

GAHC010054862021



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

Case No. : WP(C)/2144/2021

SHAJAHAN ALI
S/O. SHONJAB ALI, VILL. 6 NO. BHANDARA, P.O. BHANDARA BAZAR, P.S.
MANIKPUR, DIST. BONGAIGAON, ASSAM-783390.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-781019.

3:THE DIST. OF ELEMENTARY EDUCATION OFFICER
BONGAIGAON ASSAM-783380.

4:THE DY. COMMISSIONER BONGAIGAON ASSAM-783380.

5:THE HEAD MASTER BHANDARA GIRLS M.E. MADRASSA
VILL. BHANDARA NO.1 P.O. BHANDARA BAZAR
DIST. BONGAIGAON ASSAM-783390.

6:AYESHA KHATUN W/O. ABDUL JALIL VILL. BALARPET
P.O. TILPUKHURI P.S. ABHAYAPURI DIST. BONGAIGAON ASSAM-783384

Advocate for the Petitioner : MR. MD S HOQUE
Advocate for the Respondent : SC, ELEM. EDU

Linked Case : I.A.(Civil)/1008/2022

AYESHA KHATUNW/O. ABDUL JALIL VILL. BALARPET
P.O. TILPUKHURI P.S. ABHAYAPURI DIST. BONGAIGAON
ASSAM-783384.

VERSUS

SHAJAHAN ALI AND 5 ORS
S/O SHONJAB ALI
VILL- 6 NO. BHANDARA
PO BHANDARA BAZAR
PS MANIKPUR
DIST. BONGAIGAON
ASSAM-78330

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
EDUCATION (ELEMENTARY) DEPTT
DISPUR GUWAHATI-781006

3:THE DIRECTOR OF ELEMENTARY EDUCATIONASSAM
KAHILIPARA GUWAHATI-781019.

4:THE DIST. OF ELEMENTARY EDUCATION OFFICER
BONGAIGAON ASSAM-783380.

5:THE DY. COMMISSIONER BONGAIGAON ASSAM-783380.

6:THE HEAD MASTERBHANDARA GIRLS M.E. MADRASSA
VILL. BHANDARA NO.1 P.O. BHANDARA BAZAR
DIST. BONGAIGAON ASSAM-783390.

Advocate for : MR J ABEDIN
Advocate for : appearing for SHAJAHAN ALI AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : **23.04.2024**

Heard Mr. B. J. Ghosh, learned counsel, appearing on behalf of the petitioner. Also heard Mr. A. Phukan, learned standing counsel, Elementary Education Department, appearing on behalf of respondents No. 1, 2 & 3; Ms. Deepanjalee Das Barman, learned Addl. Senior Government Advocate, appearing on behalf of respondent No. 4; and Mr. J. Abedin, learned counsel; appearing on behalf of respondent No. 6.

2. The grievance as raised by the petitioner in the present proceedings, pertains to the denial to him of the benefits of provincialization of his services under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and also with regard to the extension of such benefits to the respondent No. 6, herein, who has been contended by the petitioner, to be not eligible for such benefits.

3. The petitioner was initially appointed as Assistant Teacher by the Managing Committee of Bhandara Girls' M.E. Madrassa, Bongaigaon, on 05.04.2005. The petitioner, accordingly, joined his services on 07.04.2005. The school, at the relevant point of time, was at its venture stage. The respondent No. 6, herein, was appointed as a Language Teacher in Arabic subject, on 06.09.2004, in the said school.

4. A perusal of the materials brought on record, would reveal that the petitioner has contended that after his initial appointment in the said school, on 07.04.2005, he has been teaching the Social Science subject in the said school; whereas the respondent No. 6 was teaching the Arabic subject. The petitioner has contended that the respondent No. 6, being an Arabic subject teacher, has to be construed as a Language Teacher and he(petitioner) as the Social Science teacher.

