



GAHC010232892015

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

Case No. : WP(C)/260/2015

PRAFULLA KUMAR NATH
S/O LT. BHOLARAM NATH, R/O TAXI ALI MOTHADANG, P.O. CHAULKARA,
DIST- SIBSAGAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER and SECY. GOVT. OF ASSAM, EDUCATION
SECO DEPTT., DISPUR, GHY-6, ASSAM

2:THE COMMISSIONER AND SECY.
GOVT. OF ASSAM
FINANCE DEPTT.
ASSAM
DISPUR
GHY-6

3:THE DISCIPLINARY AUTHORITY CUM DIRECTOR OF SECONDARY
EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE JT. DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

5:THE INSPECTOR OF SCHOOLS
SIBSAGAR DISTRICT CIRCLE
SIBSAGAR
DIST- SIBSAGAR
ASSAM



6:THE PRINCIPAL
BANMUKH HIGHER SECONDARY SCHOOL
P.O. BANMUKH
DIST- SIBSAGAR
ASSAM

7:THE ASSAM HIGHER SECONDARY EDUCATION COUNCIL
REP. BY ITS SECY.
BAMUNIMAIDAM
GHY-2

Advocate for the Petitioner : MR.S HOQUE
Advocate for the Respondent : SC, FINANCE

Linked Case : **WP(C)/746/2015**

ON THE DEATH OF RUPJYOTI BORA
REPRESENTED BY AJIT BORA AND ANR.
D/O- LT. KESHASWAR SUT
R/O VILL.- PACKPARA
P.O.- KSHATRAGAON
DIST.- SONITPUR
ASSAM.

1.1: AJIT BORAH
S/O- LATE KESHASWAR SUT
R/O- VILL- PACKPARA
P.O- KAMDEWAL
P.S.- GOHPUR
DIST-SONITPUR
ASSAM
PIN-704169.

1.2: RANJIT BORAH
S/O- LATE KESHASWAR SUT
R/O- VILL- PACKPARA
P.O- KAMDEWAL
P.S.- GOHPUR
DIST-SONITPUR
ASSAM
PIN-704169.
VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER and SECY.



GOVT. OF ASSAM
EDUCATION SECONDARY DEPTT.
DISPUR
GHY- 6
ASSAM.

2:THE COMMISSIONER and SECY.
GOVT. OF ASSAM
FINANCE DEPTT.
ASSAM
DISPUR
GHY- 6.

3:THE DISCIPLINARY AUTHORITY CUM DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19.

4:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GH- 19.

5:THE INSPECTOR OF SCHOOLS
SONITPUR DIST. CIRCLE
SONITPUR
DIST.- SONITPUR
ASSAM.

6:THE PRINCIPAL
GOHPUR HIGHER SECONDARY SCHOOL
P.O.- GOHPUR
DIST.- SONITPUR
ASSAM.

7:THE ASSAM HIGHER SECONDARY EDUCATION CONCIL
REP. BY ITS SECY.
BAMUNIMAIDAM
GHY- 21.

Advocate for : MR.S HOQUE

Advocate for : SC

FINANCER2 appearing for THE STATE OF ASSAM AND 6 ORS



**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

Advocates for the petitioners: Shri MU Mahmud, Advocate.

Advocates for the respondents: Shri R. Mazumdar, SC-Education
Shri T. C. Chutia, SC-AHSEC

Date of hearing : **27.06.2023**

Date of Judgment : **02.08.2023**

JUDGMENT & ORDER

As both these writ petitions are filed with a similar grievance and seeking similar relief, the same are taken up together analogously and being disposed of by this common judgment and order.

2. It is the cancellation of provincialisation as Teachers of Higher Secondary Schools, which is the subject matter of challenge. However, before going to the grounds of such challenge, it would be convenient to have the facts of the cases recorded in brief.

