

GAHC010013272024



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

Case No. : WP(C)/2359/2022

ARUP KUMAR SAHA
S/O- ANIL CH. SAHA
VILL-KALDOBA PART-II
P.O- AGOMONI
P.S- GOLAKGANJ
DIST- DHUBRI
ASSAM
PIN-783335

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM ELEMENTARY EDUCATION DEPTT.
DISPUR GUWAHATI-781006

2:THE DIRECTOROF ELEMENTARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-19 ASSAM.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI ASSAM

4:THE DISTRICT SCRUTINY COMMITTEEDHUBRI
REP. BY ITS CHAIRMAN DIST.-DHUBRI ASSAM

5:ANOWAR HUSSAINS/O- TAIMUR ALI SARKAR
KALBODA PART-III P.O AND P.S- AGOMONI DIST- DHUBRI
ASSAM PIN-783335

6:ANIL CH. ROYS/O- MAHESHWARI PRODHANI VILL TALLI PART-II P.O-
BELGURIP.S- AGOMONI DIST- DHUBRI ASSAM PIN-783334

Advocate for : MR. I H LASKAR

Advocate for : SC ELEM. EDU appearing for THE STATE OF ASSAM AND 5 ORS

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 20.03.2024

Date of Judgment & order: 20.03.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. P. K. Deka, learned counsel for the petitioner. Also heard Mr. P. K. Borah, learned standing counsel, Elementary Education Department, appearing on behalf of Respondents No. 1, 2, 3 & 4; and Mr. J. Abedin, learned counsel, appearing on behalf of Respondent No. 6. However, none has appeared on behalf of Respondent No. 5.

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

3. The petitioner by way of instituting the present proceedings, has presented a challenge to an order, dated 04.02.2021, by which the services of the Respondents No. 5 & 6, herein, were provincialized as Language Teachers in Gokarpara M.E. school, Dhubri. The petitioner has further prayed for a direction upon the respondent authorities to provincialize his services as a teacher in Social Science subject.

The petitioner, herein, was appointed as a Science Teacher on 16.10.1995 by the School Managing Committee(SMC) of the said school. The petitioner joined his services on 19.10.1995. It is to be noted that the school wherein the petitioner was so appointed, at the relevant point of time, was in its venture

stage.

It is projected in the writ petition that the petitioner on account of non-availability of a teacher to teach Social Science subject, was required by the school authorities of the said school to teach both Science subject and Social Science subject in the school. However, in course of time, with the appointment of other teachers in the school, the petitioner was required solely to teach the Social Science subject in the said school.

The Respondent No. 5, herein, is the Headmaster of the said school and was so appointed on 27.10.1994. The Respondent No. 6, on the other hand, was appointed in the said school on 16.11.1994 as an Assistant Teacher. As projected in the writ petition, the Respondent No. 5, in addition to discharge of his duties as Headmaster of the school, was teaching the language subject i.e. English, whereas the Respondent No. 6, was teaching the language subject i.e. Assamese in the said school.

The services of the serving teachers of the said school although were taken-up for consideration under the provisions of the Assam Venture Educational Institutions(Provincialization of Services) Act, 2011, however, during the pendency of such process; the said Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, having been declared to be *ultra vires* by this Court in the case of **Chandan Kumar Neog & ors. v. State of Assam & ors.**, reported in **2016(5) GLT 296**; the consideration as made under the provisions of the said Assam Venture Educational Institutions(Provincialization of

Services) Act, 2011, in respect of the petitioner's school, could be taken to its logical conclusion. Thereafter, upon enactment of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017; the cases of the serving teachers of the said school was again taken-up for consideration by the respondent authorities. As mandated; the Respondent No. 5 submitted the particulars of the serving teachers of the school on 31.05.2017 before the competent authority, for consideration of their cases for provincialization of their services. In the particulars so submitted by the Respondent No. 5 of the school, in question; the Respondent No. 5 was denoted to be the Headmaster of the said school and was also shown to be teaching the language subject i.e. English. The Respondent No. 6 was denoted as an Assistant Teacher of the school and was shown to be teaching the language subject i.e. Assamese. The petitioner, herein, was also denoted as an Assistant Teacher of the school and was shown to be teaching the Social Science subject.

The said particulars along with other relevant materials were, thereafter, placed before the jurisdictional District Level Scrutiny Committee(DLSC) and the District Level Scrutiny Committee(DLSC), on verification of the particulars of the serving teachers of the said school, proceeded to recommend the names of the Respondent No. 5, Respondent No. 6, the petitioner, herein, and one Taher Ahmed, for provincialization of their services.

It is to be noted here that the Respondents No. 5 & 6 while being denoted by the District Level Scrutiny Committee(DLSC) to be teaching the language

subjects i.e. English and Assamese, respectively, the petitioner, herein, was so denoted to be teaching the Social Science subject and said Taher Ahmed was denoted to be teaching the Science subject.

4. It is the case of the petitioner that the recommendations of the District Level Scrutiny Committee(DLSC) was thereafter placed before the State Level Scrutiny Committee(SLSC) and upon conclusion of the process of consideration; the respondent authorities proceeded to provincialize the services of the Respondents No. 5 & 6 and said Taher Ahmed. In terms of the said provincialization as effected in the said school; it is to be noted that the Respondents No. 5 & 6 were so provincialized as Language teachers. Being aggrieved by the said provincialization as effected in the cases of Respondents No. 5 & 6 as Language teachers; the present proceedings has been instituted by the petitioner.

5. I have heard the learned counsels appearing for the parties and also considered their submissions in the matter.

6. The facts as projected in the writ petition, is not disputed by the respondents, herein. The petitioner as per the particulars submitted by the Respondent No. 5 of the school for provincialization of the services of the eligible teachers working in the said school; was projected to be working as a Social Science subject teacher in the said school whereas the Respondents No. 5 & 6 were projected to be teaching the Language subjects of English and Assamese, respectively. Besides teaching the English subject, the Respondent

No. 5 was the Headmaster of the said school. The particulars when placed before the District Level Scrutiny Committee(DLSC), the said Committee on verification of such particulars; proceeded to recommend the name of the petitioner, herein, along with the names of Respondents No. 5, 6 and one Taher Ahmed, for provincialization of their services. In the recommendations so made by the District Level Scrutiny Committee(DLSC); it is seen that the subjects taught by the respondents No. 5 & 6 were denoted to be the Language subjects whereas the subject taught by the petitioner was denoted to be the Social Science subject. Thereafter, the matter on being placed before the State Level Scrutiny Committee(SLSC), it is not understood as to how the names of the Respondents No. 5 & 6 along with the name of one Science teacher came to be recommended for provincialization of their services in-as-much as the provisions of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, does not mandate provincialization of more than 1(one) teacher teaching the language subject in a Venture Upper Primary School. In this connection, the provisions of Section 3(xi) of the said Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, being relevant to the issue arising in the present proceedings, is quoted herein below:

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

(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:

Provided that for additional posts it shall be considered in accordance with the norms and standard stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009).”

7. A perusal of the said provisions of Section 3(xi) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, reveals that the provincialization of the serving teachers in a Venture Upper Primary School mandates that the services of a Science and Mathematics subject Teacher, Social Science subject Teacher, and a Language Teacher, is called for. Such prescription is in tune with the provisions of the Right of Children to Free and Compulsory Education Act, 2009. Applying the provisions of Section 3(xi) of the said Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, to the facts as involved in the present proceedings; it is seen that in the petitioner's school, only 1(one) amongst the Respondent No. 5 or 6 could have had their services provincialized as Language Teacher. The Respondent No. 5 was the Headmaster of the said school at its venture stage. However, the services of the Respondent No. 5 on account of low enrollment of the students in the said school, was not provincialized as the Headmaster of the school but was so provincialized as a Language teacher. The Respondent No. 5, admittedly, having joined the services of the said school prior to the date of the joining of the Respondent No. 6, herein, and it not being disputed that the Respondent No. 5, in addition to his duties as the Headmaster of the school, in question, was also teaching the English subject in the school, amongst the Respondents No. 5 & 6, both Language Teachers; it is the Respondent No. 5 who would rank senior.

8. The petitioner, herein, being the Social Science subject Teacher of the said school, is entitled to have his services provincialized against the said post of Social Science subject as per the mandate of the provisions of Section 3(xi) of the said Assam Education (Provincialization of Services of Teacher and Re-

organization of Educational Institutions) Act, 2017.

9. Accordingly, said Taher Ahmed, who was teaching the Science Subject, was also eligible for provincialization against the said post as identified for the Science subject.

10. In the case on hand; a dispute has arisen only because of the fact that 2(two) teachers teaching Language subjects in the school, in question, came to be provincialized and thereby, leaving-out the petitioner, herein, from the purview of such provincialization although he having taught the Social Science subject in the school, was, in terms of the provisions of Section 3(xi) of the said Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017; required to be provincialized in his services against the subject of Social Science in the said school.

11. In view of the said position; it is held that both the Respondents No. 5 & 6 could not have been provincialized in their services solely basing on their service seniority in the school and amongst the Respondents No. 5 & 6, only 1(one) could have been so provincialized in his services. The Respondents No. 5 & 6, both being Language Teachers, and amongst them, the Respondent No. 5 being senior in service; it would be the Respondent No. 5 whose services would be eligible to be provincialized along with the services of the petitioner herein, and said Taher Ahmed and thereby, fulfill the mandate of Section 3(xi) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017.

12. For the purpose of implementing the provisions of Section 3(xi) of the said Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, the serving Teachers of a venture educational institution is to be so identified basing on the subjects taught by them in the school and it is seen that the Committees empowered in this connection i.e. the District Level Scrutiny Committee(DLSC) and State Level Scrutiny Committee(SLSC) have been recommending the names of the serving Teachers in respect of the Venture Upper Primary Schools basing on the subjects taught by such teachers in their respective schools. In view of the said position; the petitioner not being disputed to be teaching the Social Science subject; the petitioner's service was mandated to be provincialized against one of the 3(three) minimum posts required to be provincialized in a Venture Upper Primary School i.e. against the post meant for Social Science subject.

13. In view of the conclusions reached hereinabove; the provincialization of the services of the Respondent No. 6 as a Language Teacher in the said school, cannot be held to be in consonance with the Section 3(xi) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017, and accordingly, the same cannot be sustained.

14. In that view of the matter; the provincialization of the services of the Respondent No. 6 being in violation of the provisions of Section 3(xi) of the Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017; is hereby interfered with by this Court.

15. At this stage, the submission made by Mr. Abedin, learned counsel for the Respondent No. 6, to the effect that the services of the Respondent No. 6 was provincialized in the said school vide an order, dated 05.05.2021, w.e.f. 01.01.2021 and in pursuance thereof, he was continuing in his services as a provincialized Teacher in the said school till the date of superannuation which occasioned on 30.11.2023. It is the further contention of Mr. Abedin, learned counsel, that in pursuance to the interim directions passed by this Court in the present proceedings vide an order, dated 06.05.2022, the provincialization as effected in case of the services of the petitioner came to be cancelled vide an order, dated 01.11.2023 and being so aggrieved; the petitioner, herein, had instituted WP(c)6892/2023 before this Court and this Court, vide an order, dated 29.11.2023, was pleased to keep in abeyance the order, dated 01.11.2023.

16. In view of the above factual position obtaining in the matter, Mr. Abedin, learned counsel for the Respondent No. 6, submits that the pay and allowances that were drawn by the Respondent No. 6 and would be so due to the Respondent No. 6 for the period of his provincialized services in the said school w.e.f. 01.01.2021 till 30.11.2023, may not be recovered from the Respondent No. 6. The said contention of Mr. Abedin, learned counsel, has been duly considered by this Court and on appreciating the fact that the Respondent No. 6 was provincialized in his services w.e.f. 01.01.2021 and had continued in his services in the said school and he was also paid his salaries for a period of 7(seven) months thereafter; this Court in view of the peculiar facts and circumstances as existing in the present proceedings; directs that the salaries of the Respondent No. 6 for the period he had so served as a provincialized Teacher in the said school w.e.f. 01.01.2021 till the date of his superannuation

i.e. on 30.11.2023, be released to him. The respondent authorities shall release to the Respondent No. 6, the arrears of his salaries as was due to him for the period w.e.f. 01.01.2023 till 30.11.2023.

17. In view of the said conclusion arrived at by this Court with regard to the manner in which the services of the Respondent No. 6 is to be treated; it is hereby directed that the petitioner's services now would be provincialized w.e.f. 01.01.2021 but he would not be entitled to the arrear salaries till 30.11.2023 and thereafter, the respondent authorities shall release to the petitioner his due salaries either as a Teacher and/or as a Tutor w.e.f. 01.12.2023.

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

JUDGE

Comparing Assistant