 while being the Headmaster of the said school was also teaching the English subject. It is contended by the learned counsel for the petitioner that the subjects taught by the petitioner, the respondent no. 6 and respondent no. 7 in the school since the date of their initial appointment has not been disputed by any of the parties appearing in the present proceedings. The learned counsel for the petitioner by referring to the order dated 06.12.2021, has submitted that although initially the District Scrutiny Committee had recommended the name of the petitioner along with four other teachers to be eligible for provincialisation of their services however, the said recommendations was remanded back to the District Scrutiny Committee on the ground that the same did not confirm to the requirements of the said Act of 2017. Accordingly, the District Scrutiny Committee thereafter, again submitted its recommendation and therein recommended the names of the respondents no. 6 & 7 as well as one Jyoti Kalita, a Science teacher in the school for provincialisation of their services.

**7.** Mr. Laskar, learned counsel for the petitioner submits that the said steps taken in the matter by the respondent authorities is clearly not in consonance with the provisions of said Act of 2017 and the petitioner, otherwise being eligible for being provincialised in service against the post of Social Studies teacher in the said School, in view of the provisions of Section 3(1)(xi) of the Act of 2017, the name of the petitioner could not have been ignored by the District Scrutiny Committee and the State Level Scrutiny Committee was required to consider the cases of the serving teachers of the said school, strictly,in accordance with the provisions of the said Act of 2017, which admittedly, according to the learned counsel for the petitioner was not done in the matter.

**8.** The learned counsel for the petitioner in the above premises submitted that the respondents no. 6 and 7 both being Language teachers, the services of both the said teachers could not have been provincialized given the mandate of the provisions of Section 3(1)(xi) of the Act of 2017. Accordingly, the learned counsel for the petitioner submits that the provincialisation of services as effected in the case of the respondents no. 6 & 7 mandates to be interfered with further directions called upon to be issued to the respondent authorities to provincialize the services of the petitioner herein as Social Studies teacher in the said school.

**9.** Mr. B. Kaushik, learned Standing Counsel for the Elementary Education, Assam has submitted that the order dated 06.12.2021 impugned in the present proceedings was reviewed by the authorities on account of

an error existing therein and a revised order in this connection was so issued on 15.12.2021 (a copy of which was placed on record). It is contended by Mr. Kaushik, learned counsel that in the school, the services of respondents no. 6 and 7 were provincialized as tutors w.e.f. 01.01.2021 and erroneously in the order dated 06.12.2021, it was reflected that the services of one another teacher i.e. Jyoti Kalita, a Science teacher in the school was so provincialized which was not correct and accordingly, the same was rectified vide the order dated 15.12.2021. It was also submitted that baring the reference to one Jyoti Kalita, a Science teacher in the said school in the order dated 06.12.2021 and the order dated 15.12.2021, the other findings and conclusions reached by the respondent authorities in the matter remain the same.

**10.** Mr. N. Bora, learned counsel for the respondent no. 6 by referring to the affidavit filed in the matter on behalf of the said respondents submits that the respondent no. 6 was appointed in the said school as a Language teacher and it was contended that she is the senior most Language teacher in the said school. It was further contended that the respondent no. 7 is junior to the respondent no. 6 and had joined the services of the school after the joining of the respondent no. 6. It has been contended that on account of the directions passed by this Court in WP(C)/2585/2021, the salaries of the respondent no. 6 was **stopped** and being aggrieved she has instituted WP(C)/4439/2021 before this Court and this Court, vide order dated 17.09.2021 had observed that there is *prima facie* no nexus between the right of the respondent no. 6 to receive salaries as Language teacher and the right of the petitioner herein, whose claim is for provincialisation of

his services as a Social Studies teacher. Thereafter, vide an order dated 31.07.2023, the writ petition no. WP(C)/4439/2021 was given a final consideration and the petitioner was directed to approach the Director of Elementary Education, Assam by way of filing a representation, staking a claim for receipt of her salaries as a tutor in the said school.

**11.** Mr. P. D. Nair, learned counsel for the respondent no. 7 at the outset, submits that the respondent no. 6 herein was appointed in the said school on 25.12.1992, but, on the said date she did not have the Higher Secondary qualification. Mr. Nair, learned counsel by referring to the contentions as made by the respondent no. 7 in the affidavit filed in the matter has disputed the resolution as adopted by the SMC of the school in question in its meeting held on 05.08.1994, wherein, the respondent no. 6 was resolved to be appointed. It was contended that the minutes appeared to have been interpolated later on, inasmuch as, the same was pasted on the proceeding book. It was further contended that the respondent no. 6 had completed her B.A. Course as a regular candidate from Sissi Borgaon College in the year 2013, however, no permission was taken by the respondent no. 7 from the school authorities to undergo the said course. It was further contended that the respondent no. 6 was absent from her services in the year 2019 for the entire year and that too without taking any leave. Mr. P. D. Nair, learned counsel submits that the respondent no. 6 herein having joined the school way back in the year 1992 i.e. on 25.12.1992 and she not having acquired the basic educational qualification for being so engaged, the respondent no. 6 is not entitled to have her services provincialized under the provisions of the said Act of 2017.

**12.** Mr. Bora, learned counsel for the respondent no. 6 rejoicing his submissions in the matter has submitted that the contentions raised by the learned counsel for the respondent no. 6 in the matter, to the effect that the respondent no. 6 was working in the school since 25.12.1992 is categorically erroneous inasmuch w.e.f. 25.12.1992, the school authorities had allowed the respondent no. 6 to work as an Teacher temporarily due to non-completion of her Higher Secondary Examination and accordingly, no appointment letter was issued to her at that relevant point of time. After completion of her Higher Secondary Examination in the year 1994, it is contended that the Managing Committee of the School in its meeting held on 05.08.1994, resolved to appoint the petitioner as a Teacher in the school and also an appointment letter was so issued to her. Thereafter, the respondent no. 6 joined the school on 08.08.1994 as a Language Teacher and was continuing her services therein.

**13.** Although the undertaking by the respondent no. 6 of her B.A. degree course was contended to be as a casual student, subsequently, Mr. Bora, contends that it was clarified that she had undergone the said course as a regular student in the school. Accordingly, Mr. Bora, learned counsel submits that in the event, this Court is of the view that 2(two) Language Teachers cannot be provincialized in view of the provisions of Section 3(1) (xi) of the Act of 2017, it is contended that the respondent no. 6 being the senior most Language Teacher, this Court may be pleased not to interfere with the provincialisation as made in her case in the matter.

**14.** I have heard the learned counsels for the parties and also perused the materials available on record.

**15.** Although the challenge in the present proceedings is made to an order dated 06.12.2021, this Court has noticed that the said order was revised and a fresh order in this connection was issued by the Director of Elementary Education, Assam on 15.12.2021. On perusal of the orders dated 06.12.2021 and 15.12.2021, it is seen that the contents of both the orders are same and vide the order dated 15.12.2021, only the error occasioning in the order dated 06.12.2021 to the effect that the services of one Jyoti Kalita, a Science teacher in the school, was rectified vide the order dated 15.12.2021 and clarified that only 2(two) teachers i.e. the respondent no. 6 & 7 were provincialized in their services in the said school.

**16.** A perusal of the order dated 06.12.2021 *read with* the order dated 15.12.2021, reflects that initially the name of the petitioner herein along with 4(four) other serving teachers in the said school were recommended by the jurisdictional District Scrutiny Committee as being eligible for provincialisation of their services. It is seen that thereafter the said proposal was again remanded back to the District Scrutiny Committee purportedly, for re-submission of the same in accordance with the provisions of the Act of 2017.

**17.** The District Scrutiny Committee on the matter being remanded back now proceeded to recommend the names of 3(three) serving teachers in

the school i.e. the respondent no. 6, 7 and one Jyoti Kalita, Science Teacher of the said school. It is not understood as to why the name of the petitioner herein was not so recommended for provincialisation of his services. The materials as available on record does not demonstrate that the petitioner herein was not eligible for being considered for provincialisation of his services. Further, it is seen that the particulars as submitted as well as the initial recommendation made in the matter by the jurisdictional District Scrutiny Committee, it is only the petitioner herein, who is teaching the subject of Social Studies in the said school.

