



GAHC010041012021

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

Case No. : WP(C)/1507/2021

DALIM UDDIN LASKAR

S/O- LT. ABDUL RAHMAN LASKAR, R/O- HAILAKANDI TOWN WARD NO.
XI, P.O. RATANPUR ROAD, P.S. AND DIST.- HAILAKANDI (ASSAM)

VERSUS

THE STATE OF ASSAM AND 6 ORS

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GHY-6

2:THE STATE LEVEL SCRUTINY COMMITTEE FOR ELEMENTARY
EDUCATION

REP. BY ITS CHAIRMAN CUM THE DIRECTOR OF ELEMENTARY
EDUCATION

ASSAM

KAHILIPARA

GHY-19

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE FOR ELEMENTARY
EDUCATION

REP. BY ITS CHAIRMAN CUM THE DY. COMMISSIONER
HAILAKANDI

788151

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI

788151

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
KATLICHERRA EDUCATION BLOCK

KATLICHERRA

788163



6:AFTAR ALI LASKAR
C/O HEAD MASTER
BALDABALDI JANATA M.E.INSTITUTE
VILL BALDABALDI PART-I
P.O. SULTANICHERRA
DIST.- HAILAKANDI
PIN- 788162

7:ABDUL GOFUR LASKAR
C/O HEAD MASTER
BALDABALDI JANATA M.E.INSTITUTE
VILL BALDABALDI PART-I
P.O. SULTANICHERRA
DIST.- HAILAKANDI
PIN- 78816

Advocate for the Petitioner : MR. A H M R CHOUDHURY

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (CAV)

Date : 30-06-2022

1. Heard Mr. A.H.M.R. Choudhury, the learned counsel for the Petitioner and Mr. P.N. Sharma, the learned counsel for the Elementary Education Department. I have also heard Dr. B. Ahmed, the learned counsel appearing on behalf of the Respondent Nos. 6 and 7.

2. This Court by taking into consideration that for adjudicating the stay vacating application filed seeking vacation/modification/alteration of the order dated 04.03.2021 which have been registered as I.A. (Civil) No.2409/2021 would have to enter into the merits, this Court vide orders dated 29.04.2022 and 09.05.2022 had taken up the instant writ petition for final disposal.

3. The case of the Petitioner in the writ petition is that Jamira Katanala M.E. Madrassa (hereinafter referred to as "the School") was established on 01.04.1984 which got recognition of the Director of Elementary Education vide an order dated 29.12.2005 with effect from 01.01.2005. The said School was captured in the DISE Code of 2009-10 bearing DISE Code No.18230200808.

4. The Petitioner was appointed as an Assistant Teacher (II) in the said school by an order dated 01.02.2005 and on 02.02.2005, the Petitioner joined the School as an Assistant Teacher. It is the case of the Petitioner that he has been teaching Social Science in the said school. The "Assam Education (Provincialization of Services of Teacher and Re-organization of Educational Institutions) Act, 2017 (hereinafter referred to as the "Act of 2017") was enacted to provincialize the services of teachers of Venture Educational Institutions and also to re-organize and streamline the Educational Institutions upto the degree level in Assam so as to conform to the prevailing statutory norms and standards with a further objective to restrict any further growth of such Venture Educational Institutions in Assam. Pursuant to the enactment to the Act of 2017, the school authorities were directed to submit the particulars of teaching and non-teaching staff of the institutions before the District Scrutiny Committee who after due verification and scrutiny has to forward the same before the Directorate of Higher Education for consideration of provincialization. It is the case of the Petitioner that the Headmaster of the School who happened to be the Respondent No.6 in the instant proceedings submitted the Annexure-B including the names of the teaching and non-teaching staff on 05.06.2017 before the District Level Scrutiny Committee for scrutinizing and recommendation for provincialisation of services of the teachers. The said Annexure-B has been enclosed as Annexure-2 to the writ petition and on a

perusal thereof shows that the Petitioner's name appears as a teacher teaching Social Science. At this stage, it may be also relevant to take note of that against the Respondent No.6's and Respondent No.7's name, it has been shown that the said respondents were teaching English and Bengali respectively.

5. The Petitioner on coming to learn that the District Level Scrutiny Committee did not recommend the name of the Petitioner before the State Level Scrutiny Committee for provincialization in order to accommodate the Respondent Nos.6 and 7 in place of the Petitioner, he approached this Court by filing a writ petition being WP(C) No.9465/2019. This Court vide an order dated 19.02.2020 disposed of the said petition directing the Petitioner to approach the State Level Scrutiny Committee as regards the decision made by the District Level Scrutiny Committee regarding the provincialization of teachers in terms with Section 14 of the Act of 2017 and accordingly, granted the petitioner liberty to file an appeal before the State Level Scrutiny Committee within 15 days from the date of receipt of the certified copy of the order and the State Level Scrutiny Committee was directed to consider the said appeal in accordance with law after affording a hearing to the Petitioner. It was further mentioned that the State Level Scrutiny Committee shall pass a speaking order as regards the claim made by the Petitioner for provincialisation of his service. A period of 2 months was given to the State Level Scrutiny Committee to consider and dispose of the appeal from the date of receipt of the appeal preferred by the Petitioner.

6. Accordingly, the Petitioner filed an appeal before the State Level Scrutiny Committee on 07.03.2020. It is further the Petitioner's case that the State Level Scrutiny Committee did not consider the appeal of the Petitioner and that too within the period stipulated in the order dated 19.02.2020 for which the Petitioner instituted a contempt proceedings which was registered and

numbered as Cont Cas(C) No.379/2020 against the Director of Elementary Education and also the present Director. Notices were issued by this Court and the said contempt proceedings as per the Petitioner is still pending.

7. On 04.12.2021, the Government of Assam, Department of Elementary Education published the list in its website wherein the services of the employees of the Venture Institutions were provincialised throughout the State of Assam including the School. In the said list at Serial No.47248 ,it was found that the services of the present Respondent Nos.6 and 7 alongwith one Noor Ahmed Laskar has been provincialised from the School. However, the name of the Petitioner did not figure in the said list. It is under such circumstances that the petitioner has approached this Court challenging the provincialisation of Respondent Nos.6 and 7 and for not including the Petitioner's name in the said list.

8. This Court vide an order dated 04.03.2021, after hearing the Petitioner and the learned counsel appearing for the Elementary Education Department as well as the State Level Scrutiny Committee issued notice making it returnable by 4 (four) weeks. Taking into consideration the provisions of Section 3(1)(xi) of the Act of 2017, this Court provided that the provincialization of the Respondent Nos.6 and 7 be not given effect until further orders.

9. Pursuant thereto, the Respondent Nos.6 and 7 appeared and filed their joint Affidavit-in-Opposition. Alongwith the said Affidavit-in-Opposition, an application was filed for vacating the order dated 04.03.2021 which was registered and numbered as I.A.(Civil) No.2409/2022.

10. In the Affidavit-in-Opposition filed by the Respondent Nos.6 and 7, it has been mentioned that though the Petitioner was appointed on 01.02.2005, but he did not continue his service as a result of which his name has not been

captured in the DISE Data of the School of 2009-10, 2010-11 vide DISE Code No.18230200808. Further to that, it has been mentioned that the Petitioner's name was also not available in departmental records as Assistant Teacher of the School prior to 31.12.2011. It was mentioned that after several request of the School Management Committee, the Petitioner continued in his service from the Academic Year 2012-2013 and accordingly his name was first captured in the DISE Data of 2012-2013. On the basis of the said averments it was contended in the Affidavit-in-Opposition that as per Section 4(2)(iii) of the Act of 2017, the writ petitioner did not complete 6 years continuous service as on 01.01.2017 for which the writ petitioner's service has not been provincialized. It was further mentioned that the appointment letter of the writ petitioner would only reflect that he was appointed as an Assistant Teacher (II) and not a teacher of Social Science. It was mentioned that in a primary school, there is no specific post as English teacher for English, Bengali teacher for Bengali and Social Science teacher for Social Science. These subjects are taught by the Headmaster and the Assistant Teachers in routine basis. Only in a Bengali Medium School, there is a Language Teacher Post as "Assamese Language Teacher" and other subjects like Hindi, Arabic are treated as specific subjects. It was further contended that the subjects like English, Bengali and Social Science were being taught by the Respondent Nos. 6, 7 as well as by the Petitioner on rotation basis, inasmuch as sometimes the Respondent No.6 taught Social Science, the Respondent No.7 taught Bengali and the writ Petitioner taught English and therefore, the claim of the Petitioner that since from the date of his joining he has been teaching as teacher of Social Studies is totally misleading and false. In the said Affidavit-in-Opposition, it was further mentioned that the Respondent Nos.6 and 7's services were provincialised as they were eligible under Sections 4

and 6 of the Act of 2017 vide an order dated 05.02.2021 and the services of the writ petitioner has not been provincialised as because he could not fulfill the conditions prescribed under Section 4(2)(iii) of the Act of 2017. To the said Affidavit-in-Opposition, the DISE Data of 2009-10 and 2010-11 were included wherein a perusal thereof would show that the name of the Petitioner do not appear. Annexure-B to the Affidavit-in-Opposition is an enquiry report pertaining to the School dated 21.06.2010 which was included in the Affidavit-in-Opposition to show that the Petitioner's name is not there in the said enquiry report dated 21.06.2010 in respect to the school. Annexure-C to the Affidavit-in-Opposition are various class routines for the year 2016, 2017, 2018, 2019 and 2020. The said class routines have been brought on record to show that the writ petitioner alongwith the Respondent No.6 and Respondent No.7 were teaching English, Bengali and Social Science as per their allotment. The stand taken in the said Affidavit-in-Opposition is the same stand taken in the stay vacating application registered as I.A.(Civil) No.2409/2021.

11. The Petitioner filed an objection to the stay vacating application on 18.02.2022. From a perusal of the said Affidavit filed by the Petitioner, it would transpire that the name of a teacher is captured in the DISE Data of the School on the basis of the format filled up by the Headmaster of the School and the concerned teacher had no role in capture his name in the DISE Data. It was stated that the allegation of the Petitioner not continuing in service is completely false and baseless as the Petitioner after having been appointed on 01.02.2005, joined the School on 02.02.2005 has been continuing his service without any break since then. The Petitioner further mentioned that he has received financial incentive for the year 2010 and 2011 alongwith other teachers of the School which would clearly show that the Petitioner was working in the said school

during the period alleged that the Petitioner was not working. To show the said aspect of the matter, the Petitioner have included the Attendance Register pertaining to the year 2009, 2010 and 2011 as Annexure-A to the said Affidavit. Further to that, a verification report in respect to the financial incentives wherein the Respondent No.6 had signed as the Headmaster was enclosed to show that the Petitioner was shown as working at that relevant point of time in the year 2010. At this stage, it may be relevant to take note of that Annexure-A is the daily Attendance Register of the teachers of the School. There are 3 (three) documents enclosed as Annexure-A. The first of such document is of the Month of January, 2009, the second is for the month of December, 2010 and the third is for the month of January, 2011.

12. In the said Affidavit filed against the Interlocutory Application, the Petitioner further mentioned that during the provincialization process as per the earlier Provincialization Act of 2011, the Respondent No.6 submitted a revised form wherein he mentioned that the Petitioner joined the service on 02.02.2005 and completed 6 years 8 months 29 days of service as on 31.10.2011. On the basis of the said documents, the Petitioner contended that the stand taken by the Respondent Nos.6 and 7, that the petitioner was not qualified in terms with Section 4(2)(iii) of the Act of 2017 is totally misconceived and contrary to the records.

13. I have heard the learned counsels for the parties and perused the materials on record. Before dealing with the facts of the instant case, this Court finds it appropriate to take into account that some of the provisions of the Act of 2017. Section 2(za) defines "Venture M.E. School" including Venture M.E. Madrassa to mean an Upper Primary School imparting education from Class-6 upto Class-8 and established by the people of the locality prior to 01.01.2006

which had received the recognition from the competent authority on or before 01.01.2006 and captured in the DISE Code upto 2009-10 and whereof the services of the teachers have not been provincialized under any Act enacted by the State Legislature so far. The proviso to the said Sections stipulates that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialization of services of any employees of the institution. In the instant case, it would be seen that the School in question was established prior to 01.01.2006 and received recognition with effect from 01.01.2005. It would also be seen that the School was captured in the DISE Code of 2009-10 bearing DISE Code No.18230200808. However, the proviso to the said Section 2(za) stipulates that it is only the DISE Code issued on or before 2009-10 and not the DISE Code issued thereafter shall not be considered for the purpose of provincialisation of services of any employees of the institution. Meaning thereby, the inclusion in the DISE Code of 2010-11 or thereafter cannot be taken into consideration for the purpose of provincialization of services of an employee of the institution. The DISE Data enclosed to the Affidavit-in-Opposition of 2009-10 as Annexure-A to the Affidavit-in-Opposition shows that the name of the Petitioner was not included. From the objection filed from the Interlocutory Application, it would be seen that though the Petitioner do not deny the contents of the DISE Data of 2009-10 enclosed as Annexure-A to the Affidavit-in-Opposition but the specific stand taken by the writ petitioner is that being a teacher, the writ petitioner had no control over it as the name of a teacher is captured in the DISE Data of the School on the basis of the format filled by the Headmaster of the School. On the basis thereof, the writ petitioner in his objection states the writ petitioner since 02.05.2005 have been working in the School without any break and in support



of the said statement the Petitioner has enclosed as Annexure-A to the objection, the Attendance Register for the month of January 2009, December 2010 and January 2011. Now the question therefore arises as to whether the writ petitioner's name was wrongfully omitted from the DISE Code of 2009-10. This aspect of the matter would be further dealt with at a subsequent stage of the instant judgment.

14. The next aspect of the matter also which is relevant for consideration is as to whether the Petitioner was entitled to provincialization of his services in terms with the Act of 2017. Specific statements have been made in the Affidavit-in-Opposition to the effect that the Petitioner though was appointed on 01.12.2005 but he did not continue his services as a result of which his name was not captured in the DISE Data of School in 2009-10 and 2010-11 and the Petitioner's name was as such not available in any departmental record as Assistant Teacher of the School prior to 31.12.2011. It has been further mentioned that upon several requests made by the School Management Committee, the writ petitioner continued his service from the Academic Year 2012-13 and as such his name was first captured in the DISE Data of 2012-13. On the other hand in the objections so filed to the Interlocutory Application, the Petitioner has categorically stated that from the date of joining on 02.02.2005, he has continued in his service without any break. To that effect, the Petitioner has enclosed as Annexure-A to the said objection, the Attendance Register pertaining to January 2009, December 2010 and January 2011. Further to that, the Petitioner had also included the verification report by the Respondent No.6 alongwith the Block Elementary Education Officer of the year 2010 which showed that the Petitioner was shown as entitled to receive financial incentives.

15. In the backdrop of the above, if this Court takes into consideration Section

4(2)(iii), it would be seen that the teacher and or tutors to be provincialized under the Act of 2017, must have rendered at least 6 years continuous service as on 01.01.2017 from the date of joining in the concerned Venture Educational Institution which must be on 31.12.2010 or prior to that date. The conflicting documents enclosed to the Affidavit-in-Opposition, the Interlocutory Application both filed by the Respondent Nos.6 and 7 and the documents enclosed by the Petitioner to his objection to the Interlocutory Application raises disputed questions of facts.

16. Therefore, the question as regards whether the Petitioner's name was wrongfully omitted from the DISE Data of 2009-10 and also the question as regards whether the Petitioner is not entitled to provincialisation in view of Section 4(2)(iii) of the Act of 2017 are disputed questions of facts. The Act of 2017 provides a statutory remedy under Section 19(2) of the Act of 2017 which for the sake of convenience is quoted hereinbelow.

“19.(2) To adjudicate disputes for redressal of grievances relating to the teaching staff of the Non-Government Educational Institution as well as disputes concerning disciplinary action, genuineness of establishment of school and claim for provincialization in respect of teaching staff of Venture Educational Institution, there shall be an Educational Tribunal for each district within their respective Territorial Jurisdiction. The District and Sessions Judges and the Additional District and Sessions Judges of each District are designated as Educational Tribunal.”

17. From a perusal of above quoted Section, it would show that to adjudicate disputes for redressal of grievances relating to the teaching staff of a non-Governmental educational institution as well as disputes concerning disciplinary action genuineness of the establishment of the school and claim for provincialization in respect of teaching staff of Venture Educational Institutions

there shall be Educational Tribunal for each District within their respective territorial jurisdiction. The District and Sessions Judges and the Additional District and Sessions Judges of each Districts have been designated as an Educational Tribunal.

18. In the backdrop of the above facts, as to whether the Petitioner's name was wrongfully omitted from the DISE Data of 2009-10 and as to whether the Petitioner was in continuous service from 02.02.2005 can very well be adjudicated upon by the Educational Tribunal so constituted under Section 19(2) of the Act of 2017. More so, when this would involve tendering in evidence, various records such as Attendance Registers for the relevant years, the verification reports made by the authorities and also as to whether the Petitioner was only teaching Social Science or the Petitioner alongwith the Respondent Nos.6 and 7 were teaching Social Science, English and Bengali as per their turn.

19. The next question which arises for consideration as regards the legality and validity of the provincialization orders of the Respondent Nos.6 and 7. In order to decide the said aspect of the matter, it is relevant to take note of the provisions of Right to Free and Compulsory Education Act, 2009 (for short the Act of 2009). Section 19 of the said Act of 2009 stipulates the norms and standards for a School. Sub-Section (1) of Section 19 stipulates that no school shall be established or recognized under Section 18 unless it fulfils the norms and standards specified in the Schedule. Sub-Section (2) of Section 19 stipulates that when a school established before the commencement of the Act of 2009 does not fulfill the norms and standards specified in the Schedule, it shall take steps to fulfill such norms and standards at its own expenses within a period of 3 years from the date of such commencement. Sub-Section (3) of Section 19

stipulates that when a school fails to fulfill the norms and standards within the period specified under Sub-Section (2), the authority prescribed under Sub-Section (1) of Section 19 shall withdraw recognition granted to such school in the manner specified under Sub-Section (3) thereof. Sub-Section (4) of Section 19 mandates that with effect from the date of withdrawal of recognition under Sub-Section (3), no school shall continue to function and as per Sub-Section (5) penalty is imposed upon a person who continues to run a school after its recognition is withdrawn. As such, the Schedule to the Act of 2009 is very relevant in as much as non-compliance with the Schedule beyond the period specified in Sub-Section (2) of Section 19 shall entail non-recognition of the School and thereby the said school cannot function.

20. Taking into consideration, the school in the instant case is a school within the meaning of Section 2(zs) and it imparts education from Class-6 to Class-8, the provision of Clause 1(b) of the Schedule to the Act of 2009 is relevant to be taken note of, which for the sake of convenience is quoted hereinbelow.

