



GAHC010026012023

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

Case No. : WP(C)/730/2023

JACHIMUDDIN CHOWDHURY
S/O- LATE GORIULLAH FAKIR,
VILL- SUKHUWARJHAR,
P.O- DHARAMPUR,
DIST- BARPETA, ASSAM, PIN-781308

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
EDUCATION (SECONDARY) DEPTT, DISPUR, GHY- 06

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
CUM CHAIRMAN OF STATE LEVEL SCRUTINY COMMITTEE

KAHILIPARA
GUWAHATI- 781019

3:THE INSPECTOR OF SCHOOLS
BARPETA
ASSAM
PIN-78130

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri J. Abedin, Advocate

Advocate for the respondents : Shri N.J. Khataniar, S.C.,
Secondary Education Department,

Date of hearing : 19.09.2023

Date of judgment : 19.09.2023

The short question which has arisen for consideration in this writ petition is with regard to the interpretation of Section 3(1)(vii) of the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 *qua* the issue of provincialisation of the services of teachers / tutors in Venture Higher Secondary School and the fulfillment of the conditions for such provincialisation.

2. The petitioner has contended that he was appointed as a Lecturer / Subject Teacher in Economics in the Baghmara Char Junior College in the year 2002. The said College was a Venture College at that stage and the appointment of the petitioner was as per a Resolution dated 17.08.2002. It is contended that the College had received the final concurrence on 12.08.2005 in respect of nine subjects including the subject of Economics.

3. In the year 2017, the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 (hereinafter called the Act) was enacted which was with the object to consider various Educational Institutions which had received permission for 1st year H.S. Classes and concurrence from the authorities on or before 01.01.2006 for provincialisation of the services of the teachers / tutors. Certain dates which would be crucial to the issue involved are required to be noted.

4. The Act had received the assent of the Governor on 06.04.2017 which was published on 11.04.2017. The same was published in the Gazette Notification on 06.06.2017. As per Section 1 (3), it was provided that the Act would come into force on such date as the State Government may by notification in the Official Gazette appoint. The Gazette Notification which was published on 06.06.2017, as stated above had notified the date on which the Act would come into force as 05.05.2017.

5. The relevant provision of the Act namely, Section 3 (1) (vii) which lays down the conditions for giving the benefit of provincialisation is extracted herein below:

“Section 3(1)(vii): In addition to the provision under clauses (v) above, at least 10 students must have appeared in the last final examination in any subject in case of Venture High School, Venture High Madrassa, or Venture Higher Secondary School or Venture Junior College. At least 15 students in any subject must have appeared in case of Venture Degree College in the last final Examination.”



6. The grievance of the petitioner is that his case for provincialisation has been rejected on the ground that the conditions laid down in the aforesaid provision are not met.

7. I have heard Shri J. Abedin, learned counsel for the petitioner. I have also heard Shri N.J. Khataniar, learned Standing Counsel, Secondary Education Department. The Department has also filed an affidavit-in-opposition on 16.08.2023.

8. Shri Abedin, the learned counsel for the petitioner by referring to the documents annexed to the petition has submitted that the Higher Secondary Examination of the year 2017 was held from February, 2017 to March, 2017 and it is not in dispute that the total numbers of students appearing in the subject of Economics in the School were 13. It is the case of the petitioner that the condition of having at least 10 students appearing in the last Examination has to be construed to be the examination held immediately prior to coming in force of the Act and the plain meaning of the aforesaid provision is that it is the examination which was held between February, 2017 and March, 2017 which would be the relevant examination. The learned counsel has also submitted that the aforesaid provision was substituted by an amendment in the year 2018 vide a Gazette Notification dated 18.05.2018. By referring to the relevant documents, the learned counsel has submitted that even for the Higher Secondary Examination for the year 2018 held in between February, 2018 to March, 2018, the numbers of students who had appeared in the subject of Economics were 11. Shri Abedin, the learned counsel accordingly submits that under both

conditions, the petitioner fulfills the requirements of the Act and therefore, provincialisation of his service could not have been rejected.

9. On the other hand, Shri Khataniar, the learned Standing Counsel of the Department has submitted that the consideration of the petitioner cannot be done on the basis of the substituted Rules of 2018 and therefore, the reference to Higher Secondary Examination of 2018 will not arise at all. So far as the reference to the Higher Secondary Examination of the year 2017 is concerned, the learned Standing Counsel submits that even that examination would not be relevant as the expression "last final Examination" appearing in the aforesaid provision would mean the examination held in the previous year which in this case would mean the Higher Secondary Examination of the year 2016. It is the contention of the Department that in the said year of 2016, the numbers of students in the Department of Economics in the School were less than 10.

10. The learned Standing Counsel has specifically referred to paragraph 5 of the affidavit-in-opposition dated 16.08.2023, the relevant part of which is extracted herein below.

"Since the Act of 2017 came into force w.e.f. 05.05.2017 except the provisions of Section 4 and 8, therefore, the last final Examination is considered to be the final examination held in the year 2016. In the instant case, admittedly, in the subject in question i.e. Economics, the total nos. of students appeared in the final Examination held in the year 2016 was 8 (eight) and as such, the case of the petitioner could not be considered for provincialisation since he does not fulfill the requirement of minimum 10 students appeared in the last Examination in Economics subject as provided in Section 3(1)(vii) of the Act of 2017. Hence, the writ petition is devoid of any merit and is liable to be dismissed."

11. Rejoining his submission, Shri Abedin, the learned counsel for the petitioner has submitted that the interpretations sought to be given by the Department would not be reasonable and would rather be in conflict with the plain meaning appearing from the provision of law.

12. The rival contentions advanced by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined. The relevant provision of law has already been extracted above. The controversy in this case is only with regard to the meaning which can be assigned to the expression "last final Examination". The expression used namely "last final Examination" is not qualified by any other provision which may give the Department to contend that it is the examination held in the previous year. When the statute in question is plainly worded, there is no scope to give any other meaning than the one which appears from a plain reading of the statute. Under the principles of interpretation of statute, it is the plain meaning which is required to be taken into consideration unless such plain reading does not make any reasonable construction. In the instant case, there is no dispute with regard to the fact that the examination of the Higher Secondary Examination of the year 2017 was held between February, 2017 to March, 2017 and the expression used in the statute is with regard to appearance of at least 10 students. The Department has not disputed the data produced in this case with regard to the number of students which have been projected to be 13.

13. Under those circumstances, this Court is of the opinion that denial of the benefit of provincialisation of service by giving an incorrect meaning to the



provisions of law is not at all justified.

14. Accordingly, this Court is of the opinion that a case for interference is made out.

15. Consequently, the writ petition is allowed by holding that the petitioner had fulfilled the requirement of Section 3(1)(vii) of the Act of 2017 and therefore entitled for regularization of his service. The authorities namely the Director of Secondary Education is accordingly directed to pass necessary orders in this regard expeditiously and within an outer limit of 60 days from today. Since the petitioner has been held to have fulfilled the requirement for provincialisation of his service, the effect of such provincialisation be given from the date when similarly situated persons were provincialised.

16. As regards the claim for salaries for the period, the petitioner may file appropriate application before the authorities which may be considered in accordance with law.

JUDGE

Comparing Assistant