**18.** At this stage, it is also to be noted that both the respondent no. 6 as well as the respondent no. 7 herein, have in their respective affidavits filed in the matter as well as submissions advanced in the matter before this Court, admitted to the position that the petitioner herein was teaching the subject of Social Studies in the school while they were teaching the Language subject.

At this stage, it is relevant to note the provisions of Section 3(1)(xi) of the Act of 2017 and the same being relevant is extracted herein below:-

***“3. Eligibility criteria for selection of educational institution for provincialisation of services of teachers/tutors:-***

**(1).....**

.....

.....

***(xi) In case of Venture Upper Primary School there shall be minimum three teachers or tutors at least one teacher each for (a) Science and Mathematics (b) Social Studies and (c) Languages.***

**19.** Perusal of Section 3(1)(xi) of the said Act of 2017 would bring to the forefront the fact that in a "Venture Upper Primary" School on being provincialized there must be minimum three teachers/tutors. It is further provided in the said provisions that out of the three minimum teachers as required to be provincialized in a Venture Upper Primary School one teacher each for (a) Science/Mathematics; (b) Social Studies (c) Languages is to be made. The identification of teachers for provincialisation of their services against the three subject teachers as mentioned in the provisions of Section 3(1)(xi) of the Act of 2017, is so made basing on the subjects as taught by the serving teachers in the school, whose cases are considered for provincialisation of their services.

**20.** Applying the provision of Section 3(1)(xi) of the Act of 2017 to the facts as existing in the present proceedings, it is seen that the enrollment status in the school only mandated for creation of three posts in the school and accordingly, the post of Social Studies being necessarily required to be so created, the petitioner, admittedly, being a teacher teaching the subject of Social Studies in the school, his services was mandated to be so provincialized in the school. However, for reasons not disclosed, the name of the petitioner was **dropped** from the purview of the exercise of provincialisation as carried out in respect of the said school.

**21.** The materials as brought on record reveals that 2(two) teachers who have been now being provincialized in the said school i.e. the respondents no. 6 & 7 herein both are admittedly, Language Teachers. Accordingly, the

enrolment status in the said school not having mandated, regularisation beyond the provisions of Section 3(1)(xi) of the said Act of 2017 and there being no occasion to exercise the liberty as granted under the proviso to Section 3(1)(xi) of the said Act of 2017, the respondent authorities could not have provincialized the services of 2(two) teachers i.e. the respondents no. 6 & 7 in the school in question at the first instance. It is also to be noted that none of the parties have contended in the matter that the enrolment status in the said school was to the level which required creation of an additional post by exercising the liberty as granted under the proviso to Section 3(1)(xi) of the said Act of 2017.

**22.** In view of the above undisputed position coming on record in the matter and petitioner herein, admittedly, being the only teacher teaching the subject of Social Studies in the school, his services could not have been ignored while provincializing the services of the serving teachers of the school. Accordingly, it is held that the petitioner herein is eligible and entitled to have his services provincialized as a Social Studies Teacher in the said school in accordance with the provisions of Section 3(1)(xi) of the said Act of 2017.

**23.** Having held that the petitioner herein, is eligible and entitled to have his services provincialized in the said school as a Social Studies Teacher, it is now to be seen amongst who the respondent no. 6 or respondent no. 7, whose provincialisation is required to be interfered with, so as to facilitate the provincialisation of services of the petitioner herein.

**24.** The rival contentions of the respondent no. 6 & 7 as noticed hereinabove bring on record the disputed questions of fact. Reckoning the appointment order as issued in favor of the respondent no. 6 by the School Managing Committee on 05.08.1994, she is admittedly, senior to the respondent no. 7 herein who had entered into services of the school on **05.03.2008**. However, the respondent no. 7 in his affidavit has contended that the respondent no. 6 was so engaged in the school on 25.12.1992 and at that relevant point of time she was not so eligible for being so engaged as an Assistant Teacher in the school. The respondent no. 7 has further questioned the resolution as adopted by the School Managing Committee in its meeting held on 05.08.1994, towards appointing the respondent no. 6 as an Assistant Teacher in the said school.