5. Upon the enactment of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the names of the serving eligible teachers of the school, in question, were taken-up

for consideration for provincialization of their services by the authorities and accordingly, the Headmaster of the school had submitted the requisite particulars of all the serving teachers including their educational and professional qualification. In the particulars as submitted on 30.05.2017; the petitioner was shown to have joined his services on 07.04.2005 and was shown to have been teaching the Social Science subject whereas the respondent No. 6 was shown to have been appointed on 06.09.2004 and was shown to have been teaching the Arabic subject. Thereafter, the cases of the petitioner as well as other serving eligible teachers in the said school were considered by the District Level Scrutiny Committee(DLSC) and recommendations so made, came to be placed before the Director, Elementary Education Department, Assam, by the District Elementary Education Officer (DEEO), Bongaigaon. It is to be noted that the District Elementary Education Officer (DEEO), Bongaigaon, vide his communication, dated 19.10.2020, had forwarded the names of the eligible serving teachers of the school in question and therein; had noted the petitioner to be teaching the Social Science subject and that he had joined his services in the said school on 07.04.2005; while the respondent No. 6 was stated to be teaching the Arabic subject and to have joined her services in the school, in question, on 06.09.2004.

6. It is the contention of the petitioner that although his name was so recommended by the District Level Scrutiny Committee(DLSC), his case was not favourably considered thereafter by the authorities and on conclusion of the process of scrutiny mandated; the name of the respondent No. 6 was recommended and accordingly, her services came to be provincialized as a Tutor vide order, dated 05.02.2021, w.e.f. 01.01.2021. Being aggrieved; the petitioner

has instituted the present proceedings.

7. Mr. Ghosh, learned counsel for the petitioner, by reiterating the contentions as made by the petitioner in the writ petition; submits that the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, mandates the engagement of one Social Science Teacher in a M.E. School and the petitioner was teaching the Social Science subject, and the said position having not been disputed by the authorities and/or by the respondent No. 6; the services of the petitioner ought to have been provincialized against the post of Social Science teacher in the said school, in the absence of any claim being made by any other serving teacher in the school against the said subject.

8. Mr. Ghosh, learned counsel, also submits that the respondent No. 6, at best, can be construed to be a Language Teacher and accordingly, there being a teacher senior to the respondent No. 6 teaching the Language subject in the said school; the respondent No. 6 could not have been considered for provincialization of her services.

9. Mr. Ghosh, learned counsel, further submits that, in effect, the respondent authorities have provincialized 2(two) Language subject Teachers along with 1(one) teacher teaching the science subject in the said school and has thus caused prejudice to the service interest of the petitioner, herein, who was entitled to have his services provincialized as a social science teacher in the said school. Accordingly, it is prayed that this Court would interfere with the

provincialization as effected in the case of respondent No. 6 and would issue a further direction to the respondent authorities to provincialize the services of the petitioner.

10. Mr. Phukan, learned standing counsel, Elementary Education Department, by referring to the affidavit as filed by the Director, Elementary Education Department, Assam i.e. respondent No. 2, in the matter, has contended that although the District Level Scrutiny Committee(DLSC) had recommended the names of both the petitioner as well as the respondent No. 6, herein, along with 2(two) others; it was on scrutiny found that the date of appointment of the petitioner in the said recommendation, was shown as "07.04.2015". Accordingly, the date of appointment of the petitioner so mentioned in the recommendation of the District Level Scrutiny Committee (DLSC) having demonstrated the petitioner to be not in continuous service for 6(six) years as on 01.01.2017, in terms 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; it was held that the petitioner did not fulfill the requisite eligibility criteria for being considered for provincialization of his services and accordingly, his case was not processed further for such provincialization of his services.

11. Mr. Abedin, learned counsel for respondent No. 6, at the outset, submits that there can be no comparison between the services rendered by the petitioner as well as by the respondent No. 6, herein, in-as-much as while the respondent No. 6 is a Language Teacher in the said school, the petitioner is a

teacher teaching the Social Science subject in the school.

12. Mr. Abedin, learned counsel, by referring to the affidavit filed by the respondent No. 6, fairly submits that the petitioner was appointed on 05.04.2005 and had joined his services on 07.04.2005. The learned counsel, in his usual flair, also raises an argument to the effect that the said school is a Girls' M.E. Madrassa and accordingly, it is mandated that there should be a female teacher available in the school and it was contended that it is only the respondent No. 6 who is a female teacher available in the said school and accordingly, the provincialization of her services being so done in the interest of the students of the school, who are girls, should not be permitted to be questioned by the petitioner, herein.

13. Mr. Abedin, learned counsel for respondent No. 6, by referring to the report of the jurisdictional District Level Scrutiny Committee(DLSC) available on record; submits that the petitioner's school was on provincialization, required to be merged with the base school viz. 482 No. Bhandara Adarsha K LP School which was already a provincialized school. It was pointed out that in the base school, there was 252 students enrolled whereas in the petitioner's school, there was 81 students enrolled and on such merger, upon amalgamation of the petitioner's school, the total strength of enrolment would stand raised to 333 students and accordingly, it is contended by Mr. Abedin, learned counsel, that considering the strength of the students now enrolled in the school, in question, after amalgamation and the consequent merger, there is a need for appointment of further teachers to meet the Pupil-Teacher ratio(PTR). However, the

respondent authorities without considering the said matter, had limited the provincialization as effected in the petitioner's school to 3(three) posts by considering the provisions of Section 3(1)(xi) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and it was further contended that the proviso to the provisions of Section 3(1)(xi) was not given its due consideration.

14. It is seen from the records that the respondent No. 5 i.e. Headmaster of the said school, has filed an affidavit in the matter and therein, it was contended that the petitioner was appointed on 05.04.2005, as an Assistant Teacher to teach the Social Science subject in the school and he had joined his services in the said school on 07.04.2005. It was further highlighted in the said affidavit that the name of the petitioner was captured in the DISE Code from 2009-10 onwards.

15. I have heard the learned counsels appearing for the parties and also perused the materials brought on record.

16. From the pleadings as brought on record as well as the oral arguments advanced by the learned counsels for the parties; it is amply clear that the petitioner was appointed in the said school on 05.04.2005 and he had joined his services on 07.04.2005. It is further clear that the petitioner was teaching the subject of Social Science in the school, in question. Further, it is not disputed that the respondent No. 6, herein, had joined her services in the said school on 06.09.2004 and was teaching the Arabic subject.

17. From the communication, dated 19.10.2020, of the District Elementary Education Officer (DEEO), Bongaigaon, forwarding the service particulars of the serving eligible teachers of the said school, it is seen that there is another teacher viz. Abdul Baten who while functioning as the Headmaster of the school, also taught the subjects of Assamese and English in the school, in question.

18. The provisions of Section 3(1)(xi) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, being relevant, is quoted hereinbelow:

“3. Eligibility criteria for selection of educational institution for provincialization of services of teachers/tutors: 1.

.....
(i).....

(xi) In case of Venture Upper Primary School, there shall be minimum three teachers or tutors at least one teacher each for (a) Science and Mathematics, (b) Social Studies and (c) Languages:

Provided that for additional posts, it shall be considered in accordance with the norms and standard stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009(Central Act No. 35 of 2009).

19. The provisions of Section 3(1)(xi) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, mandates that in case of a venture Upper Primary school, there shall be minimum 3(three) teachers or tutors and at least, 1(one) of such teachers should be posted for the subjects of: (a) Science and Mathematics (b) Social Studies and (c) Languages. The identification of teachers for provincialization of their services against the said posts are being

made with regard to the subjects as taught by the teachers in the school in its venture stage and who fulfill the eligibility criterias as mentioned in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

20. In the case on hand; it is seen that the name of the petitioner as well as the respondent No. 6 along with 2(two) others, were recommended by the jurisdictional District Level Scrutiny Committee(DLSC) for provincialization of their services and the matter was also placed before the State Level Scrutiny Committee(SLSC). From the affidavit filed by the respondent No. 2, herein; it is revealed that the only reason for not considering the case of the petitioner for such provincialization is that in the recommendations as made by the jurisdictional District Level Scrutiny Committee(DLSC), the date of joining of the petitioner in his services was reflected as "07.04.2015", in place of "07.04.2005". The said issue as evident from the pleadings brought on record by the parties to the present proceedings as well as the communications available on record, wherein, the particulars of serving eligible teachers of the school are reflected, shows that said conclusion as reached by the State Level Scrutiny Committee(SLSC) and the respondent No. 2 in the matter, is perverse.

21. The petitioner admittedly was appointed on 05.04.2005 in the said school and he had joined his services on 07.04.2005 and there can be no dispute with regard to the said position. That being the position; the reason as assigned by the respondent No. 2 for not considering the case of the petitioner for provincialization of his services after his name was recommended by the

jurisdictional District Level Scrutiny Committee(DLSC); this Court finds that the petitioner was denied a due and fair consideration for having his case considered for provincialization of his services against the post of Social Science teacher in terms of the provisions of Section 3(1)(xi) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

22. The respondent No. 6 although is not at fault for the provincialization of her services as effected vide order, dated 05.02.2021, however, it is seen that the respondent No. 6 could not have been favoured with such provincialization of services to the exclusion of the petitioner. This Court has also noticed that the provisions of Section 3(1)(xi) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, mandates that only 1(one) post of Language Teacher is required to be so provincialized in a school along with that of the post of Science teacher as well as the post of Social Science teacher. 1(one) Language Teacher as contemplated in the provisions of Section 3(1)(xi) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, having been already provincialized in the school, another teacher from the Language subject is not permissible to be provincialized, given the enrolment status of students in the school.

23. It is seen from the report of the District Level Scrutiny Committee(DLSC) that the enrollment status of the school prior to the provincialization of the services of the teachers therein, did not mandate the sanction of an additional

post for the school in question and/or for provincializing the Headmaster serving in the school as the Headmaster of the provincialized school. Accordingly, the necessity for applying the provisions of the proviso to Section 3(1)(xi) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, in respect of the school, in question, did not arise.

24. In that view of the matter; the provincialization as effected in the case of the respondent No. 6, cannot be sustained in-as-much as the same has caused severe prejudice to the service interest of the petitioner, herein. At this stage, it is to be noted that this Court, while issuing notice in the present proceedings on 26.03.2021, considering the prejudice caused to the petitioner, herein, directed that the benefits of provincialization be not given to the respondent No. 6, herein, until further orders. The said interim directions continues to hold the field as on date.

25. In view of the above position and the conclusions reached hereinabove, with regard to the provincialization of the services of the respondent No. 6, herein, such provincialization of the services of the respondent No. 6 is hereby interfered with and accordingly, the order, dated 05.02.2021, passed in this connection by the Director, Elementary Education Department, Assam, is set aside.

26. Having set aside the order, dated 05.02.2021, issued towards provincializing the services of the respondent No. 6; the Director, Elementary

Education Department, Assam, is now directed to place the case of the petitioner before the State Level Scrutiny Committee(SLSC) by disclosing the actual and correct date of joining of the petitioner in his services as noticed hereinabove in this order and thereafter, to have his case scrutinized strictly in accordance with the provisions as existing in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and basing on the recommendations as would be made by the State Level Scrutiny Committee(SLSC), to process the matter further for provincialization of the services of the petitioner, herein.

27. 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 within a period of 3(three) months from the date of receipt of a certified copy of this order.

28. The interference made by this Court with the provincialization of the services of the respondent No. 6 for the reasons as assigned hereinabove, will not bar the respondent No. 6 to approach the respondent authorities by way of submitting a representation highlighting the stand as taken by the said respondent before this Court.

29. The respondent No. 6 shall also be permitted to urge any further grounds as may be available to her. In the event of any such representation being filed by the respondent No. 6 before the respondent No. 2 viz. Director, Elementary Education Department, Assam; the same shall be given its due consideration

strictly in accordance with the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

30. However, it is to be noted that the consideration as would be made in the case of the respondent No. 6 should not be at the cost of the petitioner and in the event, the petitioner is found to be eligible for being provincialized in his services by the State Level Scrutiny Committee(SLSC), his such provincialization shall not be stalled on account of the representation now being permitted to be submitted by the respondent No. 6.

31. In the event, the petitioner is found to be recommended by the State Level Scrutiny Committee(SLSC) to be eligible for provincialization of his services, his such provincialization shall be effected from 01.01.2021 with all consequential benefits.

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

JUDGE

Comparing Assistant