

GAHC010021102023



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

Case No. : WP(C)/689/2023

1: SUJIT DAS AND 3 ORS

S/O- LATE GAURANGA CH DAS, R/O- WARD NO. 6, BHAKARIVITA
BONGAIGAON, P.O, P.S AND DIST- BONGAIGAON, ASSAM, PIN-
783380(WORKING AS ASSTT TEACHER(SOCIAL SC) BONGAIGAON
VIDYAMANDIR HIGH SCHOOL)

2: PRASANTA MAHANTA

S/O- LATE KUNJA BEHARI MAHANTA R/O- WARD NO. 7 BHAKARIVITA
BONGAIGAON P.O P.S AND DIST- BONGAIGAON ASSAM PIN-
783380(WORKING AS ASSTT TEACHER(ENGLISH) BONGAIGAON
VIDYAMANDIR HIGH SCHOOL)

3: ACHINTYA CHOUDHURY

S/O- DHAN RAM CHUDHURY R/O- MULAGAON P.O P.S AND DIST-
BONGAIGAON ASSAM PIN- 783380(WORKING AS ASSTT
TEACHER(SCIENCE) BONGAIGAON VIDYAMANDIR HIGH SCHOOL)

4: BISHAL ROY

S/O- LATE ASHIT BARMAN ROY R/O- NETAJI NAGAR WARD NO. 25 P.O
P.S AND DIST- BONGAIGAON ASSAM PIN- 783380 (WORKING AS JUNIOR
ASSTT BONGAIGAON VIDYAMANDIR HIGH SCHOOL

VERSUS

1: THE STATE OF ASSAM AND 2 ORS REP. BY SECRETARY TO THE GOVT
OF ASSAM, EDUCATION(S) DEPTT, DISPUR, GHY- 06

2:THE DIRECTOR OF SECONDARY EDUCATION ASSAM

3:THE INSPECTOR OF SCHOOLS BONGAIGAON DISTRICT CIRCLE
BONGAIGAON ASSAM

Advocate for the Petitioner : MRS. K DEVI

Advocate for the Respondent : SC, SEC. EDU.

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

ORDER

Date : 22-03-2024

Heard Mrs. K. Devi, learned counsel for the petitioners. Also heard Mr. U. Sharma, learned standing counsel, Education (Secondary) Department, representing all the respondents.

The grievance raised in the present proceedings by the petitioners is with regard to non-release of their salaries w.e.f. September, 2021, although their services were provincialised vide order dated 04.01.2021 w.e.f. 01.08.2021.

As projected in the writ petition, the case of the petitioners is that they were serving Teachers in Bongaigaon Vidyamandir High School, Bongaigaon, a venture educational institution, and their cases were taken up for consideration for provincialisation of their services under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (as amended) (for short, "Act of 2017"). On conclusion of the process involved, vide order dated 04.01.2021, the services of the petitioners herein were so provincialised w.e.f. 01.08.2021. Pursuant to issuance of the said order dated 04.01.2021, the petitioners were paid their salaries for the month of August, 2021 and thereafter, the salaries came to be stopped. On enquiry, the petitioners were given to understand that as the result of the School in the HSLC Examination were not up to the mark, the petitioners' salaries were stopped and to this extent a stipulation was made in the order dated 04.01.2021 that the provincialisation is subject to the condition that their performance and the number of students in the HSLC Examination, 2021 conform to the eligible standards.

The respondents have also filed an affidavit in the matter through the Director of Secondary Education, Assam and therein it is the stand of the respondents that since the academic performance of the school being not up to the mark, the salaries of the petitioners were not released.

The provisions of Section 3(1)(vi) of the Act of 2017, which is relevant to the issue arising in the present proceedings, is extracted herein below:-

“3.(1)(vi) In case of a Venture High School or a Venture Higher Secondary School or a Venture Junior College or a Venture Degree College, the concerned Venture Educational Institution must have a consistent good academic performance which would mean that at least 30% of the candidates appearing for the final examination as a whole must have passed in the last three consecutive examinations held during previous three consecutive years prior to the date of coming into force of this Act.”

A perusal of the provisions of Section 3(1)(vi) of the Act of 2017 reveals that the venture educational institution to be eligible for provincialisation must have a consistent good academic performance, which would mean that at least 30% of the candidates appearing in the final examination as a whole must have passed in the last 3(three) consecutive examinations held during previous 3(three) consecutive years prior to the date of coming into force of the Act of 2017. The respondent authorities, upon scrutinizing the cases of the serving teachers of the petitioners' school, had proceeded to issue the order dated 04.01.2021, which has to be deemed to have been so done on a conclusion being reached that the petitioners' school had fulfilled the eligibility conditions as mandated under Section 3(1)(v) and 3(1)(vi) of the said Act of 2017.

Having noticed the provisions of the Act of 2017, more particularly, Section 3(1)(vi), the condition as specified in the order dated 04.01.2021 is to be examined. The respondent authorities while proceeding to provincialize the

services of the petitioners, vide the said order dated 04.01.2021, incorporated therein the following stipulation:-

“.....pleased to provincialised the services of the Teachers/Tutors and Non-Teaching staff of the Molua High School, District-Golaghat with effect from 1st August 2021 subject to the condition that their performance and number of students in the HSLC examination 2021 conform to the eligible standards...”

The said stipulation would mean that the petitioners would be eligible to enjoy the benefits of provincialisation of their services subject to the performance of the students in the HSLC Examination of 2021. As noticed hereinabove, the provisions of Section 3(1)(vi) of the 2017 Act do not mandate any such condition.

In that view of the matter, the said stipulation so incorporated by the respondent authorities in the order dated 04.01.2021 was admittedly, without any jurisdiction. The said stipulation being in clear violation of the provisions of the Act of 2017, the same cannot be sustained. Further, the services of the petitioners although was provincialised vide order dated 04.01.2021, the effect of such provincialisation was given from 01.08.2021, which is contrary to the stipulation as made in the provisions of Section 4 of the Act of 2017. Section 4 of the said Act mandates that the services of Teachers and/or Tutors of all venture educational institutions eligible under Section 3 shall be deemed to have been provincialised on the date of publication of the provincialisation order by Notification in the Official Gazette and they shall become employees of the State w.e.f. such date. The provincialisation order in respect of the petitioners having been issued on 04.01.2021, their services have to be deemed to have been provincialised at least w.e.f. 04.01.2021. Accordingly, the respondent authorities could not have provincialised the services of the petitioners vide the order dated

04.01.2021 from a future date, i.e. 01.08.2021, and such prescriptions as made in the order dated 04.01.2021 has also been made in clear violation of the provisions of the Act of 2017.

In view of the above conclusions, the stipulation with regard to the date of coming into effect of the provincialisation of the services of the petitioners, i.e. 01.08.2021, and the condition that their such provincialisation is dependent upon the performance and number of students in the HSLC Examination, 2021 stands set aside and quashed. The petitioners would be deemed to have been provincialised in their services w.e.f. 04.01.2021. Accordingly, the petitioners would now be entitled to receive their pay against the post of Tutors w.e.f. 04.01.2021.

The Director of Secondary Education, Assam shall release to the petitioners their pay w.e.f. 04.01.2021 as Tutors. The pay of the petitioners in arrears since 04.01.2021 shall be released to the petitioners by the Director of Secondary Education, Assam within a period of 3(three) months from the date of receipt of a certified copy of this order. The Director shall w.e.f. the month of April, 2024 release to the petitioners their current salaries and the arrears would be so released, as indicated hereinabove.

Before parting with the records of the case, the submission as advanced by Mr. U. Sharma, learned standing counsel, Education (Secondary) Department is to be taken note of.

Mr. Sharma has submitted that the stipulations as made by the respondents in the order dated 04.01.2021 was so made to ensure that the students studying in the school receive the best coaching from the Teachers and the Teachers take all requisite steps to see that the students in the school perform well in the final examination, i.e. HSLC Examination. The said objective

which was sought to be achieved is a noble one and the same cannot be said to be not in tune with the objective behind provincialisation of the services of the Teachers of venture educational institutions. However, the conditions as stipulated being in violation of the Act of 2017, this Court had interfered with the same. However, the interference with the said stipulation would not bar the respondent authorities from taking appropriate departmental action against the Teachers of the school in the event it is found that they are not performing their duties in the manner required. However, any such action taken should strictly conform with the provisions of the Assam Services (Discipline and Appeal) Rules, 1964.

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

JUDGE

Comparing Assistant