3. Shri Prafulla Kumar Nath is the petitioner in WP(C)/260/2015. The case projected is that he was appointed as the Subject Teacher in the year 1997 in the subject of History at Banmukh Higher Secondary School in the district of Sivasagar, Assam. The petitioner claims that the post which he was holding was brought under the provincialization w.e.f., 01.01.2013. However, immediately thereafter the impugned order was passed on 26.12.2014 by which the appointment of the petitioner was cancelled on the ground that there was no Feasibility Report. It is the aforesaid order of cancellation of the appointment which is the subject matter of dispute in this writ petition. The petitioner also alleges that the Feasibility Report was sought for by the Principal of the School which however was not issued by the Assam Higher Secondary

Education Council (AHSEC). It is the case of the petitioner that for such default, he should not be made to suffer.

4. So far as the WP(C)/746/2015 is concerned, the original petitioner was Ms. Rupjyoti Borah and was similarly appointed as subject teacher in the Gohpur Higher Secondary School in the district of Sivasagar in the subject of Banking and Management under the Commerce Stream. The services of the petitioner was provincialized w.e.f., 01.01.2013 whereafter, vide the impugned order dated 06.01.2015, the appointment was withdrawn on the ground of there being no Feasibility Report from the AHSEC. This Court was however apprised that during the pendency of this writ petition, the original petitioner, Ms. Rupjyoti Borah had passed away and was accordingly substituted by the legal heirs, namely, Ajit Borah and Ranjit Borah. It is submitted that in case the writ petition is allowed, there would be monetary benefits which may accordingly be directed to be paid to the substituted legal heirs. In view of the aforesaid background, the discussions made in this judgment would be confined mainly to the facts of WP(C)/260/2015 (Prafulla Kumar Nath).

5. On the other hand, the case projected by the respondents is that the Feasibility Report is a *sine qua non* for provincialization of service and in the instant case, the initial benefits were given to the petitioners by inadvertent error and upon detection of the said fact, the benefits have been withdrawn. The crux of the defence is that the petitioners not being entitled at all for such provincialization of their services, the cancellation orders are fully justified and not liable to be interfered with.

6. I have heard Shri MU Mahmud, learned counsel for the petitioners in both these writ petitions whereas the Assam Higher Secondary Education Council is represented by Shri TC Chutia, learned Standing Counsel and Shri R. Mazumdar, learned Standing Counsel is for the Education (Secondary) Department. The learned counsel for the parties have also referred to the various documents which are on record.

7. Shri Mahmud, learned counsel for the petitioners has submitted that so far as the



petitioner, Prafulla Kumar Nath is concerned, he was appointed as a subject teacher in History in the year 1997 in the Banmukh High School. The said school was granted permission vide a common order dated 30.03.2001 in which the name of the school in question figured at against Sl. No. 17. The aforesaid school was provincialized vide an order dated 30.05.2013 and in the list of the beneficiaries against the Sl. No. 5, the name of the petitioner was reflected. The petitioner also got the benefit of such provincialization whereafter on 30.06.2014, a show-cause notice was issued to the petitioner with the charge of fraudulent acts and breach of trust for deliberately attempting to mislead the Department by concealing the original records. The aforesaid notice was replied to by the petitioner on 10.07.2014, whereafter, the impugned order was passed on 26.12.2014 whereby the provincialization order in favor of the petitioner dated 30.05.2014 was cancelled.

8. Shri Mahmud, learned counsel for the petitioners has submitted that no fault can be attributed to the petitioners for default of the school in question in not furnishing the Feasibility Report for the subject in question. On the other hand, so far as WP(C)/260/2015 is concerned, the Principal In-Charge of the School had issued a communication dated 04.12.2010 to the Director, Secondary Education applying for permission to introduce the subject History in the School. The said request was reiterated on 01.09.2014.

9. The learned counsel for the petitioners has drawn the attention of this Court to the ***Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011*** (hereinafter called the Act of 2011) and has submitted that the petitioners fall within the definition of Employee as per Section 2(h). Reference has also been made to Section 2(q) relating to Venture HS School which is required to be established before 01.01.2006. Section 3(1)(iii) relates to consistent academic performance and as per Section 4, employees are to be Government servants. The Act came into force on 05.09.2011 and it is the submission of the learned counsel that the institution would have the benefit of deemed provincialization.



10. Referring to the affidavit-in-opposition of the AHSEC dated 02.06.2023, he submits that the Feasibility Report is dated 03.07.1997 and the petitioner was appointed on 09.09.1997. He further submits that the resolution regarding introduction of History subject is pending since 1997.

