

GAHC010165392023



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

Case No. : WP(C)/4642/2023

MASUMA AHMED
W/O- AMINUR ISLAM AHMED, VILLAGE- DUMARDAHA PT-I, P.O.
BALAJAN, P.S. GAURIPUR, DISTRICT- DHUBRI, ASSAM, PIN- 783331

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION (ELEMENTARY), DISPUR,
GUWAHATI-06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM-CUM-CHAIRMAN OF STATE LEVEL SCRUTINY COMMITTEE
ASSAM, KAHILIPARA
GUWAHATI-19

3:THE DEPUTY COMMISSIONER-CUM-CHAIRMAN OF DISTRICT
SCRUTINY COMMITTEE
DHUBRI
P.O. DHUBRI, DISTRICT- DHUBRI
ASSAM
PIN- 783301

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER-CUM-MEMBER
SECRETARY OF DISTRICT SCRUTINY COMMITTEE
DHUBRI
P.O. DHUBRI, DISTRICT- DHUBRI
ASSAM
PIN- 783301

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
GAURIPUR, P.O.- GAURIPUR
DISTRICT- DHUBRI
ASSAM, PIN- 783330

6:SMTI. JULFA AHMED
HEAD MISTRESS OF SILGHAGRI M.E. SCHOOL
W/O- ENAMUL HOQUE PRODHANI
VILLAGE- KHAGRABARI
P.O. SAHEBGANJ
P.S. GAURIPUR, DISTRICT- DHUBRI
ASSAM, PIN- 78333

Advocate for the Petitioner : MR. M R KHANDAKAR

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

28.03.2024

Heard Mr. M. R. Khandakar, learned counsel appearing for the petitioner and Mr. A. Phukan, learned Standing Counsel, Elementary Education Department, Assam, appearing for the respondents No. 1, 2, 4 and 5. Also heard Mr. B. Deuri, learned Government Advocate, Assam, appearing for respondent No. 3. None has entered appearance for respondent No. 6.

2. The petitioner, by way of instituting the present proceedings, has presented a challenge to the order dated 25.04.2023, passed by the respondent No. 2, i.e. Director of Elementary Education, Assam cum Chairman of the State Level Scrutiny Committee, by which the claim of the petitioner for provincialisation of her services as a Language Teacher in Silghagri M.E. School was rejected on the ground that her name did not find mention in the recommendations made by the State Level Scrutiny Committee.

3. Learned counsel for the petitioner submits that in pursuance to the directions passed by this Court vide order dated 31.03.2021 in WP(C) 2398/2021, the Director of Elementary Education, Assam, had considered the case of the petitioner and vide an order dated 07.01.2022, passed by the Director of Elementary Education, Assam, the

claim of the petitioner for provincialisation of her services was rejected on the ground that her name was not recommended by the State Level Scrutiny Committee as well as by the Joint Committee so constituted by the Government for provincialisation of the services of the teachers. The petitioner thereafter instituted a writ petition, being WP(C) 2893/2022, presenting a challenge to the said order dated 07.01.2022. This Court, vide an order dated 06.05.2022 proceeded to give a final consideration to the said writ petition by interfering with the order dated 07.01.2022 and by directing the Director of Elementary Education, Assam, to determine as to who would be entitled to be provincialised and accordingly to pass a reasoned order thereon. This Court, while interfering with the order dated 07.01.2022, had recorded the following conclusions in its order dated 06.05.2022:

“3. The petitioner is a language teacher in the Silghagri ME School in the Dhubri district having been appointed on 05.07.2006 and the respondent No.6 Smti Julfa Ahmed is also a language teacher of the same school and was appointed on 20.12.2010. If the respective dates of appointments are correct, apparently the petitioner would be senior to the respondent No.6 as a language teacher of the school.

4. When the language teacher of the school was not provincialised and on the other hand the social science and science teachers were provincialised, the petitioner instituted WP(C) 2398/2021 which was given a final consideration by the order dated 31.03.2021. By the said order, a direction was issued to the respondents in the Elementary Education Department to carry forward the recommendation of the District Scrutiny Committee for provincialising the language teacher of the school to its logical end. Consequent thereof, the order impugned dated 07.01.2022 had been passed by the Director of Elementary Education Department, Assam. By the said order, the claim of the petitioner for provincialisation as a language teacher of the school stood rejected by providing that the SLC had recommended three teachers respectively as language teacher, science teacher and social studies teacher and the name of the petitioner Masuma Ahmed was not recommended for provincialisation. It is stated that no one had been provincialised as language teacher of the school concerned. It was also provided in the order impugned that the name of the other teacher Julfa Ahmed did not appear in the DISE code.