- “1(b) For sixth class to eighth class*
- (1) At least one teacher per class so that there shall be at least one teacher each for—*
 - (i) Science and Mathematics;*
 - (ii) Social Studies;*
 - (iii) Languages.*
 - (2) At least one teacher for every thirty-five children.*
 - (3) Where admission of children is above one hundred*
 -
 - (i) a full time head-teacher;*
 - (ii) part time instructors for—*
 - (A) Art Education;*
 - (B) Health and Physical Education;*
 - (C) Work Education.”*

21. From the above quoted Clause 1(b) of the Schedule to the Act of 2009, it would be seen that for Class-6 to Class-8, there has to be at least one teacher per class so that there shall be at least one teacher each for (i) Science and

Mathematics, (ii) Social Studies and (iii) Languages. The student teacher ratio has to be in terms with Section 25 of the Act of 2009 and Clause 1(b)(2) stipulates that there has to be one teacher for every 35 children. Clause 1(b)(3) stipulates that where admission of children is above 100 and in such circumstances, there shall be a full time Head teacher, part time instructors for (A) Art Education, (B) Health and Physical Education and (C) Work Education. Therefore, the mandate of the law is that there should be one teacher per class so that there shall be one teacher each for (i) Science and Mathematics, (ii) Social Studies and (iii) Languages.

22. This aspect of the matter can also be seen from a reading of Section 3(1) (xi) of the Act of 2017 which mandates that in case of 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. The proviso to the said Section stipulates that for additional post it shall be considered in accordance with the norms and standards stipulated in the Schedule of the Act of 2009. Therefore, it is the mandate of law that there has to be minimum one Science and Mathematics teacher, one Social Studies teacher and one teacher for Languages.

23. A perusal of Annexure-2 to the writ petition shows that the said document was issued by the Respondent No.6 which he has not denied in his Affidavit-in-Opposition. In the said document, it has been clearly shown that the Respondent No.6 and the Respondent No.7 were shown as teaching English and Bengali whereas the Petitioner has been shown as Social Science teacher. One Noor Ahmed Laskar whose services have also been provincialized has been shown as General Science and Mathematics. In spite of the same, it is not known on what basis the Respondent authorities have provincialized the

Respondent Nos.6 and 7 and not provincialized the services of the Petitioner who has been shown as a teacher teaching Social Science. The mandate of law as already stated hereinabove requires there has to be a teacher of Social Studies. The Elementary Education Department can have as many teachers as they please in respect to a school but has to follow the mandate of the Act of 2009 as well as the Act of 2017 to have a Social Studies teacher along with a teacher teaching Science and Mathematics and a teacher teaching Languages. The Respondent, Elementary Education Department have not filed their Affidavit and on a specific query being made to the learned counsel appearing for the Elementary Education Department as to what subject the Petitioner as well as the Respondent Nos.6 and 7 teaches, he submits that it is very difficult for the Elementary Education Department to say taking into consideration that it is only after provincialization that the Government has control over the schools and to know as to whether the teacher concerned was specifically appointed for Social Studies or the Respondent Nos.6 and 7 and the writ petitioner were teaching Social Studies as per their turn.

24. From the above, it would therefore be seen that as to whether the Petitioner was teaching Social Studies alone or the Respondent No.6 and the Respondent No.7 were teaching Social Studies, English and Bengali as per their turn, is a disputed question of facts which can only be decided after going into the question of evidence. The Educational Tribunal which has been constituted under Section 19(2) of the Act of 2017 can also go into the said aspect of the matter.

25. In view of the above discussions and observations, this Court therefore is of the opinion that the issues involved in the instant writ petition can be decided by a fact finding authority i.e. the Educational Tribunal constituted under Section

19(2) of the Act.

26. Accordingly, the instant petition stands disposed of thereby granting the liberty to the Petitioner to file an appeal under Section 19(2) before the Educational Tribunal competent to decide the instant dispute within 30 days from the date of instant judgment. Taking into consideration that the Respondent No.6 is a Language teacher and Mr. Noor Ahmed Laskar is a teacher of General Science and Mathematics, this Court is not interfering with their provincialization. However, the provincialization of the services of the Respondent No.7 shall be subject to the outcome of the appeal proceedings. The Respondent No.7 shall not be entitled to claim any rights and/or equity in case the Educational Tribunal decides the appeal against the Respondent No.7. It is made clear if the Petitioner does not file an appeal within the period specified hereinabove of 30 days from the date of the instant judgment, the order of provincialization of the Respondent No.7 dated 5.02.2021 shall attain finality.

27. With above observations and orders, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant