

GAHC010009242024



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

Case No. : WP(C)/257/2024

MAMON BORPATRA GOHAIN
W/O SRI BIREN KUMAR DUTTA, VILL-UJANI JALBHARI, P.O.-JALBHARI,
DIST-LAKHIMPUR, ASSAM, PIN-787055

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SECONDARY EDUCATION DEPARTMENT, DISPUR, ASSAM,
GUWAHATI-781006

2:THE DIRECTOR OF SECONDARY OF EDUCATION
ASSAM
-CUM- CHAIRMAN OF STATE LEVEL SCRUTINY COMMITTEE
KAHILIPARA GUWAHATI-781019

3:THE INSPECTOR OF SCHOOLS LAKHIMPUR
DIST-LAKHIMPUR ASSAM PIN-78700

Advocate for the Petitioner : MR J ABEDIN

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 15.02.2024

Heard Mr. J. Abedin, learned counsel for the petitioner. Also heard Mr. J. Neogi, learned standing counsel, Secondary Education Department, appearing on behalf of all the respondents.

2. The grievance raised by the petitioner in the present proceedings, is that the petitioner although fulfilled the eligibility criterias as prescribed under the provisions of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, was denied the benefit of provincialization of her services on the ground that there was low enrollment of students in the Economics subject in Pachim Dhakuakhana Junior College, Lakhimpur.

3. The petitioner was appointed as a lecturer in Economics subject in Pachim Dhakuakhana Junior College, Lakhimpur, on 26.12.2005, by the School Managing Committee(SMC) of the said Junior College. The petitioner joined her services on the same date i.e. 26.12.2005. It is to be mentioned here that at the relevant point of time, the said Junior College was in the venture stage. With the enactment of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, the cases of teaching and non-teaching staff of the said Junior College(now known as Pachim Dhakuakhana Senior Secondary School) was taken-up for consideration for provincialization of their services. The cases of the petitioner and other teaching staff came to be placed before the jurisdictional District Level Scrutiny Committee(DLSC). The petitioner being a first post holder in the Economics subject; the jurisdictional District Level Scrutiny Committee(DLSC) recommended her case along with other eligible persons. Thereafter, the case was forwarded to the Director, Secondary Education Department, for being placed before the State Level Scrutiny Committee (SLSC). As no information was received by the petitioner with regard to the status of the consideration being made in her case for provincialization of her services, she made an inquiry with

the authorities and on such inquiry, she was given to understand that as the number of students appearing in the final year examination in 2016 in Economics subject from the said Senior Secondary school being less than what is being prescribed in the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017; the case of the petitioner was not recommended by the State Level Scrutiny Committee (SLSC) for provincialization of her services. The petitioner, thereafter, pursued the matter with the authorities and not finding a favourable response, has instituted the present proceedings.

4. The petitioner, in the present proceedings, has brought on record a certificate from the Principal, Pachim Dhakuakhana Senior Secondary School, wherein, it has been shown that the number of students in the Economics subject in the said school for the year 2017 was 10.

5. The issue arising in the present proceedings, is to the term "last final examination" as appearing in the provisions of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017. Provisions of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, mandates that at least 10 students must have appeared in the "last final examination" in any subject in case of a Venture Higher Secondary School or a Venture Junior College. The said issue is no longer *res-integra* and is covered in the case of Jashimuddin Choudhury v. State of Assam & ors., vide judgment & order, dated 19.09.2023, passed in WP(c)730/2023. This Court on examination of the said issue, came to a

conclusion that the expression “last final examination” as used in Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, would mean the HSLC examination of 2017 or the HS examination of 2017 in-as-much as the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, had come into effect only from 12.05.2017 and the said Higher Secondary Examination of 2017 had already been concluded by then. It is to be noted that the Higher Secondary School examination for the year 2017 was held between February, 2017 and March, 2017.

6. Mr. Neogi, learned standing counsel, Secondary Education Department, has placed on record, the instruction received by him in the matter from the Director, Secondary Education Department. The Director, Secondary Education Department, Assam, in the said communication has held that the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, having been notified on 12.05.2017, the “last final examination” would be the Higher Secondary examination of 2017 and not the Higher Secondary examination of 2016, as erroneously considered by the State Level Scrutiny Committee (SLSC).

7. It was further highlighted in the said communication by the Director, Secondary Education Department, Assam, that in the Higher Secondary examination of 2017, 10 number of students had appeared in the Economics subject from Pachim Dhakuakhana Senior Secondary School and the same was said to be in fulfillment of the provisions of section 3(1)(vii) of the Assam

Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017.

8. In view of the said position and the decision of this Court in the case of Jashimuddin Choudhury(supra); this Court is of the view that denial of the benefit of provincialization of services to the petitioner by giving an incorrect meaning to the expression “last final examination”, is not justified at all. Consequently, it is held that the petitioner fulfills the requirement of section 3(1) (vii) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, and thereby, was entitled to have her case considered for provincialization of her services.

9. The Director, Secondary Education Department, Assam, now shall place the case of the petitioner again before the State Level Scrutiny Committee(SLSC) for a re-consideration of her claim. The State Level Scrutiny Committee(SLSC) shall scrutinize the particulars of the petitioner and come to a conclusion with regard to the entitlement of the petitioner for being provincialized as a lecturer in Pachim Dhakuakhana Senior Secondary School.

10. However, it is to be noted that the case of the petitioner shall not be rejected on the ground that in the Higher Secondary Examination of 2016, students less than 10 in number, had appeared against the Economics subject from the Pachim Dhakuakhana Senior Secondary School. The State Level Scrutiny Committee(SLSC) shall proceed with the consideration as directed to be made with regard to the particulars of the petitioner by reckoning that the term

“last final examination” as finding mention in the provisions of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, pertains to the Higher Secondary Examination of 2017, and this Court having held that there being 10 students appearing in the Economics subject from Pachim Dhakuakhana Senior Secondary School in the Higher Secondary Examination of 2017, the petitioner has satisfied the requirements of the provisions of Section 3(1)(vii) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017.

11. In the event, on consideration, the name of the petitioner is recommended by the State Level Scrutiny Committee(SLSC); the Director, Secondary Education Department, Assam, shall take steps for issuance of directions for provincialization of the services of the petitioner from the date, the other teaching staff of Pachim Dhakuakhana Senior Secondary School found eligible, were so provincialized, with all consequential benefits of pay, seniority, etc..

12. The directions as passed hereinabove, shall be complied by the Director, Secondary Education Department, Assam, within a period of 90(ninety) days from the date of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant