

**(2020) 11 GAU CK 0027**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 4874 Of 2020**

Ashab Uddin Mazumdar

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

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**Date of Decision :** 23-11-2020

**Acts Referred:**

Assam Venture Educational Institutions (Provincialisation Of Services) Act, 2011 —  
Section 4

**Citation :** (2020) 11 GAU CK 0027

**Hon'ble Judges :** Achintya Malla Bujor Barua, J

**Bench :** Single Bench

**Advocate :** M H Rajbarbhuiyan

**Final Decision :** Disposed Off

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## Judgement

1. Heard Mr. M.H. Rajbarbhuyan, learned counsel for the petitioner. Also heard Mr. R. Mazumdar, learned Standing counsel for the Secondary

Education Department.

2. Considering the nature of the order to be passed, we are of the view notice for the present need not to be issued on the respondent no. 4 being the

Headmaster of Brajahari Musafir High School, Sivsagar.

3. The petitioner was appointed as a graduate teacher on 25.09.1992 in the Brajahari Musafir High School, Sivsagar. The Brajahari Musafir High

School, Sivsagar was provincialised w.e.f. 01.01.2013 under the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (in short Act of 2011).

4. As per the Act of 2011 certain criterias have been provided therein and if such criterias are fulfilled by the teachers in service when the Act of

2011 was given effect, Section 4 thereof provided that it is deemed that their services have been provincialised. Section 4 creates a legal fiction in

favour of such teachers who were in service when the Act came into effect and the teachers concerned had met the essential

qualifications/requirements provided in the Act of 2011, their services are deemed to have been provincialised by operation of law.

5. It being a case of provincialisation by a legal fiction under the law, no further administrative action is required on the part of the respondent

authorities to either provincialise or not to provincialise or all the respondents authorities are required to do is to look into it as on 01.01.2013 the

teachers concerned did meet the eligibility criteria provided in the Act of 2011.

6. This writ petition has been instituted on the grievance that although the petitioner did meet the eligibility criteria provided in the Act of 2011, but his

service has not been regularized. It is also stated that the petitioner would otherwise superannuate from service in the month of September, 2011.

7. Considering all the aspects as indicated above, we are of the view that the ends of justice would be met if the respondent authorities being the

Commissioner and Secretary to the Government of Assam look into the matter whether the petitioner had met the eligibility criteria provided in the Act

of 2011 as on 01.01.2013. If the result of exercise would be that the petitioner had met the eligibility criteria, his service has already been

provincialised by operation of law by the Act of 2011, if he had not met the eligibility criteria as on 01.01.2013, the Commissioner and Secretary shall

pass a reasoned order indicating as to why and inform the petitioner.

8. The exercise be done within a period of one month from the date of receipt of certified copy of the order.

9. This writ petition stand disposed of in the above terms.