



GAHC010261622022

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

**Case No. : WP(C)/8205/2022**

ABDUL AWAL  
S/O. LT. MESSIR UDDIN, VILL. NO.1 PUBERGAON (MANKACHAR), P.O. AND  
P.S. MANKACHAR, DIST. SOUTH SALMARA MANKACHAR, ASSAM, PIN-  
783131.

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, DEPT. OF SCHOOL  
EDUCATION (SECONDARY EDUCATION DEPT.), DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM CUM CHAIRMAN OF STATE LEVEL SCRUTINY COMMITTEE  
SECONDARY EDUCATION  
ASSAM  
KAHILIPARA  
GUWAHATI-19.

3:THE DEPUTY COMMISSIONER CUM CHAIRMAN OF DISTRICT SCRUTINY  
COMMITTEE  
(SECONDARY EDUCATION)  
DHUBRI  
P.O. DHUBRI  
DIST. DHUBRI  
ASSAM  
PIN-783301.

4:THE INSPECTOR OF SCHOOLS



DHUBRI DISTRICT CIRCLE (D.D.C.)  
DHUBRI  
P.O. AND P.S. DHUBRI  
DIST. DHUBRI  
ASSAM  
PIN-783301

**Advocate for the Petitioner** : MR. M R KHANDAKAR

**Advocate for the Respondent** : SC, SEC. EDU.

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

**Date** : 07-09-2023

**JUDGMENT & ORDER (ORAL)**

Heard Mr. MR Khandakar, learned counsel for the petitioner and Mr. U Sarma, learned counsel for the respondents in the Secondary Education Department.

2. The writ petitioner Abdul Awal was appointed as an Assistant Teacher in the Namergaon High School as per the order of the Inspector of Schools, DDC, Dhubri dated 20.02.2004 and in the order of appointment, his qualification is stated as P.U passed. The services of some of the other teachers of Namergaon High School were provincialised under the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011 (in short Act of 2011). Being aggrieved, the petitioner instituted WP(C) No. 581/2016, which was given a final consideration by the order dated 05.12.2017 by providing as extracted:-

*“Considering the above, the impugned order dated 06.01.2016 passed by the Director of Secondary Education, Assam is hereby set aside and quashed as the Director while issuing the impugned speaking order dated 06.01.2016 did not consider the provisions of Section 4(3) of the said 2011 in its proper perspective*

*during the time when the said 2011 Act was in force.*

*Since the said 2011 Act is no longer in force now and the 2017 Act noted above has been brought into force, the Director of Secondary Education, Assam shall no w reconsider the case of the petitioner in terms of the provisions of said 2017 Act for provincialisation of his services in terms of the order dated 19.11.2015 passed earlier in WP(C) No.6695/2014 and shall pass a speaking order afresh within a period of 4 (four) months from the date of receipt of a certified copy of 2017:GAU-AS:13052 this order to be furnished by the petitioner.*

*Needless to say, that the Director of Secondary Education Assam shall intimate the outcome of his speaking order to the petitioner to be passed as directed above. "*

3. A reading of the order dated 05.12.2017 makes it discernible that the claim of the petitioner for provincialisation under the Act of 2011 was discarded inasmuch as, the said Act was no longer in force when the order was delivered and accordingly, the respondents were required to consider the claim of the petitioner for provincialisation under the Assam Education (Provincialisation) of Services of Teachers and Re-Organization of Educational Institution Act, 2017 (in short Act of 2017). In the circumstance, the order dated 08.03.2022 was passed by the Director of Secondary Education, Assam, which apparently also refers to the order dated 05.12.2017 of the Court in WP(C) No. 581/2016 and also accepts the fact that there is a requirement to reconsider the case of the petitioner for provincialisation under the Act of 2017. The order dated 08.03.2022 is extracted as below:-

*“Seen & perused the Order issued by this office vide No. Pc/CC/5/2015/242, dated 06-02-2018 and seen &perused the order of the Hon’ble Gauhati High ourt dated 05-12-2017 passed in WP(C) No.581/2016 filed by Abdul Awal, Asstt. Teacher of Namargaon High School, Dhubri. The Hon’ble Court has directed the DSE, Assam to reconsider the case of the petitioner in terms of the New Act namely "The Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.*

*Section 4(2)(iii) of "The Assam Education (Provincialisation of Services of*

*Teachers and Re-organization of Educational Institutions) Act, 2017 as Amended 2018”, states that “The teachers/tutor must have rendered at least six year of 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 the date”. The Writ Petitioner, Abdul Awal had passed B.A examination in the year 2016 from Krishna Kanta Handique State Open University. Although the petitioner joined the school prior to 31.12.2010 he acquired the required eligibility criteria in the year 2016. His eligibility criteria can be counted from the date of passing B.A examination 2016. Hence his service cannot be considered for Provincialisation as per the Provincialisation Act, 2017.*

*Also seen and perused the Hon’ble High Court order dated 07-01-2022 passed in WP(C) No. 88/2022 filed by Abdul Awal –vs- State of Assam and others. At Para 7 of the said order the Hon’ble High Court issued a direction to the DSE, Assam “to pass consequential reasoned order on the recommendation made in favour of the petitioner for Provincialisation by the District Scrutiny Committee of Dhubri in its order dated 28-08-2019.”*

*Seen and verified the recommendation of the District Scrutiny Committee, Dhubri dated 28.08.2019 recommending the name of the petitioner for Provincialisation.*

*On the above facts and circumstances stated above the matter of provincialisation of services in respect of the petitioner cannot be considered as per section 4(2)(iii) of “The Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 as Amended 2018.”*

4. A reading of the second paragraph of the order dated 08.03.2022 makes it discernible that the Director relied upon Section 4(2)(iii) of the Act of 2017 and accordingly arrived at a conclusion that as the petitioner had passed the B.A examination in the year 2016 from the Krishna Kanta Handique State Open University, therefore, his eligibility for being provincialised can be counted only from the date of passing the B.A examination. It is stated that pursuant to the requirement of the order dated 05.12.2017, the claim of the petitioner for being provincialised was considered by the District Scrutiny Committee and there is a recommendation in favour of the petitioner. When the recommendation was not further acted upon, the petitioner instituted WP(C) No. 88/2022 wherein an



order dated 07.01.2022 was passed directing the Director of Secondary Education, Assam to pass a consequential reasoned order on the recommendation made in favour of the petitioner by the District Scrutiny Committee. The Director in its order dated 08.03.2022 also took note of the aforesaid aspect of the matter. But in the penultimate paragraph it is provided that in the facts and circumstance as narrated in the order of 08.03.2022, the claim of the petitioner for provincialisation was rejected. Being aggrieved, this writ petition is instituted.

5. Mr. U Sarma, learned counsel for the respondents in the Secondary Education Department has raised the contention that when the petitioner was considered for provincialisation under the Act of 2011, he did not have the qualification of graduation and that is the reason why the Director had refused provincialisation by the impugned order dated 08.03.2022.

6. In the order dated 08.03.2022, the Director merely refers to Section 4(2) (iii) of the Act of 2017, which in fact had also been quoted in the order of the Director. A reading of Section 4 of the Act of 2017, does not provide for any such provision which says that a person who did not have the required qualification of graduation under the Act of 2011 would be prevented from being provincialised any further nor section 4 of the Act of 2017 provides for any eligible qualification or eligibility criteria for provincialisation. The educational and professional qualification of teachers to be eligible for provincialisation under the Act of 2017 is provided under Section 6 of the Act of 2017, which is extracted as below:-

*“6. Educational and Professional qualification of teachers:-*

*(1) The services of teachers in a Venture Educational Institution from the Primary level up to the Degree Level, shall be considered for provincialisation in*

*the post of teachers or relevant teaching faculty in appropriate nomenclature, as the case may be, subject to fulfillment of the eligibility criteria relating to educational and professional qualifications as laid down under the following Acts, Rules and Regulations:-*

*(a) The Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009) and its Rules;*

*(b) The National Council for Teachers Education Act, 1993 (Central Act No. 73 of 1993) and its Regulations in force at the time of provincialisation of services;*

*(c) The Assam Secondary Education (Provincialised) Service Rules, 2003, as amended in 2012;*

*(d) The University Grants Commission Act, 1956 (Central Act No. 3 of 1956) and University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 framed thereunder, as the case may be.*

*(2) The services of a teaching employee in a Venture Educational Institution shall be considered for provincialisation as teacher only if they have the requisite academic and professional qualifications prescribed under the relevant Acts, Rules or Regulations as mentioned in sub-section (1) of this section which are applicable for the time being in force, otherwise their services shall be provincialised as tutor.*

*(3) In case of teachers for special subjects like Sanskrit, Arabic, Hindi, Craft Teacher, Music Teacher, and any other Classical Teachers, the qualification should be as per the qualification prescribed by the relevant statutory Rules of the State Government in force."*

7. Section 6 refers to four Acts namely, The Right of Children to Free and Compulsory Education Act, 2009; the National Council for Teachers Education Act, 1993; the Assam Secondary Education (Provincialised) Service Rules, 2003, as amended in 2012; and the University Grants Commission Act, 1956 providing for the regulation of minimum qualification for appointment of teachers and other academic staffs in Universities and Colleges.

8. As for provincialisation under the Act of 2017, the required educational and



professional qualification is provided under section 6 of the Act and section 6 refers to four specific Acts as indicated above, we are of the view that the respondent authorities cannot rely upon any other statutory provision for determining the educational or professional qualification for being provincialised under the Act of 2017. From such point of view, the Director in the impugned order dated 08.03.2022 had erred in law in referring to section 4(2)(iii) of the Act of 2017 and in the submissions made before the Court to rely upon the Act of 2011 to justify the denial of provincialisation of the petitioner.

9. The aforesaid view would be further fortified from the provisions of Section 7 of the Act of 2017 which provides for the concept of a Tutor upon being provincialised, where a person would be provincialised as a Tutor, if he does not have the required qualification for the post in which he would be provincialised and would be provided a window of five years to acquire the qualification.

10. A reading of Section 7 makes it discernible that even acquisition of the required qualification on a future date would also be acceptable for the purpose of provincialisation, although as a Tutor and not as a Teacher. If future acquisition of qualification is also permissible under the Act of 2017, it cannot be accepted that a past qualification acquired in the year 2016 would be unacceptable for provincialisation merely because the authorities feel that when the Act of 2011 was in force, the person concerned did not have the qualification.

11. In view of the above, the order impugned dated 08.03.2022 is set aside and the matter is remanded back to the Director of Secondary Education for passing a reasoned order taking note of the qualification prescribed under section 6 of the Act of 2017 and examine as to whether the petitioner do have the qualification prescribed therein and accordingly pass a reasoned order



thereon. The reasoned order be passed within a period of two months from the date of receipt of a certified copy of this order.

12. It is stated that against the impugned order, an appeal had been filed before the authorities, which had also been disposed of. As the matter has already been remanded back, it would not be of any relevance to go into the said aspect of the matter.

**JUDGE**

**Comparing Assistant**