

**(2019) 08 GAU CK 0025**

**In the Gauhati High Court**

**Case No : Writ Petition (C) No. 3386 Of 2018**

Luqman Ansari

APPELLANT

Vs

State Of Assam And 7 Ors

RESPONDENT

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**Date of Decision :** 08-08-2019

**Acts Referred:**

**Citation :** (2019) 08 GAU CK 0025

**Hon'ble Judges :** N. Kotiswar Singh, J

**Bench :** Single Bench

**Advocate :** B Chetri

**Final Decision :** Allowed

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## **Judgement**

1. Heard Mr. B. Chetri, learned counsel for the petitioner. Also heard Mr. C. Bhattacharjee, learned Standing Counsel, Secondary Education Department; Mr. B. Deuri, learned Government Advocate, Assam; Mr. R. Borpujari, learned Standing Counsel, Finance Department and Mr. N. Upadhyay, learned counsel appearing for Respondent No.7.

2. The matter pertains to provincialization of the petitioner's service as an Assistant Teacher. The case of the petitioner is that the petitioner was initially appointed as an Assistant Teacher (Arts) in Srimati Chandra Prabha Pandit Smriti Hindi Vidyalaya, Rangapara on 14.3.1990 at the fixed pay which was duly approved by the school authorities and, accordingly, he continued in the said scale as Assistant Teacher in the said school. Subsequently, the said school was provincialized with effect from 1.1.2013. However, at the time of provincialization, because of a mistake by the school authorities as well as the state authorities, the name of the petitioner was shown as an Assistant Teacher (Sanskrit) provincialized, as evident from the letter dated 2.9.2013. Subsequently, as the petitioner was wrongly provincialized as Assistant Teacher (Sanskrit), he made a representation on the basis of which the Headmistress of the school vide letter dated 24.10.2013 requested the Deputy Director of

Secondary Education, Assam to correct the name and designation of the petitioner. Subsequently, the State authorities also made necessary verification and recommended provincialization of the petitioner's service as Assistant Teacher (Arts). The High Level Empowered Committee examined the case of the petitioner after the school authorities informed about the wrong provincialization of the petitioner as Assistant Teacher (Sanskrit). Accordingly, the said High Powered Committee also recommended for correction of the petitioner as Assistant Teacher and another teacher Shri Vijay Kr. Prasad as Sanskrit Teacher. Subsequently, thereafter, the Government also prepared a gradation list of provincialized school along with the staff as evident from the letter dated 30.1.2014 in which, the name of the petitioner was shown at Serial No.7 and he was shown as Assistant Teacher. In the said list, Shri Vijoy Kr. Prasad was shown as Sanskrit Teacher at Serial No.6. Accordingly, it is submitted by the learned counsel for the petitioner that the respondent authorities have subsequently verified and made the necessary correction but have wrongfully deprived the petitioner of regular salary which has been stopped from September, 2014. The petitioner also submits that he continues to serve the school as Assistant Teacher. It is further submitted by the learned counsel for the petitioner that during the pendency of this writ petition, two of the Assistant Teachers who were working in the said school have expired, namely Tapash Roy and Nagendra Prasad Singh, whose services were also provincialized at the time of provincialization of the school.

3. Learned counsel for the State submits that provincialization has to be done in accordance with the Assam Secondary Education (Provincialisation of Service) Rules, 2003, as amended on 2012.

4. Learned counsel for the petitioner submits that the person who has been wrongly provincialized in lieu of the petitioner has been impleaded as Respondent No.8 but has not entered appearance before this Court inspite of service of notice and the said respondent no.8 is junior to the petitioner.

5. However, learned counsel for the petitioner submits that since there are vacancies as of now, he will not be insisting on disturbing the provincialization of the service of Respondent No.8 and the said Respondent No.8 can be accommodated against any of the existing vacancies and the petitioner be regularized. It is submitted that since the petitioner was third amongst the teachers in the list of teachers as Assistant Teachers prior to provincialization and three posts of Assistant Teacher were sanctioned, he can be provincialized against the third vacancy. However, the respondent authorities, instead of the petitioner, provincialized the services of Respondent No.8 as Assistant Teacher. Considering the fact that vacancy exists, the aforesaid Respondent No.8 can be adjusted against the said vacancy post so that his provincialization is not disturbed. On the other hand, since the petitioner has been initially provincialised as Assistant Teacher (Sanskrit), and since the authorities have thus rectified the said mistake, it shall be deemed that he has been provincialized as Assistant

Teacher (Arts) in the said school.

6. Learned counsel for the petitioner submits that provincialisation of the service of the petitioner as Sanskrit Teacher was withdrawn vide order dated 8.4.2015 issued by the Director of Secondary Education and the District Level Scrutiny Committee had recommended the name of the petitioner as Hindi Teacher of the School.

7. Having gone through the records, this Court is satisfied that the petitioner had been wrongly provincialized as Assistant Teacher (Sanskrit). The letter dated 30.1.2014 issued by the Under Secretary to the Government of Assam, Finance (Budget) Department clearly mentions the name of the petitioner at Serial No.489 and the person who has been wrongly provincialized as Assistant Teacher - Bijay Sankar Thakur (Respondent No.8) has been shown as junior to the petitioner in the said list prepared by the authorities. If the competent authority contends that there cannot be four teachers and only three teachers, the said Shri Bijay Sankar Thakur has to be replaced by the petitioner who is higher in the sonority list and who has been wrongly provincialized as Assistant Teacher (Sanskrit).

8. Accordingly, the impugned order dated 8.4.2015 by which the provincialisation of the petitioner's service has been withdrawn is set aside with a direction that the petitioner be provincialized in lieu of Respondent No.8. However, since it has been submitted that vacancies have arisen in the meantime in the post of Assistant Teacher in the said school upon expiry of two of the provincialized Assistant Teacher, namely Nagendra Prasad Singh and Tapash Roy, the aforesaid Respondent No.8 who had been provincialized and working since 2013 may be adjusted against one of the aforesaid vacancies. However, since the petitioner was senior and had a better claim for provincialization as Assistant Teacher (Arts) but was wrongly provincialized as Assistant Teacher (Sanskrit), which has been admitted by the respondent authorities themselves, it will be deemed that the petitioner's service has been provincialized with effect from 1.1.2013 in terms of the order dated 2.9.2013 in lieu of the Respondent No.8. In so far as the claim for payment of arrear salary is concerned, the authority shall release the same to the petitioner without ordering any break in service.

9. The writ petition, accordingly, stands allowed.