

GAHC010052522021



2024:GAU-AS:13142

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

Case No. : WP(C)/1949/2021

SHEIKH MEHBUB ALOM
S/O- LT. IBRAHIM ALI SHEIKH, R/O- VILL- KAJAIKATA PART-VI, P.O.
KAJAIKATA, P.S. BILASIPARA, DIST.- DHUBRI, ASSAM, PIN- 783348

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
ELEMENTARY DEPTT., DISPUR, GHY-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DY. COMMISSIONER
DHUBRI
ASSAM
P.O. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783323

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
P.O. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783323

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
BILASIPARA
P.O. BILASIPARA

DIST.- DHUBRI
ASSAM
PIN- 783348

6:THE PRESIDENT OF THE SCHOOL MANAGEMENT COMMITTEE (SMC)
OF NAYERALGA M.E. GIRLS M.E. MADRASSA
P.O. NAYERALGA
P.S. BILASIPARA
DIST.- DHUBRI
ASSAM
PIN- 783348

7:HAMDIA KHATUN
HEADMASTER OF NAYER ALGA GIRLS M.E. MADRASSA
W/O- MOYNUL HOQUE
R/O- VILL- NAYER ALGA PART-III
P.O. NAYERALGA
P.S. BILASIPARA
DIST.- DHUBRI
ASSAM
PIN- 783348

8:MOYNUL HOQUE MANDAL
S/O- LT. MOMTAZ ALI MONDAL
R/O- VILL- MAYERCHAR PART-VI
P.O. NAYER ALGA
P.S. BILASIPARA
DIST.- DHUBRI
ASSAM
PIN- 78334

Advocate for the Petitioner : MR. M A SHEIKH, MR. N M SARKAR,MS F INTAZ

Advocate for the Respondent : SC, ELEM. EDU, MR. M U MONDAL,MS. N NASRIN,MD. I H KHAN,GA, ASSAM

Linked Case : WP(C)/2083/2021

SHAH ALOM SHEIKH
S/O DANEJ ALI
R/O VILL. NAYER ALGA PART-IV
P.O. NAYER ALGA
P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN 783348

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
EDUCATION ELEMENTARY DEPTT.
DISPUR
GUWAHATI 6

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 19

3:THE DEPUTY COMMISSIONER
DHUBRI
ASSAM
P.O. DHUBRI
DIST. DHUBRI
ASSAM
PIN 783323

4:THE DIST. ELEMENTARY EDUCATION OFFICER

P.O. DHUBRI
DIST. DHUBRI
ASSAM
PIN 783323

5:THE BLOCK ELEMENTARY EDUCATION OFFICER

BILASIPARA
P.O. BILASIPARA
DIST. DHUBRI
ASSAM
PIN 783348

6:THE PRESIDENT OF THE SCHOOL MANAGEMENT COMMITTEE (SMC)
OF NAYER ALGA M.E. GIRLS M.E. MADRASSA
P.O. NAYER ALGA
P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN 783348

7:HAMDIA KHATUN

HEADMASTER OF NAYER ALGA GIRLS M.E. MADRASSA
W/O MOYNUL HOQUE
R/O VILL. NAYER ALGA PART-III
P.O. NAYER ALGA
P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN 783348

8:MOYNUL HOQUE MANDAL

S/O LATE MOMTAZ ALI MONDAL
R/O VILL. MAYERCHAR PART VI
P.O. NAYER ALGA
P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN 783348

Advocate for : MR. M A SHEIKH
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

24/09/2024

Heard Mr. M A Sheikh, learned counsel for the petitioner. Also heard Ms. S Chutia, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2, 4 & 5 and Mr. M U Mondal, learned counsel for the respondent Nos. 7 & 8.

2. Pursuant to the decision dated 06.04.2008 of the Managing Committee of Nayer Alga Girls M.E. Madrassa under Bilasipara Education Block of District-Dhubri, the Headmistress-cum-Secretary of the said M.E. Madrassa by order dated 06.04.2008 appointed the petitioner as an Assistant Teacher of Science in the said Madrassa. Pursuant to the same, he joined his service on 07.04.2008 in said Nayer Alga Girls M.E. Madrassa since the days of its venture stage.

3. Said Nayer Alga Girls M.E. Madrassa had its recognition of the Director of Elementary Education (DEE), Assam on 31.12.2005 w.e.f. 01.01.2005 and the service of the petitioner was

provisionally approved by the District Elementary Education Officer (DEEO), Dhubri on 30.05.2011. Said M.E. School has also its recognition under the SSA, Assam and has its DISE Code since the year 2009-2010.

4. The said Nayer Alga Girls M.E. Madrassa was considered for provincialisation under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017*.

5. Section 3(1)(XI) of said 2017 Act provides that — *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.*

6. The Director of Elementary Education, Assam by an order under No.EPD-16/Prov-UP(Act.2017)/2021/2352 dated 05.02.2021 provincialised the service of the respondent Nos. 7 & 8 of Nayer Alga Girls M E Madrassa, under Bilasipara Education Block of District-Dhubri as a Tutors under the provisions of said 2017 Act and attached them with the Base School, Nayer Alga Higher Secondary School.

7. While provincialising the service of the respondent Nos. 7 & 8 as Tutors under the said 2017 Act from the said M.E. Madrassa, the authorities concerned in the Elementary Education Department under the said 2017 Act did not consider the case of the petitioner in proper perspective disregarding his better claim and left him out from provincialisation of his service.

8. Aggrieved by the same, petitioner preferred a writ petition being WP(C) No. 1470/2021, however, he had withdrawn the same on 08.03.2021 with liberty. The Court accordingly by order dated 08.03.2021 closed the said WP(C) 1470/2021 of the petitioner granting him liberty, as prayed for.

9. Thereafter, the petitioner filed WP(C) No. 1949/2021 praying amongst others for a direction to the respondents in the Elementary Education, particularly, the Director of Elementary Education, Assam to provincialise his service as an Assistant Teacher in Nayer Alga Girls M.E. Madrassa under the provisions of the said 2017 Act setting aside the provincialisation order of the respondent Nos. 7 & 8 as Tutors vide orders dated 05.02.2021 issued by the DEE, Assam attaching both the respondent Nos. 7 & 8 in the Base School, namely, Nayer Alga Higher Secondary School.

10. By order dated 22.03.2021 while issuing notice in said WP(C) No. 1949/2021, the Court in the interim directed the respondents in the Elementary Education Department not to give the effect of provincialisation of the respondent Nos. 7 & 8 until further order which is still in force.

11. During pendency of the said WP(C) No. 1949/2021, the petitioner filed WP(C) No. 2083/2021 praying amongst others to set aside and quash the notification No. EPD-46/2017/Pt.-I/42 dated 04.02.2021 of the Director of Elementary Education, Assam that relates to provincialisation of three teaching staff of Nayer Alga Girls M.E. Madrassa, District-Dhubri and pertaining to provincialisation of the service of the respondent Nos. 7 & 8 of Nayer Alga Girls M.E. Madrassa pursuant to which both the respondent Nos. 7 & 8 were provincialised as Tutors under the provisions of said 2017 Act vide orders dated 05.02.2021 issued by the DEE, Assam and attached to the Base School Nayer Alga Higher Secondary School.

12. As both the writ petitions of the petitioner relates to same issue and on being approved by the parties, both the petitions have been taken up together for their adjudication.

13. It is seen that earlier the respondent Nos. 7 & 8 filed an Interlocutory Application being I.A. (Civil) No. 1353/2021 for modification/vacation/alteration of the interim order dated 22.03.2021 passed in WP(C) No. 1949/2021 and the Court after hearing the parties including the respondent Nos. 7 & 8 as well as the petitioner and the Standing counsel, Department of School Education by order dated 06.04.2022 dismissed the said interlocutory application of the respondent Nos. 7 & 8.

