
(2021) 08 GAU CK 0086

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4015 Of 2021

Md. Faijur Rahman

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 24-08-2021

Acts Referred:

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

Citation : (2021) 08 GAU CK 0086

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : T N Srinivasan

Final Decision : Allowed

Judgement

1. Heard Mr. TN Srinivasan, learned counsel for the petitioner, Mr. R Mazumdar, learned counsel for the respondents No. 1, 2 and 4 being the

authorities under the Secondary Education Department of the Government of Assam and Ms. DD Barman, learned Additional Senior Government

Advocate appearing for the respondent No.3 being represented by the Deputy Commissioner, Morigaon.

2. The petitioner was appointed as a Lecturer in the Department of Political Science in the Laharighat Junior College, Morigaon as per the resolution

No.6 dated 23.12.1992 of the Governing Body of the College and thereafter he joined the College on 02.04.1993 and since then he has been

discharging the duties as Lecturer in the Department of Political Science. Subsequently, when the Laharighat Junior College was changed to that of a

Senior Secondary School, the petitioner continued to discharge his duties as a Subject Teacher in Political Science. The petitioner is aggrieved to the

extent that when the teachers of the Laharighat Junior College were subjected to the process of provincialisation by the order dated 04.02.2021, the

petitioner had been provincialised as a Tutor in the subject Political Science and not as a Teacher.

3. Tutor is defined in Section 2(u) of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions)

Act, 2017 (in short Act of 2017) to mean and includes Teachers, Assistant Teachers, Classical Teachers, Lecturers, Assistant Professors, Associate

Professors, Professors, Principal, Vice-Principal, Demonstrator, Headmaster, Assistant Headmaster, Superintendent, Assistant Superintendent in a

provincialised educational institutions under the Act of 2017, who are otherwise not eligible for such provincialisation due to lack of any educational or

professional qualification as required under the right of Children to Free and Compulsory Education Act, 2009, National Council for Teachers

Education Act, 1993, University Grants Commission Act, 1956 and/or any other relevant Rules, Regulations that may be in force.

4. A reading of the definition of the expression "Tutor" goes to show that a person would be provincialised as a Tutor, if he does not have the

required educational and or professional qualification as provided in the aforementioned Acts and Laws. On the other hand, Section 2(t) of the Act of

2017 defines "Teacher" to mean Teachers, Assistant Teachers, Classical Teachers and also includes Lecturers, Assistant Professors, Associate

Professors, Professors, Principal, Vice-Principal, Demonstrator, Headmaster, Assistant Headmaster, Superintendent, Assistant Superintendent having

the required educational and professional qualification as per the norms and standard provided in the aforesaid Acts and Laws.

5. A reading of the "particulars of teachers" under the Signature of the Inspector of Schools, Morigaon in respect of Laharighat Junior College,

shows that the petitioner is having qualification of M.A, which he obtained twice as well as B.Ed degree. The relevant Rules providing for the

qualification of a Subject Teacher in a Senior Secondary School is provided in Schedule-II to the Assam Secondary Education (Provincialisation)

Service Rules, 2003, which provides that in order to be a Post Graduate Teacher, which is a Subject Teacher, the required qualification is

M.A/M.Sc/M.Com with 50% marks in the relevant subject from any recognized University.

6. Mr. R Mazumdar, learned counsel for the respondents in the Secondary Education Department refers to a representation made by the petitioner

before the Director of Secondary Education, Assam wherein he has stated that the marks obtained by him in the Post Graduate Examination from the

Gauhati University was wrongly recorded in the particulars recorded by the respondent authorities. It is stated that because of such incorrect

recording of the marks obtained by the petitioner in the Post Graduate Examination, there is a possibility that the authorities had arrived at a conclusion

that the petitioner did not have the required educational qualification for the post of a Subject Teacher in a Senior Secondary School/Junior College.

Accordingly, Mr. Mazumdar, learned counsel submits that there is also a possibility that the petitioner may not have the required 50% marks required

in the M.A/M.Sc/M.Com examination.

7. In order to verify the factual aspect, we look into the mark-sheet of the petitioner issued by the Gauhati University in respect of his M.A final

examination and could notice that the petitioner had obtained 405 marks out of 800 marks in such examination. Petitioner having obtained 405 marks

out of total 800 marks clearly shows that he had more than 50% marks in his M.A final examination. As pointed out, the required qualification is

minimum 50% marks in the M.A/M.Sc/M.Com examination and as the petitioner has more than 50% marks, it cannot be said that he did not have the

required educational qualification.

8. As the petitioner had the required educational qualification under the Act of 2017, he would be entitled to be provincialised as a Teacher and not as

a Tutor. In view of such prima-facie satisfaction being arrived at in respect of the petitioner, we deem it appropriate that the Director of Secondary

Education, Assam will look into the factual aspects of the marks obtained by the petitioner in his M.A final examination and if it is found that the

petitioner had obtained more than 50% marks, the Director may pass appropriate order provincialising the petitioner as a Teacher and not as a Tutor

as was done earlier. If for any reason, the Director is of the view that the petitioner does not have the necessary qualification, appropriate reasons be

stated for arriving in such a conclusion. But on the other hand, if it is found that the petitioner has the qualification, necessary consequential orders be

passed for provincialising his service as a Teacher in the school concerned.

9. Mr. TN Srinivasan, learned counsel for the petitioner also raises an issue that the writ petitioner was also a Principal of the school. If that is so, it is

for the respondent authorities to take their decision as to in what manner the petitioner would now continue in the school.

10. As we are relying on a number of annexures annexed to this writ petition, we also require the petitioner to submit a copy of the writ petition to the

Director of Secondary Education, Assam for passing of the necessary order. The requirement of passing the necessary order be done by the Director

within a period of two months from the date of receipt of a certified copy of this order.

The writ petition is allowed of in the above terms.