

GAHC010014542024



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

Case No. : WP(C)/400/2024

SMTI SUNITA KAKATI AND 2 ORS
D/O MAHENDRA MOHAN KAKOTI, R/O VILLKSHUDRA PALAHA, P.O.-
BAIHATA CHARIALI, DESIGNATION- HEADMASTER OF AZARA
SONESWAR HIGH SCHOOL, DIST- KAMRUP, ASSAM

2: SYED ABDUL BAREQUE
S/O SYED AZIZAR RAHMAN
R/O VILL-DHUHI NO. 1
P.O.-DHUHI
P.S.-KAYAN
DESIGNATION- SCIENCE TEACHER
AZARA SONESWAR HIGH SCHOOL
DIST- KAMRUP
ASSAM

3: SMTI. PRANITA KEOT
D/O RAMESH CH. KEOT
R/O VILL-DIMU NO. 1
P.O.-KSHUDRA DIMU
P.S.-RANGIA
DESIGNATION-MUSIC TEACHER
AZARA SONESWAR HIGH SCHOOL
DIST- KAMRUP
ASSA

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF SECONDARY EDUCATION,
GUWAHATI-781006

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
SCHOOL EDUCATION DEPARTMENT

DISPUR
GUWAHATI-781006
ASSAM

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
CUM THE CHAIRMAN STATE LEVEL SCRUTINY COMMITTEE
HAVING ITS OFFICE AT KAHILIPARA
GUWAHATI-781019

4:THE INSPECTOR OF SCHOOLS CUM MEMBER SECRETARY
DISTRICT SCRUTINY COMMITTEE FOR SECONDARY EDUCATION
OFFICE OF THE INSPECTOR OF SCHOOL
KAMRUP
DISTRICT CIRCLE
DADARA
KAMRUP
ASSAM
PIN-781104

5:THE CHAIRMAN
DISTRICT SCRUTINY COMMITTEE FOR SECONDARY EDUCATION
OFFICE OF THE DEPUTY COMMISSIONER
KAMRUP
AMINGAON
ASSAM
PIN-781031

6:THE CHAIRMAN
STATE LEVEL SCRUTINY COMMITTEE FOR SECONDARY EDUCATION
DEPARTMENT OF SECONDARY EDUCATION
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-78100

Advocate for the Petitioner : MR. S BANIK, MS F BEGUM

Advocate for the Respondent : SC, SEC. EDU., GA, ASSAM

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

ORDER

Date : 01.08.2024

Heard Mr. S. Banik, learned counsel for the petitioners. Also heard Mr. U. Sharma, learned Standing Counsel for the Secondary Education Department, Assam, appearing for all the respondents.

2. The petitioners, by way of instituting the present proceeding has presented a challenge to an order, dated 23.09.2023, issued by the Secretary to the Govt. of Assam, Department of School Education, by which, the claim of the petitioners for provincialization of their services were directed to placed before the State Level Scrutiny Committee (SLSC), for a thorough examination and also for submission of a detailed report to the Government for taking necessary action.

3. The petitioners herein were working as Headmaster, Science Teacher and Music Teacher, respectively in Azara Soneswar High School, which school at the time of the initial appointment of the petitioners was at its venture stage. The cases of the serving teachers of the said school were taken up for consideration for provincialization of their services under the provisions of the "Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017". However, it is contended that the services of the petitioners herein were not recommended for provincialization by the constituted committees and accordingly, in respect of their cases, the provisions of the said Act was not so extended by the departmental authorities.

4. The petitioners being aggrieved, had preferred an appeal in the matter before the Director of Secondary Education, Assam, however; the said appeal, on consideration, came to be rejected vide an order dated 30.08.2022.

5. The petitioners being aggrieved assailed the said order of the Director of Secondary Education, Assam; dated 30.08.2022, before this Court, by way of instituting a writ petition being WP(C)/6772/2022. This Court, vide the order dated 20.12.2022, on noticing the issues arising in the matter and appreciating the contentions so advanced by the learned counsel for the parties, proceeded to interfere with the order dated 30.08.2022, holding that the Director of Secondary Education, Assam had no jurisdiction to consider the said appeal under the provisions of the said Act of 2017. This Court further directed the Secretary, Department of School Education, Assam to consider and dispose of the appeal of the petitioners as preferred on 08.02.2021 afresh and without being so influenced by the observations as made by the Director of Secondary Education, Assam, in the order dated 30.08.2022. Accordingly, it is the contention of the petitioners herein that the said appeal was taken up for consideration by the Secretary, Department of School Education, Assam and upon hearing the petitioners herein and appreciating the documents that were brought on record by the petitioners during such hearing, proceeded to dispose of the said appeal vide an order dated 23.09.2023, by drawing a conclusion that the claim of the petitioners herein would require a re-examination. Accordingly, it was directed that the Director of Secondary Education, Assam shall place the case of the petitioners again before the SLSC for a thorough examination and also to submit a detailed report to the government for taking further necessary

action in the matter. Being aggrieved by the manner in which the consideration was so made by the Secretary, Department of School Education, Assam of the appeal, as preferred by the petitioners herein, vide the order dated 23.09.2023, the petitioners have instituted the present proceeding.

6. Mr. Banik, learned counsel for the petitioners has submitted that the Secretary, Department of School Education, Assam, who is empowered under the said Act of 2017 to consider the factual matrix as involved in the matter, failed to exercise his jurisdiction in the manner required, inasmuch as, the documents as produced by the petitioners during the hearing afforded to them, while considering the appeal so preferred by them, was not properly appreciated. It is the further contention of the learned counsel for the petitioner that in the event the materials brought on record by the petitioners during the consideration of the appeal, was so considered in the light of the provisions of the said Act of 2017, the petitioners would have been found to be entitled to have their respective service provincialised.

7. Per contra, Mr. U. Sharma, learned Standing Counsel for the departmental authorities has submitted that the documents having been so furnished by the petitioners before the Secretary, Department of School Education, Assam in the appeal only and the same not having been scrutinized by the body so envisaged in the matter under the said Act of 2017 for undertaking such scrutiny, the direction as issued by the Appellate authority vide the order dated 23.09.2023, requiring the placement of the case of the petitioners before the SLSC would not call for any interference from this Court.

8. I have considered the submissions so advanced by the learned counsels appearing for the parties and also perused the materials brought on record.

9. It is the grievance of the petitioners that their cases were not so properly scrutinized by the SLSC, on their cases being so placed before it in the process of consideration as extended to the serving teachers of the school in question for provincialization of their services under the provisions of the said Act of 2017. The said position has been contended to have deprived the petitioners from having their respective services provincialized.

10. The provisions of Section 13 (11) of the said Act of 2017 mandates that the SLSC shall cause physical verification of all institutions and shall also inspect all documents and records produced before them and/or call for such other records and documents as may be required for the purpose of causing verification of the claims of the serving teachers of a particular school as placed before them for provincialization of their services.

11. In the above view of the matter and the given the express provisions of Section 13 (11) of the said Act of 2017, this Court does not find the directions as passed by the Secretary, Department of School Education, Assam vide the order dated 23.09.2023 to have the cases of the petitioner re-examined by placing their cases before the SLSC, to be in any manner erroneous.

12. In view of the above position, this Court directs the SLSC, to take on record the documents pertaining to the claim of the petitioners for provincialization of their services on record and thereafter, to proceed to verify such claims of the petitioners by strictly following the provisions of Section 13 (11) of the said Act of 2017.

13. At this stage, it is to be noted that a submission was made at in the Bar that a proposal for re-consideration of the order, dated 04.01.2021, pertaining to the provincialization as effected with regards to the teachers found eligible for provincialization of their services in the said school is also under way. The SLSC, while considering the cases of the petitioners herein for provincialization of their services shall also consider the proposal as stated to have been so formulated for de-provincialization of the services of the teachers of the said school.

14. The said exercise that would now required to be carried out by the SLSC and the recommendations on the claim of the petitioners herein be so made within a period of 2(two) months from the date of receipt of a certified copy of this order by the Director of Secondary Education, Assam.

15. The report as would now be submitted in the matter by the SLSC, after verification of the claims of the petitioners herein; would be forwarded by the Director of Secondary Education, Assam to the Secretary, Department of School Education, Assam within a period of 15(fifteen) days from receipt of such report.

16. The Secretary, Department of School Education, Assam on receipt of such report of the SLSC, pertaining to the claims of the petitioners for provincialization of their services, shall consider the same, strictly, in accordance with the provisions of the said Act of 2017 and thereafter, dispose of the same by issuing a speaking order and communicate the same to the petitioners within a period of 2(two) months from the date of receipt of such report from the Director of Secondary School, Assam.

17. With the above observations and directions, the writ petition stands

disposed of.

JUDGE

Comparing Assistant