**25.** Be that as it may, both the respondents no. 6 & 7 are admittedly, Language Teachers. As to who would be eligible *inter-se* between the respondent no. 6 & 7 is a question of fact, which would be now required to be considered by the respondent authorities in the matter. However, while on the one hand the respondent no. 6 had claimed that she is senior to the respondent no. 7, *per contra* the respondent no. 7 has contended that the seniority as claimed by the respondent no. 6 over him in the matter in view of the facts existing pertaining to the engagement of the respondent no. 6 in the school cannot **clothe** the respondent no. 6 with such seniority.

**26.** In the above view of the matter, this Court is left with no other alternative in view of the disputed question coming on record with regard to

the services/seniority of the respondents no. 6 & 7 in the school and a determination as to who amongst them would be the teacher eligible for provincialisation as a Language Teacher not being permissible this Court interferes with the provincialisation as effected in the case of the respondents no. 6 & 7.

**27.** In view of the conclusions as reached herein above, the following directions are being issued:-

(i) The Director of Elementary Education, Assam, in view of the determination as made hereinabove, that the petitioner is eligible and entitled for having his services provincialized as a Social Studies Teacher in the said school, would now place the case of the petitioner before the SLSC for scrutiny of his service particulars and the Director of Elementary Education, Assam while placing the case of the petitioner herein before the SLSC shall intimate the committee that the petitioner is working in the said school as an Teacher w.e.f. 25.12.1992 and he admittedly, is teaching the subject of Social Studies in the said school and in terms of the provisions of Section 3(1)(xi) of the Act of 2017, he is eligible to have his services provincialized in the said school.

(ii) The State Level Scrutiny Committee, on the case of the petitioner being placed before it, shall proceed to scrutinize the service particulars of the petitioner in the light of the determinations

made in this order by this Court and thereafter, proceed to make its recommendations.

(iii) The Director of Secondary Education Department, Assam, shall on receipt of the recommendation in respect of the petitioner from the SLSC proceed to further process the matter and in the event the said recommendation is in favor of the petitioner, proceed to provincialise the services of the petitioner after following the procedure as mandated under the provisions of the said Act of 2017. In the event the petitioner herein is found to be eligible for provincialisation of his services, such provincialisation in his case shall be so effected w.e.f. 01.01.2021, with all consequential benefits of seniority, pay etc.

(iv) The appointments of the respondents no. 6 & 7 having been interfered by this Court only on the ground that materials on record do not conclusively indicate as to who amongst them is to be provincialised in their services, the respondent no. 6 & 7 are hereby directed to prefer appeals before the Secretary to the Government of Assam, Department of School Education, staking their claims for provincialisation of their services.

(v) The Secretary to the Government of Assam, Department of School Education, on receipt of such appeals from the respondents no. 6 & 7 shall place the same before the SLSC for further scrutiny of their service particulars. The SLSC on receipt of such appeals, shall

proceed to scrutinize the matter by exercising the powers vested in it under Section 13(11) Act of 2017 and thereafter, upon a detailed examination of the contemporaneous records maintained in the school, also by ascertaining the continuous nature of service rendered by the respondent no. 6 in the school, ascertain as to who amongst the respondent no. 6 & 7 is eligible to have his/her services provincialised.

(v) Basing on the determination that would be now made in the matter by the SLSC, the Secretary to the Government of Assam, Department of School Education, shall pass a speaking order directing the provincialisation of the person now found eligible amongst the respondent no. 6 & 7 for having their services provincialised.

(vi) It is provided that amongst the respondent no. 6 & 7, who is now found eligible for having his/her services provincialised, would be entitled to have his/her services provincialised w.e.f. 01.01.2021 with all consequential benefits.

(vii) The above exercise now required to be carried in the matter, shall be so carried out by the Director, Secondary Education Assam and the Secretary to the Government of Assam, Department of School Education, within a period of 120 days from the date of receipt of certified copy of this order.

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

**JUDGE**

**Comparing Assistant**