11. Reference has also been made to the additional affidavit dated 25.08.2020 in which a communication dated 01.09.2014 has been annexed which was issued by the Principal to the Director on introduction of the History subject. Similarly, the AHSEC vide communication dated 20.08.2014 had informed the Director of Secondary Education that History was not included. Shri Mahmud, the learned counsel submits that Feasibility Report is not a one time measure and the exercise can be carried out again.

12. The learned counsel for the petitioners has also cited the example of another school namely, Sidalsati HS School wherein the Feasibility Report was given on 15.09.2012. He has also referred to an order dated 07.03.2014 passed in WP(C)/1242/2014. Another order passed in WP(C)/1516/2014 has been referred.

13. In support of his submission, Shri Mahmud, the learned counsel has relied upon the following decisions:-

- (i) (1995) 2 SCC 326 [**U.P. Awas Evam Vikas Parishad vs Gyan Devi (Dead) & Ors.**]
- (ii) (2003) 5 SCC 333 [**Commissioner of Central Excise Vs MPV & Engineering Industries**].
- (iii) (2005) 8 SCC 696 [**Union of India & Anr. Vs Raja Mohammed Amir Mohammad Khan**].
- (iv) (2014) 3 SCC 502 [**Dipak Babaria & Anr. Vs. State of Gujarat & Ors.**]

14. In the case of **U.P. Awas Evam Vikas Parishad** (supra) the Hon'ble Supreme

Court has explained the doctrine of Legitimate Expectation. In the case of **MPV & Engineering Industries** (supra) the aspect of bureaucratic delay and red-tapism has been criticized. In the case of **Raja Mohammad** (supra) it has been laid down that there is a duty of the Legislative and Executive to do justice and in the case of **Dipak Babaria** (supra) it has been laid down that there cannot be any improvement made in a case by way of an affidavit.

15. It is submitted that on 28.01.2015, an interim order was passed in the case of Prafulla Kumar Nath. So far as the case of Rupjyoti Borah is concerned [WP(C)/746/2015] is concerned, the petitioner had died on 13.11.2018 after serving for 5 years and on such death, there is substitution by her brothers. It is submitted that benefits, if any, should accrue on the substituted petitioners.

16. *Per contra*, Shri T. C. Chutia, learned Standing Counsel for the Assam Higher Secondary Council submits that necessary affidavit-in-opposition has been filed on 02.06.2023. Referring to the same, it is submitted that the subjects in question were not included in the schools. So far as WP(C)/ 260/2015 is concerned, the subject History was not included. The Feasibility Report was given on 03.07.1997 whereas the petitioner was appointed on 09.09.1997. He further submits that even the permission for opening the subject was not taken from the Council. By referring to the Revised Regulations on Recognition of Higher Secondary Schools and Junior Colleges, 2004, it is submitted that there is a prescription under Regulation 1 for applying for permission to start a Higher Secondary School and Regulation 3 is with regard to permission to star classes which requires a satisfactory report. However, in the present cases, it is submitted that no such permission was taken for starting the subjects concerned.

17. Controverting the stand of the petitioners, Shri R. Mazumdar, the learned Standing Counsel, Secondary Education Department has submitted that in absence of Feasibility Report, the Subjects concerned could not have been started by the School. By drawing the attention of this Court to the Feasibility Report dated 03.07.1997, the



learned Standing Counsel has submitted that Banmukh High School is at Sl. No. 17 where as Gohpur High School is at Sl. No. 37. The subjects mentioned in the Feasibility Report do not include the subjects involved in the present case.

18. By referring to the Act of 2011, the learned Standing Counsel has submitted that under Section 3 (2), recognition, affiliation or concurrence, minimum enrolment and performance should be with regard to each of the Subjects and this provision of law is not fulfilled in these two cases. He has also referred to the format submitted by the Banmukh HS School which would clearly show that so far as the petitioner, Prafulla Kumar Nath is concerned, in the column of date of receiving Subject permission from the AHSEC, the remark is A/F (Applied For).

19. Shri Mahmud in his rejoinder has submitted that the provincialisation of the services has been done as per the Act and there is no requirement of any Feasibility Report. Further, there are repeated communications by the Principal of the School and therefore the petitioners cannot be made to suffer.

20. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have also been duly examined.

21. The issue which calls for determination is with regard to the legality of the action in cancelling the provincialisation orders of the petitioners. For such determination, certain undisputed facts are to be taken into consideration.

22. Petitioner Prafulla Kumar Nath had joined the Banmukh HS School on 09.09.1997 and his formal order of appointment is dated 13.09.1997. However, the Feasibility Report is dated 03.07.1997. Even the format for provincialisation submitted by the School Authorities which has been annexed as Annexure-4 to the writ petition clearly reflects that the permission for the Subject in question was also not there and was simply applied for. This application in the prescribed format was obviously after 2011 (as the Act is of 2011) and till that time, the necessary permission from the



AHSEC was not even there. Under such condition, the provincialisation could not have been granted so far as the petitioner is concerned. The matter was also discussed threadbare by a High Powered Committee headed by the Addl. Chief Secretary, Assam in the meeting dated 18.09.2014 wherein it was clearly held that institutions or any Subjects without Feasibility Report from the AHSEC should not be considered for provincialisation.

23. This Court has also noticed that the impugned action is preceded by an opportunity as a notice was issued seeking explanation on the issue of lack of Feasibility Report and only after such exercise, the impugned order has been passed. Therefore, this Court is of the opinion that the principles of natural justice have been adhered to.

24. The petitioner, Shri Prafulla Kumar Nath has tried to impress upon the Court by showing the enrolment pattern of students and the pass percentage from the years 1999 to 2014. Apart from the fact that the enrolment in History subject is not impressive, the said fact is wholly irrelevant inasmuch as, the Feasibility Report is not the subject matter of challenge and it is the requirement of the statute that an order of provincialisation of the institution/subjects is to be preceded by a Feasibility Report. Examination of enrolment pattern/pass percentage which are factually in nature may be factors for considering a Feasibility Report which are within the domain of the Authorities under the Act of 2011 and cannot be the subject matter of a writ petition.

25. Though the example of Sidalsati HS School was cited along with an order dated 07.03.2014 passed in WP(C)/1242/2014, the said case is not applicable with the facts of this instant cases. In any case, it transpires that the said writ petition was withdrawn. Even the other writ petition WP(C)/ 1516/2014 transpires to be withdrawn and there is no discussion of the facts and therefore cannot be relied. Further none of the case laws relied upon by Shri Mahmud, the learned counsel would come to the aid of the petitioners. No attempt has been made to improve the case by any affidavit of

the respondents and there is no instance of any bureaucratic delay. As observed above, the Feasibility Report is not the subject of challenge.

26. With regard to the doctrine of legitimate expectation, the basis of application of said doctrine is absent under the facts and circumstances of the present case. It is the settled principle of law that legitimate expectation apart from not being an indefeasible legal right has to be preceded by certain factors that such expectation is reasonable, logical and valid. The same is procedural in character based on the requirement of a higher degree of fairness in an administrative action as a consequence of a promise made.

27. The Hon'ble Supreme Court in the case of ***Monnet Ispat & Energy Ltd. v. Union of India, reported in (2012) 11 SCC 1***, after discussing the various case laws on the doctrine of legitimate expectation has laid down as follows:-

“188. It is not necessary to multiply the decisions of this Court. Suffice it to observe that the following principles in relation to the doctrine of legitimate expectation are now well established:

188.1. *The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.*

188.2. *The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.*

188.3. *Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.*

188.4. *The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be justifiable, legitimate and protectable.*

188.5. *The protection of legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit.”*



28. Though there was an interim order dated 28.01.2015, the same was vacated vide order dated 10.12.2018.

29. In view of the aforesaid discussion, this Court is of the opinion that the impugned decision to cancel the provincialisation does not suffer from any legal infirmity and accordingly the writ petitions are held to be without any merits.

30. Both the writ petitions accordingly stand dismissed. However, considering that the petitioner Prafulla Kumar Nath appears to have served for a long period of time, in case the authorities are of the view that the Subject of History is required to be formally permitted in the school, the case of the petitioner may be considered in accordance with law.

31. No order as to cost.

JUDGE

Comparing Assistant