

GAHC010004142022



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

Case No. : WP(C)/141/2022

1: ANJARUL AZAM FAKIR AND 2 ORS.

S/O. MD. HAFIZUR RAHMAN FAKIR, VILL. CHAMDHARA,
P.O. DAGAON, P.S. JURIA, DIST. NAGAON, ASSAM, PIN-782124.

2: MD. BAHARUL ISLAM

S/O. FAIZUDDIN AHMED VILL. CHENIMARI P.O. LAHARIGHAT
P.S. LAHARIGHAT DIST. MORIGAON ASSAM PIN-782127.

3: MD. ZAHANGIR KHAN

S/O. LT. SHAHEED KHAN VILL. DIKORAIJAN P.O. NAPAM
P.S. TEZPUR DIST. SONITPUR ASSAM PIN-784028

VERSUS

1: THE STATE OF ASSAM AND 2 ORS. REP. BY THE COMM. AND SECY. TO
THE GOVT. OF ASSAM, EDUCATION (HIGHER) DEPTT., DISPUR,
GUWAHATI-06.

2:THE DIRECTOR HIGHER EDUCATION
ASSAM KAHILIPARA GUWAHATI-19.

3:THE PRINCIPAL KATAHGURI COLLEGE
TUKTUKI NAGAON DIST. NAGAON PIN-782123 ASSAM

Advocate for the Petitioner : MS D BORGOHAIN

Advocate for the Respondent : SC, HIGHER EDU

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

ORDER

Date : 22-03-2024

Heard Ms. D. Borgohain, learned counsel for the petitioners. Also heard Mr. K. Gogoi, learned standing counsel, Education (Higher) Department,

representing the respondent Nos.1 & 2.

The petitioners, by way of instituting the present proceedings, have prayed that their services be provincialised in Katahguri College in the Department of Economics, by reckoning the current enrollment status of students in the Department towards satisfaction of the provisions of Section 3(1)(vii) of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (for short, "Act of 2017").

The petitioners herein were recruited as Assistant Professors in the Department of Economics in Katahguri College, Tuktuki, Nagaon on different dates. During the period when the petitioners were so appointed in the said College by the Managing Committee of the College, the said College was in its venture stage. The College having satisfied the eligibility criteria for coming under the purview of the Act of 2017, the services of the serving Assistant Professors of the said College were taken up for consideration for provincialisation of their services. It is the contention of the petitioners that on consideration of the cases of the eligible serving teachers of the said College, the services of the Assistant Professors so found eligible came to be provincialised, however, the cases of the petitioners herein were not considered along with some other Assistant Professors on the ground that they had not satisfied the eligibility criteria as mandated under the provisions of Section 3(1) (vii) of the said Act of 2017. Accordingly, being aggrieved by the denial of the benefit of provincialisation of their services under the provisions of the said Act of 2017, the petitioners have instituted the present proceedings.

The respondents have filed affidavits in the matter through the Director of Secondary Education, Assam and it has been contended therein that the petitioners herein having not fulfilled the requirement as mandated under

the provisions of Section 3(1)(vii) of the said Act of 2017, i.e. the requirement of minimum of 15(fifteen) students having appeared in the last final examination, the cases of the petitioners were not considered for provincialisation of their services under the provisions of the said Act of 2017. It is the further contention of the respondents that only 4(four) students have appeared in the final examination against the subject of Economics from the said College during the year 2017 and as such, the District Level Scrutiny Committee did not recommend the name of the petitioners herein to the State Level Scrutiny Committee for provincialisation of their services.

Ms. Borgohain, learned counsel for the petitioners has submitted that in the College as of the Session 2019-2020 and 2020-2021, there is more than the required enrollment of students in the Department of Economics and in the final degree examination held in the year 2020, 15(fifteen) students have appeared in the said examination against the subject Economics and accordingly, the Department wherein the petitioners are serving in the said College having the requisite enrollment at least w.e.f. 29.10.2020, the respondent authorities ought to have considered their cases for provincialisation of their services considering the length of service rendered by the petitioners since the said College was in the venture stage. Ms. Borgohain further submits that the interpretation of the word "*last final examination*" as given by the respondent authorities was so given on a clear misinterpretation of the provisions of Section 3(1)(vii) of the said Act of 2017 and accordingly this Court, by reckoning the present enrolment of students in the said Department, is required to direct the respondent authorities to consider the cases of the petitioners herein for provincialisation of their services.

Mr. Gogoi, learned standing counsel, Education (Higher) Department,

however, submits that the cases of the petitioners have to be construed for provincialisation of their services strictly in accordance with the provisions of the said Act of 2017 and the provisions of Section 3(1)(vii) of the said Act having mandated that for being so eligible to be considered for provincialisation of their services, at least 15(fifteen) students from the Department, wherein the petitioners are serving ought to have appeared in the final examination and on examination of the records, the number of students appearing in the final examination against the subject of Economics having been found to be much lower than the minimum prescribed in the Act of 2017, the case of the petitioners were not recommended by the District Level Scrutiny Committee. Mr. Gogoi submits that the action, as taken by the respondent authorities including the District Level Scrutiny Committee being so taken strictly in accordance with the provisions of the said Act of 2017, the petitioners are not entitled to any relief in the matter.

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 Act of 2017. The provisions of Section 3(1)(vii) of the Act of 2017 mandates that at least 15(fifteen) students must have appeared in the "*last final examination*" in any subject in case of a Venture Degree College. The said issue is no longer *res-integra* and is covered in the case of ***Jashimuddin Choudhury -Vs- State of Assam & Ors.***, vide judgment & order, dated 19.09.2023 passed in WP(C) No.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 Act of 2017, would mean the HSLC examination of 2017 or the HS examination of 2017 inasmuch as the Act of 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.

Applying the ratio of the decision of this Court in the case of **Jashimuddin Choudhury** (supra) to the issue arising in the present case, it is seen that as on 2017, only 4(four) students had appeared in the final degree examination in the subject of Economics from the said College and accordingly the said number being much lower than the minimum as required under the provisions of Section 3(1)(vii) of the Act of 2017, the petitioners would not be entitled to have their cases considered for provincialisation of their services under the provisions of the Act of 2017. The last final examination, as finding mention in the provisions of Section 3(1)(vii) of the Act of 2017 in relation to a degree College, would mean the last final degree examination and the same ought to be the Degree Final Examination of 2017 and not of a date post thereof. It is not disputed by the petitioners that as of 2017 and/or of 2016 in the final degree examination held, less than 15(fifteen) students had appeared in the subject of Economics from the said College. Accordingly, this Court is of the considered view that the petitioners have not fulfilled the eligibility criteria as mentioned under Section 3(1)(vii) of the Act of 2017 and the denial to them of the benefit of provincialisation of their services by the respondent authorities is not erroneous.

In view of the above conclusions reached by this Court in the matter, the contentions raised by the petitioners do not merit acceptance and accordingly, the writ petition stands dismissed.

At this stage, Ms. D. Borgohain, learned counsel for the petitioners submits that the provisions of Section 3(1)(vii) of the said Act of 2017 is under

challenge before the Division Bench of this Court and accordingly, she prays that in the event the said challenge is upheld by this Court, the benefits thereof be also extended to the petitioners herein.

It is needless to say that in the event the provisions of Section 3(1)(vii) of the Act of 2017 is interfered with by this Court in the proceedings pending before it, the petitioners would then be eligible for consideration of their cases subject to the condition that they fulfill the other eligibility criterias as mandated under the Act of 2017 for provincialisation of their services.

JUDGE

Comparing Assistant