

(2022) 03 GAU CK 0058

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2115 Of 2021, 1780 Of 2022

Rowshan Ali Khan

APPELLANT

Vs

State Of Assam And 8 Ors

RESPONDENT

Date of Decision : 28-03-2022

Acts Referred:

Assam Education (Provincialisation Of Services Of Teachers And Re-Organisation Of Educational Institutions) Act, 2017 — Section 14

Citation : (2022) 03 GAU CK 0058

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : M U Mondal

Final Decision : Disposed Of

Judgement

1. Heard Mr. M U Mondal, learned counsel for the petitioner in both the writ petitions. Also heard Mr. N J Khataniar, learned Standing Counsel for the Elementary Education Department appearing for the respondents no. 2 to 5 and 8 and Mr. P Saikia, learned Government advocate appearing for the respondents no. 1, 6 and 7. Also heard Mr. P K Deka, learned counsel for the respondent no. 9.

2. By filing WP(C)/2115/2021, the petitioner has assailed the provincialisation of the service of respondent no. 9, namely, Jahanara Begum on the ground that in the report of the District Scrutiny Committee (DSC), Dhubri, the name of respondent no. 9 does not appear whereas the name of the petitioner was recommended for provincialisation of his service as language teacher in the Paisty Aironjongla ME Madrassa. During the pendency of the said writ petition, the respondent no. 9 whose service was provincialised as language teacher, has filed an interlocutory application which has been registered as I.A. (Civil)/1751/2021. In connection with the affidavit-in-reply filed by the respondent in the said I.A., the respondent no. 9 has produced the "format for report of DSC" wherein the name of respondent no. 9 appears at column no. 6 as the second tutor eligible for provincialisation and the name of the petitioner

appeared therein at column no. 7 in respect of teacher/tutor who are not eligible for provincialisation due to non availability of required enrolment. Therefore, the petitioner has filed WP(C)/1780/2022 to assail the report of the DSC, Dhubri.

3. In view of the nature of the order proposed to be passed, the Court is not inclined to record the submission made by the learned counsel for the petitioner, the respondent no. 9, as well as the learned departmental counsel.

4. In the proceeding of WP(C)/1780/2022, two reports of the DSC are available, being Annexure – 6 and 14 respectively.

5. The Court is appalled by the fact that although the DSC consists of several members with Deputy Commissioner for the district as Chairman, but none of the eight members of the DSC, Dhubri deemed it appropriate to pen down the date on which the report was made or signed.

6. It is also observed that this Court by the order dated 12.10.2018 passed in WP(C)/7429/2018 in Jahanara Begum vs. State of Assam and others which was filed by the respondent no. 9, a direction was given to the effect that the respondent no. 9 herein shall submit a representation before the Chairman of DSC, Dhubri district for consideration of her case by enclosing a copy of the recommendation of the Headmaster given at Annexure-7 to the said writ petition and on receipt of the same, the DSC, Dhubri was directed to consider the case of the respondent no. 9 by taking into account the recommendation of the Headmaster of Paisty Airangjongla ME Madrassa herein. From the said order, a presumption can be drawn that the second report of the DSC (Annexure-14) to WP(C)/1780/2022 was made after the copy of the said order dated 12.10.2018 passed in WP(C)/7429/2018 was submitted before the DSC, Dhubri.

7. It is also noticed that the DSC has made no observation in the said report which is available as Annexure-14 that the previous recommendation made by the DSC had been recalled or withdrawn. Thus, two DSC recommendations are available on record [Annexure – 6 and 14 of WP(C)/1780/2022].

8. From the order of the appointment of the respondent no. 9 dated 05.02.2021, the Court assumes that the recommendation of the DSC had been approved by the State Level Scrutiny Committee. Therefore, the Court is of the considered opinion that it is an appropriate case for relegating the petitioner and the respondent no. 9 to the appellate authority, i.e. State Government, as provided under Section 14 of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (in short, the Act of 2017).

10. It has been submitted at the Bar that the appellate authority may not sit regularly to dispose of the appeal in a time bound manner.

11. As per the provisions of Section 14 of the said Act of 2017, if a recommendation made by the State Level Scrutiny Committee, the State Government, would be the appellate authority. Therefore, the petitioner is at

liberty to produce a certified copy of this order before the Principal Secretary to the Government of Assam, Elementary Education Department and upon receipt of the said certified copy of the order, the said authority shall register an appeal. The petitioner as well as the respondent no. 9, who are both represented herein by their respective counsel, shall file their respective written statement along with any document they intend to rely upon before the said appellate authority within ten days from the date of this order, by sending a copy to the other side.

12. The said appellate authority shall dispose of the appeal within a period of six weeks thereafter.

13. The petitioner and the respondent no. 9 shall also provide their email addresses to the appellate authority and the appellate authority shall transmit the copy of the order to the petitioner as well as the respondent no. 9 in their respective email addresses.

14. The learned counsel for the respondent no. 9 has submitted that although his service was provincialised, the respondent no. 9 is not being able to get the salary in view of the interim order passed by this Court.

15. Therefore, it is provided that while disposing of the appeal, the appellate authority shall also pass appropriate orders for release of the salary for the Assistant Teacher whose service would be provincialised.

16. The writ petition stands closed without deciding the respective rights of the petitioner and the respondent no. 9, with a direction to both the parties to appear before the appellate authority, within 10 (ten) days from the date of this order.

17. The interim order passed on 24.03.2021 in WP(C)/2115/2021 stands extended till the appellate authority takes up and registers the appeal. Thereafter, it would be open for the appellate authority to pass any appropriate order widening interim order, if any, if so deemed appropriate.

18. With observation and directions as indicated above, this writ petition stands closed.