

GAHC010039632024



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

Case No. : Review.Pet./44/2024

RASIKAR RAHMAN
S/O LT. NOOR ALI R/O WARD NO. 203, VILL- BOROLABARI, P.O.
BOROLABARI, P.S. CHANGSARI, PIN - 781101, DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (SECONDARY) DEPARTMENT, GUWAHATI- 781022.

2:DIRECTOR OF EDUCATION (SECONDARY)

DIRECTORATE OF SECONDARY EDUCATION ASSAM

KAHILIPARA MAIN ROAD

GUWAHATI - 781019.

3:INSPECTOR OF SCHOOLS

KAMRUP DISRRICT CIRCLE

PANBAZAR
P.O.AND P.S. PANBAZAR TOWN-781001.

4:HEAD-MISTRESS

PADMADHAR BARUAH HIGH SCHOOL
KADAMTAL
NORTH GUWAHATI
GUWAHATI
ASSAM

PIN - 781030

Advocate for the Petitioner : MR M J QUADIR

Advocate for the Respondent : SC, SEC. EDU.

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

ORDER

Date : 18.04.2024

Heard Mr. M. J. Quadir, learned counsel appearing for the review petitioner.

The present review petition has been filed praying for review of the order dated 28.08.2019 passed by this Court in WP(C) No.5798/2018 requiring the respondent authorities to consider the case of the petitioner for provincialization of the services against the post of Persian Subject Teacher in Padmadhar Baruah High School under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institution) Act, 2017 (for short "Act of 2017").

Mr. M. J. Quadir, learned counsel for the review petitioner has submitted that while passing the said order dated 28.08.2019, the petitioner could not place before this Court the decision rendered by this Court in the case of ***Dilip Das Vs. State of Assam and Others [WP(C) No.6804/2017]*** wherein it is contended that under similarly situated circumstances, this Court vide order dated 03.10.2018 had considered the case of the petitioner therein to be provincialized under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011 (for short "Act of 2011").

It is the contention of the review petitioner that the case of the review

petitioner after being considered by the District Level Scrutiny Committee came to be forwarded before the Director, Secondary Education Assam for further course of action under the provisions of the said Act of 2011. Thereafter, the Director, Secondary Education Assam upon further scrutiny had submitted a proposal before the Government for creation of post for the purpose of provincializing the services of the serving teachers of the said school. Accordingly, it is contended that the case of the serving teachers of the said school in question having been so approved by the District Level Scrutiny Committee and also forwarded by the Director of Secondary Education Assam to the Government, the case of the review petitioner ought to have been considered as to be deemed to be provincialized and accordingly a direction was required to be issued by this Court for consideration of the case of the serving teachers of the said school for provincialization of the services under the provisions of the Act of 2011.

On consideration of the contentions as made by the petitioner in the review petition, it is seen that although a recommendation was made by the Director of Secondary Education, Assam upon receipt of the recommendations of the jurisdictional District Level Scrutiny Committee for creation of post for the purpose of provincialization of the services of the serving teachers of the said school, the further proceedings of the matter at the level of the Government for creation of post and issuance of necessary notification as contemplated under the provisions of Section 10(4) of the said Act of 2011 was not concluded and the said Act of 2011 came to be set aside by this Court.

On perusal of the materials brought on record, it is seen that the said aspect of the matter was very much on record before this Court when the order dated 28.08.2019 was passed by this Court in WP(C) No.5798/2018. On consideration

of the submissions made by the learned counsel for the petitioner, this Court is of the considered view that no basis for review of the impugned order has been made out by the review petitioner. The contentions so raised by the review petitioner is to the effect that the decision as rendered by this Court vide the order dated 28.08.2019 in WP(C) No.5798/2018 is an erroneous one. It is settled position of law that even if there is an erroneous finding, the same cannot form the basis for a review of the impugned order.

The Hon'ble Supreme Court in the case of ***Delhi Administration Vs. Gurdip Singh Uban and Others reported in (2000) 7 SCC 296*** has held that the review petition by no means can be an appeal in disguise. The review petitioner has not been able to demonstrate any error apparent on the face of the order dated 28.08.2019 and accordingly, this Court is of the considered view that the review petition is not maintainable. Further as noticed hereinabove, it is also evident from the materials as available on record that the case of the serving teachers of the said School in question was not approved by the Government under Section 10(4) of the Act of 2011 before setting aside of the Act of 2011 by this Court and accordingly no vested right has accrued upon the serving teachers in this connection for having their cases considered for provincialization under the said Act of 2011.

In view of the above conclusions, the review petition is found to be without any merit and accordingly the same stands dismissed.

JUDGE

Comparing Assistant