



GAHC010015412015

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

Case No. : WP(C)/3410/2015

MUZAMMIL HOQUE
S/O ABDUS SALAM VILL and P.O. KALAHABHANGA P.S. SORBHOG, DIST.
BARPETA, ASSAM, PIN- 781315.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE SECRETARY TO THE GOVT. OF ASSAM

ELEMENTARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DIRECTOR

ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE DISTRICT SCRUTINY COMMITTEE

BARPETA REP.BY ITS CHAIRMAN
DEPUTY COMMISSIONER
BARPETA

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER

BARPETA



Advocate for the Petitioner : MR.H J TAMULI

Advocate for the Respondent : MR. T C CHUTIA, SC, SEBA AND AHSEC

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date : 02-03-2021

Heard Mr. A.K. Sarma, learned counsel for the petitioner. Also heard Mr. N.J. Khataniar, learned counsel for the respondents no. 1, 2, 3 and 5 in the Elementary Education Department of Government of Assam, Mr. S.R. Barua, learned counsel for the respondent no. 4 being the District Scrutiny Committee of Barpeta district represented by the Deputy Commissioner and Mr. D.K. Roy, learned counsel for the Secondary Education Board of Assam and Assam Higher Secondary Education Council.

2. The petitioner Sri Muzammil Hoque was appointed as an Assistant Teacher in the Madhya Kalaha Bhanga Balika L.P. School in the Barpeta district on 07.04.2008. On the date when he was appointed as an Assistant Teacher the petitioner did not have the qualification of being HSLC passed but he had appeared in the HSLC examination at that stage and ultimately he passed the HSLC examination on 27.05.2008. Later on the petitioner also passed his Higher Secondary examination on 26.05.2010.

3. The claim of the petitioner for provincialisation in the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (in short, Act of 2011) was given a consideration by the District Scrutiny Committee of Barpeta district where a conclusion was arrived that the petitioner was found qualified as per norms. Section 4(3) of the Act of 2011 inter-alia provides that the services of a teaching or non-teaching employee in a Venture Educational Institution upto higher secondary level shall be considered for provincialisation, only if they have the requisite academic and professional qualifications prescribed by the relevant Rules at the time of their initial appointment.

4. Accordingly, it has to be understood that the District Scrutiny Committee had arrived at its conclusion that the petitioner did satisfy the requirement of Section 4(3) of the Act of 2011.

Subsequently, the Commissioner and Secretary to the Government of Assam in the Elementary Education Department issued a communication dated 26.03.2013 addressed to the Accountant General, Assam wherein it was provided that the service of some of the teachers whose names were included at Annexure-A to the said communication be not provincialised and the posts sanctioned for the purpose be kept vacant. In the accompanying Annexure-A to the communication dated 26.03.2013, the name of the petitioner Sri Muzammil Hoque appears and the reason for not provincialising his service has been stated to be 'under qualified'. Consequent thereof, the order 24.03.2015 was passed by the Director of Elementary Education Department of Assam by which the benefit of provincialisation meted to the petitioner stood withdrawn as his name was included in the Annexure-A to the communication dated 26.03.2013. Being aggrieved, the present writ petition is instituted.

5. The reason for withdrawing the provincialisation of the petitioner that he was found to be under qualified has to be examined from the aspect whether the petitioner did meet the requirement of Section 4(3) of the Act of 2011.

Section 4(3) of the Act of 2011 is extracted as below:

“(3) The services of a teaching or non-teaching employee in a Venture Educational Institution upto higher secondary level shall be considered for provincialisation, only if they have the requisite academic and professional qualifications prescribed by the relevant Rules at the time of their initial appointment.....”

6. A reading of the said provisions goes to show that in order to be qualified for provincialisation the incumbent concerned must have the requisite academic and professional qualification prescribed by the relevant Rules which were in force at the time of their initial appointment. The petitioner was admittedly appointed on 07.04.2008 and as on 07.04.2008, the academic qualification as prescribed in the Assam Elementary Educational (Provincialisation) Rules, 1977 (in short, Act of 1977) was in force. The academic qualification prescribed in the Act of 1977 is that the incumbent concerned must have the qualification of having passed the HSSLC examination (higher secondary).

7. True, at the time of his appointment on 07.04.2008, the petitioner did not have the qualification of having passed the HSSLC examination but it is also an admitted fact that he had subsequently passed the HSSLC examination on 26.05.2010. To decide the question whether the petitioner was under-qualified vis-à-vis the provisions of Section 4(3) of the Act of 2011, we take a look at the requirement of the provisions of Section 4(3). Section 4(3)

provides that in order to be eligible for provincialisation the incumbent concerned must have the requisite academic qualification prescribed by the relevant Rules which were in force at the time of their initial appointment. We have specifically taken note of that Section 4(3) does not provide that the incumbent concerned must have the qualification prescribed by the Rules in force at the time of their initial appointment when such appointment was made.

8. A reading of the Section 4(3) of the Act of 2011 would go to show that the requirement of having the requisite qualification would have to be satisfied that at the point of time when the consideration is made for provincialisation under the Act of 2011 and requirement is that at the point of time when the consideration for provincialisation is made the incumbent concerned must have the academic qualification that were in force when he was initially appointed. No requirement is discernable under Section 4(3) of the Act of 2011 that the teaching or non-teaching staff should have such qualification at the time of his initial appointment itself.

9. From the said point of view in the instant case, the petitioner had the qualification of HSSLC passed when his case for provincialisation was considered under the Act of 2011 and from such point of view it cannot be concluded that the petitioner was under-qualified at the relevant point of time when provincialisation was considered under the Act of 2011.

10. In view of the above, we are unable to accept the conclusion arrived at in the communication dated 26.03.2013 by the Commissioner and Secretary to the Government of Assam in the Elementary Education Department wherein as per the Annexure-A thereof, the petitioner was held to be under-qualified. As the subsequent withdrawal of the provincialisation of the petitioner by the order dated 24.03.2015 of the Director of Elementary Education Department is also for the reason that in the communication of the Commissioner and Secretary he was held to be under qualified, we are of the view that for such reason the withdrawal of the provincialisation of the petitioner would also be unsustainable.

11. We also take note of that proviso to Section 4(3) of the Act of 2011 provides that in the event a teaching or a non-teaching staff of a Venture Educational Institution does not meet the required qualification under the Rules, such teaching or non-teaching staff may be given an opportunity to acquire the qualification within a period of five years thereafter

12. From the said point of view, the order dated 24.03.2015 of the Director of Elementary Education Department of Government of Assam stands set aside and further the petitioner shall be entitled to all the benefits of the provincialisation that was meted to him earlier as per the Act of 2011.



13. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant