

GAHC010035122021



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

**Case No. : WP(C)/1277/2021**

RUSHNA BEGAM BARBHUIYA  
W/O ABDUL MANNAN BARBHUIYA, VILLAGE HARINAGAR PART II, PS  
KATIGORAH, DIST CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS  
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVT. OF ASSAM, EDUCATION ELEMENTARY DEPARTMENT, DISPUR,  
GUWAHATI 06

2:THE DIRECTOR  
ELEMENTARY EDUCATION ASSAM  
KAHILIPARA  
GUWAHATI 19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER  
CACHAR  
ASSAM

4:THE BLOCK ELEMENTARY EDUCATION OFFICER  
KATIGORAH  
CACHAR  
ASSAM

5:THE DISTRICT LEVEL SCRUTINY COMMITTEE  
CACHAR  
TO BE REPRESENTED BY ITS CHAIRMAN CUM DEPUTY COMMISSIONER  
CACHAR  
ASSAM

6:THE STATE LEVEL SCRUTINY COMMITTEE  
ASSAM  
TO BE REPRESENTED BY ITS CHAIRMAN CUM THE DIRECTOR OF  
ELEMENTARY EDUCATION DEPARTMENT  
KAHILIPARA  
ASSAM

7:MOIN UDDIN CHOUDHURY  
HEADMASTER  
SHAH JALAL ME MADRASSA

S/O LATE HARINAGAR PART II  
PO RAJATILLA  
DIST CACHAR  
ASSAM  
788107

8:HABIBUR RAHMAN BARBHUIYA  
S/OLATE ATAB UDDIN BARBHUIYA  
VILLAGE JOGODISHPUR  
PO JOGODISHPUR  
DIST CACHAR  
ASSAM  
78880

**Advocate for the Petitioner** : MR. J LASKAR

**Advocate for the Respondent** : GA, ASSAM

**BEFORE**  
**HON'BLE MR. JUSTICE KARDAK ETE**

O R D E R

21.02.2024.

Heard Mr. J. Laskar, learned counsel for the petitioner. Also heard Mr. P.K. Bora, learned standing counsel for the Elementary Education Department appearing for all the respondent Nos.1—5. Also heard Mr. T.U. Laskar, learned

counsel for the respondent Nos.7 & 8, who stated that the respondent No.7 has already expired on 11.02.2024.

(2) The grievance of the petitioner is against the provincialisation of services of the respondent Nos.7 & 8 on the ground that the petitioner is the senior-most Assistant Teacher of the Shah Jalal M.E. Madrassa. The petitioner has also prayed for a direction to the respondent authorities to provincialise her service.

(3) The contention of the petitioner is that she was holding the post of Assistant Teacher, teaching the subject MIL since the date of appointment on 05.01.1992. As an Assistant Teacher, the petitioner is senior to the respondent No.7 and if by virtue of teaching the subject MIL she is construed to be a language teacher, she would still be senior to one Habibur Rahman Barbhuiya who is holding the post of Assamese language teacher but has been teaching Arabic.

(4) It is contended by the petitioner that the respondent No.7 (now expired), who was holding the post of Head Master of the Shah Jalal M.E. Madrassa was appointed on 01.06.1997 and he was teaching the subject English. The respondent No.8, Habibur Rahman Barbhuiya who is holding the post of Assistant Teacher in Assamese language teacher but has been teaching Arabic.

(5) According to the petitioner, the service of the respondents have been provincialised in terms of the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 (here-in-after referred to as 'the Act of 2017'). The learned counsel for the petitioner further submits that admittedly the petitioner is senior to the respondent Nos.7 & 8 but her case has not been recommended for provincialisation, in violation of the provision of the Act of 2017.

(6) Mr. P.K. Bora, learned standing counsel for the Elementary Education Department, referring to the affidavit-in-opposition filed on behalf of the respondent No.2 submits that the name of the petitioner was not included in the list recommended by the District Scrutiny Committee, Cachar and therefore, the State Level Scrutiny Committee did not recommend the name of the petitioner for provincialisation of her service.

(7) Section 14 of the Act of 2017 provides as follows:

*“14. Appellate Authority:- The State Level Scrutiny Committee shall be the appellate authority against any recommendation of the District Scrutiny Committee and the State Government in the concerned administrative department shall be the Appellate Authority against any recommendation of the State Level Scrutiny Committee.”*

(8) On reading of the above provision, it is seen that the State Level Scrutiny Committee is the Appellate Authority against the recommendation of the District Scrutiny Committee and the State Government in the concerned administrative department is the Appellate Authority against any recommendation of the State Level Scrutiny Committee.

(9) Having considered the above provision of Appeal under Section 14 of the Act of 2017 and that the District Scrutiny Committee has not recommended the name of the petitioner for provincialisation, I am of the view that the petitioner may recourse to the remedy of filing an appeal before the Appellate Authority under Section 14 of the Act of 2017.

(10) Accordingly, on the consent of learned counsel for the parties, this Writ Petition is disposed of with a direction to the petitioner to file an appeal before the Appellate Authority under Section 14 of the Act of 2017, within twenty (20)

days from today. On such filing of Appeal, the appellate Authority shall consider the case of the petitioner, by giving her an opportunity of hearing and pass appropriate order(s) within three (3) months, from the date of receipt of the said Appeal.

(10) The Writ Petition stands disposed of in terms of the above direction and order. No order as to cost.

JUDGE

**Comparing Assistant**