

(2022) 05 GAU CK 0043

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2582 Of 2021

Kukheswar Gogoi And 12 Ors

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 26-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam Venture Educational Institutions (Provincialisation Of Services) Act, 2011 — Section 3

Assam Education (Provincialisation of Services of Teachers??and Re-organisation of Educational Institutions) Act, 2017 — Section 2(u), 3, 13, 14, 24

Citation : (2022) 05 GAU CK 0043

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Division Bench

Advocate : N SAIKIA, N.J. Khataniar

Final Decision : Disposed Of

Judgement

1. Heard Mrs. N. Saikia, learned counsel for the petitioner. Also heard Mr. N.J. Khataniar, learned standing counsel for the Secondary Education Department, respondent nos. 1 and 3. None appears on call for the Finance Department, respondent no.2.

2. The petitioners have joined together, claiming common cause of action, and have filed this writ petition under Article 226 of the Constitution of India. The case projected by the petitioners is that they have been working as Post Graduate Teachers in different Junior Colleges and/or Senior Secondary Schools in different districts of the State. Their appointment was made in the year 1994, 1996, 1997, 1998, 2002, 2003 and 2009 respectively, and it is claimed that the petitioners are working in the first and/or second available vacancies in their respective subjects on honorary basis. However, despite rendering such a long and continuous service, the service of the petitioners has not been regularised. It is projected that all the institutions, where the petitioners are working, were established prior to 01.01.2006, and since then they are having due permission,

recognition and subject concurrence from the Department of Education, Government of Assam.

3. In this regard, the learned counsel for the petitioners has submitted that as per Section 3 of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, all the petitioners were fulfilling the requisite eligibility criteria for being considered for provincialisation of their services. Accordingly, it was submitted that in the year 2014 and 2017, the Inspector of Schools of Dhemaji and Lakhimpur districts had recommended the names of the petitioners for regularisation of their services. It was also submitted that although the process for regularisation of the service of the petitioners was going-on, but the petitioners were deprived of such benefit. Accordingly, the petitioners have approached this Court by filing this writ petition under Article 226 of the Constitution of India. The prayer in this writ petition is for a direction upon the respondent authorities to regularise/ give benefit of provincialisation of service with immediate effect since persons junior to the petitioners had been given the benefit of provincialisation of their service.

4. The learned counsel for the petitioners had submitted that in the meanwhile, the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (hereinafter referred to as the "2017 Act") was enacted by the State and that under the said 2017 Act, by a notification dated 01.02.2021, the services of about 18,000 teaching staff was provincialised as "teachers" and/or "tutors". The learned counsel for the petitioner has submitted that the said list was full of errors and discrepancies, because the names of some dead and/or retired teaching staff had been included and moreover, although some of the schools did not have the adequate number of student, yet the service of some teaching staff of such ineligible schools were also provincialised. By referring to the decision of this Court in the case of Shiv Chetry & Ors. v. The State of Assam & Ors., W.P.(C) 6290/2021, decided on 17.01.2022, it has been submitted that those teaching staff, who did not have the requisite qualification, had a right to be considered for provincialisation of their service as "tutors", which is defined under Section 2(u) of the 2017 Act. Hence, it was submitted that this was a fit case for grant of relief as prayed for.

5. Per contra, it was submitted by the learned standing counsel for the respondent nos. 1 and 3 that all the 13 petitioners are (i) having different qualifications, (ii) teaching different subjects, (iii) teaching in different Junior Colleges/ Senior Secondary Schools, (iv) were appointed on different dates, and (v) serving in different districts. Therefore, it was submitted that different causes of actions have been clubbed together. Therefore, by placing reliance on the Rule 1 of Chapter- V-A of the Gauhati High Court Rules, it was submitted that in such cases, separate writ petitions ought to have been filed as the interest of all the petitioners were not identical. In the said context, it was submitted that in the absence of the concerned District Elementary Education Officers have not been impleaded and relevant data relating to DISE Codes of the concerned schools

have not been provided, it was impossible for the respondent authorities to provide the relevant information so as to enable the appropriate authority to file a detailed affidavit-in-opposition. It was also submitted that under the provisions of the 2017 Act, the petitioners have an alternative and efficacious statutory remedy of filing an appeal before the State Level Scrutiny Committee as well as before the State Government in the Secondary Education Department and that such remedy was not exhausted before approaching this Court. Accordingly, it was submitted that the present writ petition was not maintainable on facts and in law.

6. At the outset, it must be mentioned that the petitioners have made a false statement in para 14 of the writ petition to the effect that gazette notification dated 11.04.2017 was published to notify the 2017 Act, without repealing or amending the existing Act, i.e. the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011. In this regard, it may be mentioned that by the provisions of Section 24 of the 2017 Act, the herein before referred 2011 Act and all rules, orders, notifications, issued thereunder had been repealed. Moreover, it has further been mentioned in Section 24 of the 2017 Act that the 2011 Act, as amended by Assam Act XXI of 2012 and Assam Act XX of 2013 had been struck down by this Court in W.P.(C) 3190/2012. Thus, it appears that the deliberate false statement has been made in para 14 of the writ petition with a view to mislead this Court. The writ petition, thus, is liable to be dismissed on this count alone. If needs any authority on the point that owing to suppression of material facts, a writ petition is liable to be dismissed and thrown out, one may refer to the decision of the Supreme Court of India in the case of (i) S.P. Chengalvaraya Naidu Vs. Jagannath (Dead) & Ors. Vs. Jagannath (Dead) & Ors., (1994) 1 SCC 1, and (ii) Satyan v. Commissioner, (2020) 14 SCC 210. Nonetheless, in view of the order proposed to be passed, the Court has refrained from dismissing this writ petition on ground of suppression of material fact.

7. Having perused the writ petition, we have to agree with the contention of the learned standing counsel for the respondent nos. 1 and 3. Under the 2017 Act, before selection of educational institution for provincialisation of service of teachers/ tutors, such institutions must have the requisite eligibility criteria as envisaged under Section 3 of the 2017 Act. In this case, save and except the statement made by the petitioners in para 19 of the writ petition, there is no material from which it can be ascertained as to whether or not the educational institutions in which the petitioners had been rendering service had the requisite eligibility criteria. Assuming for a moment that the educational institutions, where the petitioners are rendering their service, are eligible under the 2017 Act for provincialisation of service of its teaching staff as teachers/ tutors, then the service of some of teaching staff of such educational institutions must have been provincialised. However, the petitioners have not disclosed such information in their writ petition.

8. Moreover, every educational institution, which is otherwise eligible for

provincialisation of service of teachers/ tutors, are required to have a District Information System for Education Code (DISE Code for short). If DISE codes of the educational institutions are indicated, it is quite possible for the authorities of the Secondary Education Department to have access to all the relevant data concerning the status of the respective educational institutions where the petitioners are serving. We also have to agree with the learned standing counsel for the Secondary Education Department that all the 13 petitioners are (i) having different qualifications, (ii) teaching different subjects, (iii) teaching in different Junior Colleges/ Senior Secondary Schools, (iv) appointed on different dates, and (v) serving in different districts. Therefore, when all the relevant essential particulars of the petitioners are different, we cannot expect the officials of the Secondary Education Department to cause elaborate enquiry to collect better particulars and then file a comprehensive affidavit-in-opposition covering all the petitioners. Nonetheless, in view of the order proposed to be passed, the Court is not inclined to dismiss this writ petition on the ground of mis-joinder of cause of action and order separate writ petitions to be filed.

9. From the statements made in the writ petition, we presume that the statement made by the petitioners that their respective cases had not been considered for provincialisation of their respective services to be correct. On such presumption, we are of the considered opinion that in the absence of requisite material particulars, it would be appropriate to relegate the petitioners to file individual applications/ representations before the concerned District Scrutiny Committee, constituted as per Section 13 of the 2017 Act, stating in details their respective particulars, and enclosing therewith the relevant testimonials, which are relevant for the purpose of conducting an examination of the same by the District Scrutiny Committee, for considering the claim of the petitioners for regularisation of their respective services. If so required under the 2017 Act, the applications/ representations to be submitted by the petitioners individually, shall be counter-signed by the Principal and/or Headmaster/ Headmistress of the concerned educational institutions, as the case may be. Upon the individual applications/ representations being submitted, the District Scrutiny Committee shall pass appropriate orders within an outer period of 3 (three) months from the date of receipt of such applications/ representations, accompanied by a certified copy of this order. The aforesaid liberty is in addition to the statutory remedy of appeal available to the petitioners under Section 14 of the 2017 Act.

10. However, it is clarified that if the District Scrutiny Committee had already considered the candidature of the petitioners for provincialisation of their respective services, and rejected the same, fresh consideration by the District Scrutiny Committee shall not be required. However, the District Scrutiny Committee shall communicate its decision individually to the petitioners at their respective e-mail address, which shall be provided by the petitioners in their individual applications/ representations.

11. It may be mentioned that even in the cited case of Shiv Chetry & Ors.

(supra), this Court had not adjudicated the matter, but under the distinguishable facts of the said case, the petitioners therein were relegated to approach the Director of Secondary Education, Assam. The facts on which the said case is distinguishable is that the service of the petitioners in the said case had been provincialised, but were given pay and allowances of "tutors", but those petitioners were claiming provincialisation of their service as "teachers". But in this case in hand, the service of the petitioners has not been provincialised. Therefore, the said case is not found to help the petitioners in any manner whatsoever.

12. Thus, by relegating the petitioners to approach the District Scrutiny Committee, this writ petition stands closed. On the ground of suppression of material facts, as indicated herein before, the Court is disinclined to examine the merit of the respective claims of the petitioners.