14. Ms. Chutia, learned Standing counsel, Department of School Education (Elementary), Assam placed the communication No. EPD/H/89/ 2022/Pt./12 dated 13.09.2024 as well as the Minutes of the State Level Scrutiny Committee for re-verification of provincialisation of posts at Venture recognized Upper Primary Schools including Nayer Alga Girls M.E. Madrassa as well as the DISE/UDISE (NIEPA DISE) Data Base Verification Report of said Nayer Alga Girls M.E. Madrassa submitted by the authorities of Mission Director, Samagra Shiksha, Assam.

15. Ms. Chutia, learned Standing counsel, Department of School Education (Elementary), Assam from the said communication of the DEE, Assam dated 13.09.2024 placed before the Court that pursuant to the orders of the Court passed in WP(C) No. 1949/2021, the State Level Selection Committee (SLSC), Assam, on due verification found that the respondent No.7 is the junior most teacher and the 2nd Language Teacher, whose service has been provincialised as

Tutor on 05.02.2021 as been recommended by the District Scrutiny Committee, Dhubri and as forwarded by the District Elementary Education Officer, Dhubri; whereas the petitioner who was the Science Teacher in the said Girls M E Madrassa, is senior to the respondent No. 7 in the said Madrassa, who has been wrongly left out from the benefit of provincialisation under the provisions of said 2017 Act.

16. It is seen that after hearing the petitioner as well as the respondent Nos.7 & 8, considering all the relevant records including the report of the SSA, Assam with DISE Code and U-DISE Code of the relevant years of the said Nayer Alga Girls M E Madrassa and in pursuance of the orders of the Court passed earlier in WP(C) No. 1949/2021, the Director of Elementary Education, Assam by order under No. EPDH/81/2021/401 dated 01.11.2021 cancelled the provincialisation order of service of the respondent No. 7 dated 05.02.2021 as Tutor, noted above.

17. It is also seen that in the case in hand, after verification of relevant records, hearing both the petitioner as well as the respondent Nos. 7 & 8, the State Level Scrutiny Committee found that though the petitioner, who was the Science Teacher in the said Nayer Alga Girls M E Madrassa and was senior to the petitioner and an eligible teacher for provincialisation as per the provisions of Section 3(1)(xi) of the said 2017 Act, yet he was left out from the benefit of provincialisation, whereas the service of the respondent No. 7 was provincialised as a Tutor, although she was appointed as a second Language Teacher in the said Madrassa. Accordingly, the DEE, Assam by order dated 01.11.2021 cancelled the provincialisation order of service of the respondent No. 7 dated 05.02.2021 as Tutor.

18. It is also seen that the SLSC, Assam has already considered the case of the petitioner and have decided to provincialise his service as per the provisions of said 2017 Act. But due to pendency of these cases including WP(C) No. 126/2024 preferred by the respondent No. 7 the respondent authorities in the Elementary Education Department could not pass the necessary order pertaining to provincialisation of service of the petitioner.

19. After hearing the learned counsels for the parties and considering entire aspects of the matter, both the writ petitions are disposed of directing the respondents in the Department of School (Elementary) Education more particularly the Commissioner and Secretary to the Govt. of Assam in the Department of School (Elementary) Education as well as the Director of Elementary Education, Assam to pass necessary order provincialising the service of the petitioner under the

provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017* as per his entitlement, in accordance with law.

20. The interim order passed earlier on 22.03.2021 in WP(C) No. 1949/2021 stands merged with this order.

21. The relevant instruction placed by Ms. S Chutia, Standing counsel, Department of School (Elementary) Education, Assam including the communication dated 13.09.2024 of the DEE, Assam be kept as a part of the record.

22. Accordingly, both the writ petitions stand allowed to the extent above.

JUDGE

Comparing Assistant