

GAHC010177302021



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

Case No. : WP(C)/5692/2021

NUR HUSSAIN PRODHANI
S/O LT. GULZAR ALI PRODHANI, VILL. BANIAMARI, P.O. SAHEBGANJ, P.S.
GOLAKGANJ, DIST. DHUBRI, ASSAM, PIN 783331

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, ELEMENTARY EDUCATION DEPTT., DISPUR, GUWAHATI 06

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM CUM CHAIRMAN OF STATE LEVEL SCRUTINY COMMITTEE
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 19

3:THE DEPUTY COMMISSIONER CUM CHAIRMAN OF DIST. SCRUTINY
COMMITTEE (ELE. EDUCATION)
DHUBRI
P.O. AND P.S. DHUBRI
DIST. DHUBRI
ASSAM
PIN 783301

4:THE DIST. ELEMENTARY EDUCATION OFFICER

DHUBRI
P.O. DHUBRI
DIST. DHUBRI
ASSAM

PIN 783301

5:THE BLOCK ELEMENTARY EDUCATION OFFICER

GOLAKGANJ
P.O. GOLAKGANJ
DIST. DHUBRI
ASSAM
PIN 783334

6:AKLIMA KHATUN

ASSTT. TEACHER OF SHIKARITARI M.E. MADRASSA
W/O SAMAD ALI BEPARI
VILL. BANIAMARI
P.O. SAHEBGANJ
P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM
PIN 78333

Advocate for the Petitioner : MR. M R KHANDAKAR

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

29.10.2021

Heard Mr. MR Khandakar, learned counsel for the petitioner. Also heard Mr. PN Sarma, learned counsel for the respondents No.1, 2, 4 and 5 being the authorities under the Elementary Education Department, Government of Assam and Ms. DD Barman, learned Additional Senior Government Advocate for the respondent No.3 being represented by the Deputy Commissioner, Dhubri.

2. Considering the nature of the grievance raised, the respondent No.6 stands deleted from the array of respondents, inasmuch as, the petitioner claims his own legal right to be provincialised.

3. The petitioner is a teacher in English in the Shikaritari ME Madrassa in the Dhubri district having been appointed on 04.08.1992 and it has to be understood that he is a language teacher in the school. By the order of provincialisation, the services of Sibendra Nath Roy who is a Science and Mathematics Teacher and Ruhul Amin Shikary who is a teacher of Social Science have been provincialised. It is stated that there is a recommendation by the District Scrutiny Committee for provincialisation as a language teacher of the school in respect of a teacher namely, Aklima Khatun, who was appointed on 29.05.2017, but the respondent authorities had not provincialised, the services of the said teacher as a language teacher.

4. Section 3(1)(XI) of the *Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017* (for short, the Act of 2017) provides for provincialisation of one teacher each being a teacher in language, social science and science and mathematics. As teachers in social science and science and mathematics have already been provincialised in the school concerned, a legal right remains with the petitioner to be considered for being provincialised as a language teacher of the school under the Act of 2017.

5. It has been brought to our notice that the District Scrutiny Committee had

not recommended the petitioner for provincialisation by giving the reason of insufficient enrolment. We fail to understand the said reasoning of the District Scrutiny Committee from the point of view that if two other teachers of the same school, one being a teacher of social science and the other being a teacher of science and mathematics can be provincialised, meaning thereby, that the District Scrutiny Committee was satisfied with the number of enrolment in respect of such teachers, can it be different in respect of another teacher of the same school to reject his claim on the ground of insufficiency of enrolment. The entire reason given by the District Scrutiny Committee is arbitrary and a result of non-application of mind.

6. Consequently, the reasons for not recommending the petitioner on the ground of insufficiency of enrolment is unsustainable in law. If the rejection of the claim of the petitioner is because of insufficiency in the number of students in the school, than none of the teachers in the school could have been provincialised. We have taken note of that the school concerned is a ME School which is governed by Section 3(1)(XI) of the Act of 2017, where there is no requirement of any evaluation of enrolment subject-wise, unlike that of a High School.

7. From such point of view, it appears that the District Scrutiny Committee was misdirected. Accordingly, this writ petition stands disposed of directing the District Scrutiny Committee of Dhubri district to give a fresh consideration of the claim of the petitioner for provincialisation and pass a reasoned order thereon.

8. The above requirement be done within a period of one month from the date of receipt of the certified copy of this order.

9. This writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant