

GAHC010019292022



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

Case No. : WP(C)/793/2022

GEETAMONI BHUYAN AND ANR
D/O- BHAGAWAN CH. BHUYAN, R/O- VILL.- BAPUJINAGAR (NEAR
NAAMGHAR), P.O. BALADMARI, DIST.- GOALPARA, ASSAM, PIN- 783121.

2: KUZRAT ALI SHEIKH S/O- AKKES ALI SHEIKH
R/O- VILL.- AZADNAGAR P.O. BALADMARI
DIST.- GOALPARA ASSAM PIN- 783121

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, EDUCATION (SECONDARY) DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS GOALPARA DISTRICT CIRCLE (GDC)
GOALPARA DIST. GOALPARA ASSAM

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : SC, SEC. EDU.

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

ORDER

Date : 01.05.2024

Heard Mr. K. Uddin, learned counsel for the petitioners. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department, appearing for the respondents.

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

3. The petitioners, by way of instituting the present proceeding have raised a grievance with regard to non-consideration of their cases for provincialisation of their services as Tutor/Teacher in Goalpara Girls' Junior College, on the ground that their names were not captured in the DISE Data as maintained for the said Junior College.

4. As projected in the writ petition, the petitioner no. 1 herein was appointed as a Lecturer in Logic & Philosophy on 25.11.2010 by the Managing Committee of the said Junior College and had joined in her services in the said Junior College on 30.11.2010. Thereafter, it is contended that her services was upgraded to the 1st post of Lecturer in Logic & Philosophy in the said College. Likewise, the petitioner no. 2 was appointed as a Lecturer in History (3rd post) vide an order of appointment dated 24.11.2010, issued by the Managing Committee of the said Junior College and he had joined in his services on 29.11.2010. It is also contended that the petitioner no. 2 was upgraded to the 1st post of Lecturer in History as per the Resolution No. 4 of the Governing Body of the College, dated 10.05.2017.

5. The Goalpara Girls' Junior College is a Senior Secondary School, under the Secondary Education Department. Upon enactment of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the particulars of the eligible teachers of the said Junior College including that of the present petitioners were submitted before the departmental authorities and accordingly, the case of the petitioners came to be

placed before the jurisdictional DLSC for verification of their service particulars. Upon such verification of their service particulars, it is contended that the jurisdictional DLSC had recommended the names of the petitioners along with other teachers working in the College found to be eligible for provincialisation of their services and thereafter, as projected in the writ petition, the cases of the petitioners and other eligible serving teachers of the said College came to be placed before the SLSC for further verification of their service particulars.

6. It is the categorical contention of the petitioner herein that the SLSC had recommended their names for provincialisation of their respective services along with other eligible teachers of the said College. It is the contention of the petitioners that vide an order dated 04.02.2021, the Director of Secondary Education, Assam had proceeded to provincialise the services of similarly situated teachers in the said Junior College, however, the names of the petitioners herein came to be dropped from the purview of such provincialisation. It is to be noted that the services of the teachers found eligible for provincialisation of their services were so provincialised vide order, dated 04.02.2021 w.e.f. 01.01.2021 and Baladmari High School was identified as the base school for the said Junior College. On enquiry, the petitioners were given to understand that their cases for provincialisation were not so considered in view of the fact that their names were not captured in the DISE Data for the relevant period of time and accordingly, the respondent authorities not being in a position, in absence of existence of the names of the petitioners herein in the DISE Data, to come to a conclusion with regard to their continuous nature of service, the names of the petitioners herein were excluded from the purview of provincialisation of their services under the provisions of Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. Being so aggrieved, the present proceedings have been

instituted by the petitioners before this Court.

7. The petitioners in the writ petition have brought on record a communication dated 03.08.2021, issued by the Inspector of Schools, Goalpara to the Director of Secondary Education, Assam, wherein, it was highlighted that, as per the report submitted by the Principal of the Junior College in question and the attendance sheet as made available, it was found that the petitioners herein, were serving in the school from the dates of their initial appointment till date. The institutions wherein, the petitioners are presently serving being a Junior College/Senior Secondary School, in terms of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the names of the teachers working in the “Venture High School”, “Venture Higher Secondary School” or “Venture Junior College” are not required to be captured in the DISE Code or U-DISE Code. The definition of “Venture High School”, “Venture Higher Secondary School” and “Venture Junior College” can be seen in Section 2(x), 2(y) and 2(z) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, which are reproduced hereinbelow:-

“2.(x) ‘Venture High School’ means High School imparting education up to class X and established by the people of the locality prior to 1.1.2006 which has received permission from the State Government and recognition from the Board of Secondary Education, Assam on or before 1.1.2006 and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far;

(y) ‘Venture Higher Secondary School’ means a Higher Secondary School imparting education up to Class XII and established by the people of the locality prior to 1.1.2006 which has received permission from the State Government on or before 01.01.2006 and whereof the services of teachers have not been provincialised under any Act earlier enacted by the State legislature so far.”

(z) “Venture Junior College” means a Venture Junior College established by the people of the locality prior to 1.1.2006 which has received concurrence from the Government and permission from the Assam Higher Secondary Education Council on or before 01.01.06 and whereof the services of teachers have not been

provincialised under any Act earlier enacted by the State legislature so far;

8. This Court further, at this stage, finds it relevant to take note of two other definitions, i.e. definition of “Venture M.E. School” including “Venture M.E. Madrassa and “Venture Lower Primary School” or “Venture L.P. School”, which have been defined in Section 2(za) and 2(zb) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. The said definitions, being relevant, are also quoted herein below:-

“2(za) ‘Venture ME School’ including ‘Venture ME Madrassa’ means an Upper Primary School imparting education from class VI up to class VII and established by the people of the locality prior to 1.1.2006 which has received recognition from the competent authority on or before 01.01.2006 and captured in the DISE Code up to 2009-10 and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far: Provided that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialisation of services of any employee of the institution;”

2(zb) ‘Venture Lower Primary School’ or ‘Venture LP School’ means a School imparting education up to Class V and established by the people of the locality prior to 1.1.2006 whose name figure in the DISE Code up to 2009-10 and prior to that and whereof the services of the teachers have not been provincialised under any Act enacted by the State legislature so far: Provided that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialisation of services of any employee of the institution.”

9. From the above extracted definitions, it transpires that Section 2(z) defines “Venture Junior College” to mean such College established by the people of the locality prior to 01.01.2006, which has received permission from the State Government and recognition from the Board of Secondary Education, Assam on or before 01.01.2006 and whereof the services of the teachers have not been provincialised under any Act enacted by the State Legislature so far.

10. The definition of “Venture Junior College” as would be seen from Section 2(z) of

the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, is similar to “Venture High School” and “Venture Higher Secondary School”. However, the difference in the definitions between “Venture High School” on one hand and the “Venture Higher Secondary School” or “Venture Junior College” on the other is that in “Venture High School”, the School imparts education up to Class-X whereas in the “Venture Higher Secondary School” or “Venture Junior College”, the School imparts education up to Class-XII.

11. From the definitions of “Venture High School”, “Venture Higher Secondary School”, “Venture Junior College”, “Venture M.E. School” and a “Venture Lower Primary School”, as quoted hereinabove, it is evident that it is only in respect of the “Venture M.E. School” and a “Venture Lower Primary School”, the requirement of the names of the teachers being captured in the DISE Code upto 2009-10 has been mandated. In respect of a “Venture High School”, “Venture Higher Secondary School” or “Venture Junior College” as defined under Section 2(x), 2(y) and 2(z) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; such prescription is admittedly absent and accordingly, it can be construed that the requirement of a DISE Code is only applicable in case of a “Venture Primary School” or a “Venture Upper Primary School”.

12. This Court, while disposing of WP(C)4594/2022 vide order dated 18.07.2022, had categorically held that in respect of a “Venture Higher Secondary School,” there can be no requirement of the names of the teachers therein to be captured in the DISE Code or the U-DISE Code. The said reasoning would also apply with equal force to a “Venture Junior College”.

13. In view of the conclusions as reached by this Court hereinabove, with regard to the necessity of the names of the teachers working in a “Venture Junior College” to be captured in the DISE Code or U-DISE Code, it is seen that the non-consideration of the cases of the petitioners herein for provincialisation of their services only on the ground that their names were not so captured in the DISE Code or U-DISE Code, is in violation of the provisions of the Act of 2017.

14. In view of the above position; the matter now stands remanded back to the Director, Secondary Education, Assam, with a direction to place the case of the petitioners before the State Level Scrutiny Committee (SLSC) along with all requisite particulars as may be mandated for the purpose of provincialization of the services of the petitioners, including the enrollment status of the students in the school, in question, against the subjects taught by the petitioner.

15. The Director, Secondary Education, Assam, while placing the case of the petitioners before the State Level Scrutiny Committee (SLSC), shall also inform the said Committee about the conclusions reached by this Court hereinabove to the effect that the teachers serving in a “Venture High School”, in a “Venture Higher Secondary School” or in a “Venture Junior College”, are not mandated under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, to have their names captured in the DISE Code or the U-DISE Code.

16. The State Level Scrutiny Committee (SLSC), on receipt of such proposal from the Director, Secondary Education Department, Assam, would now consider the materials as placed before it and also by exercising the powers vested on it under the provisions of

Section 13 (11) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; proceed to examine the contemporaneous records as maintained in the school, in question, to ascertain as to whether the petitioners, herein, were in continuous service in the said school since the date of their initial appointments and more particularly, as to whether the petitioners, herein, satisfy the requirements of the provisions of Section 4(2)(iii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, which mandates that the teacher considered for provincialization of his/her services, must have rendered at least 6 years continuous services as on 01.01.2017.

17. Upon the scrutiny/verification of the particulars of the petitioners, herein, in terms of the directions passed by this Court hereinabove; the State Level Scrutiny Committee(SLSC) shall proceed to make its recommendations in the matter.
18. In the event, the State Level Scrutiny Committee(SLSC) recommends the case of the petitioners for provincialization of their services; the Director, Secondary Education Department, Assam, shall take further steps as is mandated in the matter, for issuance of order(s) towards provincializing the services of the petitioners, herein, with effect from the date the services of other serving teachers in Goalpara Girls' Junior College were so provincialized, with all consequential effects.
19. In the event, the State Level Scrutiny Committee(SLSC), upon making the scrutiny as mandated hereinabove, comes to the conclusion that the petitioners, herein, are not entitled for having their services provincialized; the Director, Secondary Education Department, Assam, shall, by incorporating the reasons as existing in the matter, issue a

speaking order to the petitioners informing them that their services does not call to be so provincialized under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

20. The exercise as now required to be carried-out in terms of the directions passed by this Court hereinabove, shall be so initiated and completed by the Director, Secondary Education Department, Assam, within a period of 90(ninety) days from the date of receipt of a certified copy of this order.

21. The petitioners, herein, shall furnish a certified copy of this order along with a forwarding letter before the Director, Secondary Education Department, Assam, for taking the matter forward.

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

JUDGE

Comparing Assistant