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**(1999) 01 GAU CK 0012**  
**In the Gauhati High Court**  
**Case No : 18 of 1998**

Bolinmili

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

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**Date of Decision :** 21-01-1999

**Acts Referred:**

**Citation :** (1999) 1 GLJ 180

**Hon'ble Judges :** P.G.Agarwal, J

**Bench :** Single Bench

**Advocate :** T.J.Mahanta, M.C.Pegu, D.C.Mahanta, Advocates appearing for Parties

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## **Judgement**

1. This second appeal is directed against the judgment and decree passed by the Civil Judge (Senior Division), Jorhat on 12.1.98 whereby the Title Appeal No. 17 of 1997 preferred by the present petitioner was dismissed.

2. The plaintiff who is the appellant herein instituted Title Suit No.79 of 1995 before the Civil Judge (Junior Division) No.2, Jorhat praying for a declaration that his service in the Bhakat Chapari Tribal ME School was prior in time than the defendant No.3 and the plaintiff being senior in service, his services should have been provincialised with effect from 1.11.93. That plaintiff appellant prayed for cancellation of provincialisation of the service of defendant No.3 and other ancillary reliefs. The suit was contested by the State of Assam and other official functionaries of the State Education Department and also by the respondent No.3. The case of the defendant is that the defendant No.3 was appointed as a teacher in the said school on 6.6.86 whereas the plaintiff was appointed on 4.10.88 and as the defendant was senior in service, his services were provincialised. The defendant took the plea of non maintainability of the suit in view of section 6 of the Assam Secondary Education (Provincialisation) Act, 1977, for short, the Act.

3. The learned trial Court after conclusion of the hearing dismissed the suit both on facts and law. The plaintiff appellant thereafter preferred the appeal which

was also dismissed vide the impugned order. Hence the present appeal.

4. So far the facts of the case are concerned the plaintiff claimed that he was appointed as Assistant Teacher in the said school during the year 1985-86 and after regularisation of the post he was appointed on 4.10.88. However, during the course of trial the plaintiff shifted his stand and introduced Ext 1 to show that he was appointed on 11.8.86. This Ext 1 was considered by both the Courts below and considering the number of overwriting and considering the fact that it was originally addressed to one Anurup Mili, both the Courts below held that the plaintiff was never appointed on the strength of Ext 1. There was nothing to dispute this finding of fact, rather from the plaintiff's own documents, Ext 2 and Ext 4, it is clear that the plaintiff was appointed as Assistant Teacher on 4.10.88 only. On the other hand, from the official document, Ext 3 it is seen that respondent No.3 Paban Sarma was appointed on 6.6.86. Hence even if Ext 1 is considered as true Paban Sarma joined the service in the said school prior to the present appellant as Ext 1 is dated 11.8.86 only. Exts Ka, Kha and Ga are the other documents to show that defendant Paban Sarma was appointed and joined service on 6.6.86. Thus from the facts it is established that the plaintiff has got no case for declaration of his seniority as prayed for or for provincialisation of his service ahead of defendant No.3.

5. In this second appeal the following substantial question of law was formulated: ?Whether the appellant was required to obtain previous permission from the Govt to institute the suit ??

6. Section 6 of the Act reads as follows :

?6. Suits and proceedingsNo suit, prosecution or other legal proceeding shall lie for anything in good faith done under this Act except with the previous sanction of the State Govt.?

7. There is no dispute at the Bar that the said school was provincialised in the year 1991 and the service of the defendant No.3 as 5th Additional Assistant Teacher was provincialised with effect from 1.11.93. The relief sought for by the plaintiff is for a direction to the State of Assam for cancelling the provincialisation of defendant No.3 and for provincialisation of the service of the plaintiff appellant. Both the Courts below have held that the suit is not maintainable in view of section 6 of the Act. The learned Civil Judge has also referred to a decision of this Court in the case of Mrs Maya Dutta vs. State of Assam & others reported in (1984) 2 GLR101 wherein it was held that when a school is taken over by the State Govt of Assam, this Court has no jurisdiction to try a suit filed by an employee of such a school against the school management and the suit is barred by section 6 of the Act. The learned counsel for the appellant has tried to distinguish the case by stating that as the service of the plaintiff has not been provincialised till now he is not an employee of the Govt of Assam and as such provision of section 6 will not act as a bar for instituting a suit by him.

8. Considering the reliefs sought for by the plaintiff and considering the fact that

the plaintiff before instituting the suit did not call for previous sanction of the State Govt, it is held that section 6 will be a bar.

9. In the result, there is no merit in this appeal and the appeal is accordingly dismissed on contest without costs.