

GAHC010013532016



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

Case No. : WP(C)/2382/2016

RUPKONWAR M.E. SCHOOL and 15 ORS.
REP. BY ITS HEAD MASTER, SRI ATUL CHANDRA NATH S/O DEBA RAM
NATH VILL- NO. 2 SONAJULI P.O. KALIKHOLA P.S. DIMAKUCHI DIST.
UDALGURI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
FINANCE DEPARTMENT, DISPUR, GUWAHATI-6.

Advocate for the Petitioner : MS.K BARPUJARI

Advocate for the Respondent : SC, ELEMENTARY EDUCATION

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

20.04.2024

Heard Ms. B Bhuyan, learned senior counsel assisted by Ms. B Bora, learned

counsel appearing for the petitioners. Also heard Mr. B Kaushik, learned Standing Counsel, Elementary Education Department, Government of Assam as well as Ms. DD Barman, learned Additional Senior Government Advocate for the State respondents.

2. The petitioners have instituted the present writ proceedings praying for a direction upon the respondents to grant approval for creation of posts with regard to the petitioners' schools for provincialisation of services of the serving teachers therein under the provisions of *the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011* (for short, the Act of 2011). The petitioners' schools, represented by their respective Headmasters, in the present proceedings were functioning as venture schools. Pursuant to the enactment of the Act of 2011, the cases of the petitioners' schools were taken up for consideration for provincialisation of the services of the serving teachers therein. The petitioners schools having been found to have satisfied the requisite criterias mandated in this connection under the said Act of 2011, it is contended that the cases of the serving teachers of the petitioners schools for provincialisation of their services were considered by the District Level Scrutiny Committee (for short, DLSC). On such consideration being made, the recommendations in favour of the serving teachers came to be made by the DLSC and the matter was thereafter placed before the Director of Elementary Education, Assam for further scrutiny. It is contended that after a rigorous process as undertaken by the respondents in the matter, the Director of Elementary Education, Assam submitted a list containing the names of the teachers found to be eligible of the petitioners' schools to the Government in the Education Department for further consideration as well as for sanction for

creation of the requisite posts. The said process having not been taken to its logical conclusion, the present proceeding has been instituted by the petitioners' schools herein.

3. At the outset, it is to be noted that the petitioners' schools on being found to have satisfied the eligibility criteria as mandated under the Act of 2011, the cases of the eligible serving teachers were duly considered by the DLSC and on such scrutiny being made, recommendations in favour of the eligible serving teachers of the petitioners' schools came to be forwarded to the Director of Elementary Education Assam for further consideration. The Director of Elementary Education Assam after processing as made in the matter, had forwarded a list of such eligible serving teachers to the Government for the purpose of approval and creation of requisite number of posts for provincialisation of their services. During the pendency of the said process, this Court had set aside the Act of 2011 on a challenge being presented to it. Accordingly, on the said Act being set aside, the cases of the eligible serving teachers of the petitioners' schools could not be taken to its logical conclusion and no notification provincialising their services came to be issued.

4. The petitioners' schools have contended that their cases having been forwarded to the Government for creation of posts, in terms with the provisions of the Act of 2011, the services of the eligible serving teachers in the petitioners' schools should be held to have been deemed to be provincialised and, accordingly, a direction is required to be issued to the authorities for provincialising the services of the eligible serving teachers of the petitioners' schools w.e.f. 01.01.2013. The said contention as made by the petitioners'

schools is to be examined in the light of the provisions of the Act of 2011, more particularly, the provisions of Section 10(4) thereof. The provisions of Section 10(4) having relevance to the issues arising in the present proceeding is extracted herein below:

“10(4). The District Scrutiny Committee shall forward the verified list of eligible teachers school-wise in accordance with the number of posts specified in the Schedule appended to this Act, to the concerned Director who shall, after making such further scrutiny as may be required, shall forward the same to the concerned Department of the State Government for consideration and for issuing Notification in respect of the eligible institutions and employees eligible for getting their services provincialised.”

5. A perusal of the provisions of Section 10(4) of the Act of 2011 would reveal that the verification or decision of the DSLC is not ultimate or final. The DSLC does not have a final say in the matters of provincialisation. Further the manner in which the provisions have been structured would reveal that after the scrutiny by the DLSC and also by the Director of Elementary Education Assam, the same is required to be further considered by the State Government before issuance of the final notification towards provincialisation of the services of the serving teachers of the schools, in question. The above being the scheme of Section 10(4) of the Act of 2011, it cannot be held that without a consideration being made by the State Government as mandated and also issuance of a notification in pursuance thereof, the process of provincialisation of the services of the teachers of the petitioners' schools had been taken to its logical conclusion.

6. In the above view of the matter, it cannot be held that prior to setting aside of the Act of 2011, the cases of the petitioners' schools were duly considered in the manner as mandated under Section 10(4) of the said Act of 2011. Upon setting aside of the Act of 2011 and the consideration as required to be made in the case of the petitioners' schools having not been concluded, it would not be open for this Court to direct the respondent authorities to provincialise the services of the eligible serving teachers of the petitioners schools under the provisions of the Act of 2011 w.e.f. 01.01.2013. However, the petitioners' schools having been in existence and also having been considered under the provisions of the Act of 2011, a vested right had accrued upon the eligible serving teachers of the petitioners' schools to have their services considered for provincialisation under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017* (for short, the Act of 2017). Accordingly, in the considered view of this Court, the cases of the eligible serving teachers is required now to be considered by the respondent authorities under the provisions of the said Act of 2017 for provincialisation of their services. In view of the above, it is directed that the petitioners' schools shall submit individual representations along with the particulars of the serving teachers therein to the Director of Secondary Education, Assam within a period of one month from today, staking a claim for provincialisation of their services under the provisions of the Act of 2017. The Director of Secondary Education Assam on receipt of such individual representations from each of the petitioners school shall consider as to whether the petitioners schools satisfy the eligibility criteria as mandated and in the event, it is so found that the petitioners schools are so eligible, the Director of Elementary Education Assam shall direct the jurisdictional District Elementary

Education Officers to have the cases of the eligible serving teachers of each of the petitioners' schools to be placed before the DLSC for verification of their service particulars. Thereafter, basing on the recommendation as would be made by the DLSC in respect of each of the petitioners' schools, the Director of Elementary Education Assam shall place such recommendation before the State Level Scrutiny Committee (for short, the SLSC) and thereafter proceed with the matter in accordance with the recommendations that would now be made by the SLSC to have the services of such recommended teachers of each of the petitioners' schools to be provincialised. In the event, any of the teachers serving in each of the petitioners' schools is found to be not eligible to have his/her services provincialised, the Director of Elementary Education Assam shall by incorporating the reasons existing for the same, issue a speaking order and communicate the same to each of such serving teachers of the petitioners' schools.

7. The above exercise as now required to be done by the Director of Elementary Education Assam shall be so initiated and concluded within a period of 6 (six) months from the date of receipt of a certified copy of this order. Accordingly, each of the petitioners' schools shall submit their individual representations as required along with a certified copy of this order before the Director of Elementary Education Assam for taking the matter forward.

8. Writ petition, accordingly, stands disposed of.

JUDGE

Comparing Assistant