5. Be that as it may, we are of the view that it was incumbent upon the Director to call for the entire records to find out as to which of the teacher was entitled for being provincialised as a language teacher of the school and if there was an incorrect recommendation made by the SLC in favor of some teacher whose name did not appear in the DISE code or as a matter of fact there was incorrect

decision of the SLC in not recommending the petitioner who otherwise may have been entitled , it was for the Director to look into the matter and pass a reasoned order rather than taking a perfunctory view that as the SLC did not recommend the petitioner so the petitioner is rejected and as the SLC had recommended another person whose name did not appear in the DISE code and therefore the said person be also rejected.

6. Accordingly, we interfere with the order dated 07.01.2022 and direct the Director of Elementary Education Assam to determine as to who would be entitled to be provincialised and accordingly pass a reasoned order thereon. Requirement may be done within 2 months from the date of receipt of a certified copy of this order and in doing so, if necessary, the other person may also be given a hearing by the Director.”

Pursuant to the directions passed by this Court vide the order dated 06.05.2022, the Director of Elementary Education, Assam, issued the impugned order dated 25.04.2023.

4. On a perusal of the order dated 25.04.2023, it is revealed that the contents of the same is just a replication of the contents in the earlier order dated 07.01.2022, which has since been interfered by this Court. It is also revealed that while passing the order dated 25.04.2023, the Director of Elementary Education, Assam, had not considered the observations made by this Court vide order dated 06.05.2022 and had reiterated what had been contended in the earlier order dated 07.01.2022.

5. The materials as available on record reveal that the names of the petitioner and the respondent No. 6 were recommended by the jurisdictional District Level Scrutiny Committee for provincialisation of their services as Language Teachers. The recommendations as made by the District Level Scrutiny Committee came to be placed before the State Level Scrutiny Committee for further scrutiny. The State Level Scrutiny Committee recommended the name of the respondent No. 6 for provincialisation of her services as Language Teacher along with the names of two other serving teachers in the school against the posts of Science and Social Studies subjects. Thereafter, the matter was further processed with and again came to be placed before the State Level Scrutiny Committee. The State Level Scrutiny Committee

now dropped the name of the respondent No. 6 and only recommended the names of two serving teachers of the school for provincialisation of their services against the posts of Science and Social Studies subjects. The post of Language Teacher was kept vacant. The case of the petitioner after being dropped by the State Level Scrutiny Committee after the initial scrutiny, her case was not further considered for provincialisation of her services. The above position was noticed by this Court in the proceedings of WP(C) No. 2893/2022 and, accordingly, vide order dated 06.05.2022 this Court had required the Director of Elementary Education, Assam, to carry out a fresh consideration in the matter on examination of the records to find out as to which teacher was entitled for being considered for being provincialised as a Language Teacher. The said examination as required by this Court has admittedly not been carried out while issuing the impugned order dated 25.04.2023. As such, the order dated 25.04.2023 was so issued in clear violation of the directions as passed by this Court vide the said order dated 06.05.2022.

6. Having heard the learned counsel for the parties and having gone through the material on record, this Court is of the view that the order dated 25.04.2023 does not stand to the scrutiny of law and needs to be interfered with. Accordingly, the impugned order dated 25.04.2023 is hereby set aside.

7. At this stage, it is contended at the Bar that a post of Language Teacher is still lying vacant in the school in question, which is required to be filled up in terms of the provisions of Section 3(xi) of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (hereinafter referred to as "Act of 2017").

8. In view of the above, the present writ petition is disposed of requiring the Director of Elementary Education, Assam, to place the cases of the petitioner and the respondent No. 6 again before the State Level Scrutiny Committee and the State Level Scrutiny Committee shall, by exercising the powers under the provisions of Section

13(11) of the Act of 2017, cause physical verification of the institution and, on examination of the contemporaneous records, as maintained in the school and after ascertaining as to whether the petitioner and the respondent No. 6 were in continuous service for the period, as mandated under the provisions of the Act of 2017, shall make necessary recommendations with regard to the provincialisation of the services of the petitioner and/or the respondent No. 6 against the post of Language Teacher presently lying vacant in the said school. The Director of Elementary Education, on receipt of such recommendations from the State Level Scrutiny Committee, shall proceed with the matter in accordance with the recommendations so made and shall pass the requisite consequential orders after receiving necessary approval from the Government in this regard towards provincialising the services of the teacher so recommended.

9. In the event the case of the petitioner is not recommended by the State Level Committee, the Director of Elementary Education, Assam, shall issue a speaking order recording therein the reason(s) for such rejection of the petitioner's case and shall communicate the same to the petitioner. The exercise, as directed hereinbefore, shall be initiated and concluded within a period of three months from the date of receipt of a certified copy of this order by the Director, Elementary Education, Assam. The petitioner is left at liberty to furnish a certified copy of this order before the Director of Elementary Education, Assam, for compliance.

10. The writ petition stands disposed of with the above observations and directions.

JUDGE

Comparing Assistant