
(2021) 07 GAU CK 0137

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2268, 3644 Of 2020

Rupanjali Mahanta

APPELLANT

Vs

State Of Assam And 8 Ors

RESPONDENT

Date of Decision : 29-07-2021

Acts Referred:

Assam Education (Provincialisation Of Services Of Teachers And Re-Organization Of Educational Institutions) Act, 2017 — Section 1(3), 3(1)(vii), 3(1)(ix), 4(2)(iii)

Citation : (2021) 07 GAU CK 0137

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P Mahanta

Final Decision : Allowed

Judgement

1. Heard Mr. P. Mahanta, learned counsel for the petitioner. Also heard Mr. R. Mazumder, learned counsel for the respondents No.1, 2, 3 and 9 being

the authorities under the Secondary Education Department of the Govt. of Assam, Mr. P. Saikia, learned counsel for the respondents No.4 and 5

being the Deputy Commissioner and Additional Deputy Commissioner, Kamrup(R) and respondent No.8 being the District Scrutiny Committee for

Kamrup(R) and Mr. R. Baruah, learned counsel for the respondents No.6, 7 and 10 being the School Managing Committee and Principal cum

Secretary of the Kamalpur Senior Secondary School and Sri Najrul Islam, who is the Principal of the school. As the issues involved in both the writ

petitions are one and the same, we intend to give a final consideration by this common judgment and order.

2. The petitioner is a MA degree holder in the subject Education from Gauhati University, obtained in the year 1994 and also qualified for the B.Ed

degree in the year 1997. Subsequently she also obtained M.phil degree in the year 2009 from the Vinayaka Mission University, Salem through distant mode. We take note of that for the purpose of this petition no question had been raised by any of the authority as regards the M.Phil qualification of the petitioner. The petitioner was initially appointed as a lecturer in the Education department of the Kamalpur Junior College on 28.09.1997 as per the resolution No.1 of the Governing Body and the appointment was made as per the recommendation of the selection committee constituted for the purpose. It is stated that subsequent thereto the Kamalpur Junior College became Kamalpur Senior Secondary School. The staff pattern of the teaching staff of the Kamalpur Senior Secondary School, which is annexed as Annexure-4 to the writ petition, shows Ritu Saloi Kalita to be the subject teacher in Education. The particulars of the teaching staff of the Kamalpur Senior Secondary School as it appeared in the website of the Secondary Education Department of the Government of Assam shows the respondent No.10 Najrul Islam having the qualification of MA, to be a tutor in the school as well as its Principal. It has been brought to our notice that the respondent No.10 does not have the qualification of B.Ed and therefore, he is not qualified to be a principal.

3. A reading of the particulars of the teaching staff of the Kamalpur Senior Secondary School would go to show that in the years 2014, 2015 and 2016 there were 82, 93 and 93 students respectively in Class-xii for the subject Education. In other words the number of students in the subject Education in the school was more than 80 for the last 3 years prior to the teachers of the school being provincialised. It is stated that many teachers of the school were provincialised including Ritu Saloi Kalita as a subject teacher in Education. Admittedly Ritu Saloi Kalita was appointed as a subject teacher in Education on 08.09.1994 i.e. prior to the petitioner who was appointed on 28.09.1997.

4. The claim of the petitioner for provincialisation was subsequently forwarded by the Principal of the Kamalpur Senior Secondary School along with another teacher namely Jitumoni Sarma. In the said document also the number of students in Education subject was shown to be 82 and 93 in Class-xii for the years 2014 and 2015 but for the year 2016 it was shown blank. When the same information was provided for Ritu Saloi Kalita for his

provincialisation, the complete information even for the year 2016 was given, whereas when particulars for the petitioner was subsequently forwarded

, the Principal deemed it appropriate to keep it blank for the year 2016. No reasons are forthcoming as why it was forwarded as blank.

5. In any view of the matter, the petitioner in this petition claims for provincialisation under Section 3(1)(ix) of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (in short Act of 2017) on the ground that as the subject Education

had more than 80 students in the last final examination of the highest class of school for the particular subject, there was an entitlement for

provincialisation of an additional teacher or tutor for that given subject. The provision of Section 3(1)(ix) is extracted below:-

“For provincialisation of services of additional teacher or tutor, as the case may be, for a particular subject including the core subjects, in addition

to the post mentioned in Section 3(1)(vii), in any Venture High School or Venture High Madrassa or Venture Higher Secondary School or Venture

Senior Secondary School, the minimum students appearing in the last final examination of the highest class of the said school for that particular subject

must exceed eighty for one additional post and one hundred fifty for the second additional post. Further, for provincialisation of services of additional

teacher or tutor, as the case may be, for a particular subject, in addition to the posts mentioned in Section 3(1)(vii), in a venture Degree College, the

minimum students appearing in the last final examination of the highest class for that particular subject must be more than one hundred fifty for one

additional post.”

6. The provisions of Section 3(1)(ix) provides for provincialisation of an additional teacher or tutor for a particular subject including the core subject, in

addition to the posts mentioned in section 3(1)(vii) in any Venture High School or Venture High Madrassa or Venture Higher Secondary School, if the

minimum number of students appearing in the last final examination of the highest class of the said school for the given subject exceeds 80 and in such

event the provision for provincialisation of an additional post in the said subject can be invoked. The factual matrix of the present case as indicated

above shows that for the subject Education in the Kamalpur Senior Secondary School the number of students in Class-xii, which is highest class for

the subject Education not only in the last final examination but even for the last 3 years had clearly exceeds 80.

7. In the facts and circumstances of the present case in respect of the petitioner and in view of the provision of Section 3(1)(ix) of the Act of 2017 a

legal right had accrued in favour of the petitioner for being considered for provincialisation as an additional teacher in the subject Education in the

Kamalpur Senior Secondary School.

8. The respondent No.10 Najrul Islam being the Principal of the school by filing an affidavit has taken a stand that as per the resolution No.4 of the

executive meeting of the Kamalpur Junior College in its meeting held on 18.07.2017 a decision was taken that the petitioner along with another teacher

Jitumoni Sarma be released from their respective posts of professor (subject teacher) from the Kamalpur Senior Secondary School on the ground that

they have been continuously absent from the school from 2010 to 2015. The resolution No.4 of the executive meeting of the Kamalpur Senior

Secondary School which is annexed as Annexure-4 page-6 to the affidavit of the Principal of the school has not been preceded or supported by any

document nor any material has been produced to show as to on what factual basis the conclusion was arrived that the petitioner was continuously

absent from the year 2010 to 2015. In the absence of any such preceding document or material, a further doubt would be created on the authenticity

of the resolution No.4 considering the aspect that the said resolution was taken at a stage when the claim for provincialisation of the teachers of the

school were to have been considered.

9. We have been told that the Kamalpur Junior College became Kamalpur Senior Secondary School almost as far back as 2007. But the resolution

No.4 which is dated 18.07.2017 still refers it to be a resolution of the executive meeting of the Kamalpur Junior College, although by that time the

institute was known as Kamal Senior Secondary School and further the petitioner was referred as a professor, whereas, on the said date, the

petitioner was a subject teacher of the school. Such incorrect depiction also indicates a non-application of mind. Mr. P. Mahanta, learned counsel for

the petitioner makes a statement that although the resolution No.4 provides that the petitioner was absent from the school from 2010 to 2015, but even

after the said resolution was taken, the petitioner continued her duties and took

classes in the subject Education on the demand of the students, although the school authorities had made all the efforts to prevent her from entering the campus. Be that as it may we are not inclined to go into such factual question for the purpose of this writ petition.

10. Section 1(3) of the Act of 2017 provides that the State Government may by notification in the Official Gazette, appoint the date for the Act to come into force and different dates may be appointed for different provisions of the Act or for different category of educational institutions.

11. Section 4(2)(iii) of the Act of 2017 provides that teachers or tutors to be provincialised under the Act, amongst others, as on 01.01.2017 must have rendered at least six years of continuous service from the date of joining in the concerned Venture Educational Institution which must be as on 31.12.2010 or prior to that date. Section 4(2)(iii) of the Act of 2017 is extracted as below:-

â??4(2)(iii)- must have rendered at least six years continuous service as on 1.1.2017 from the dare of joining in the concerned Venture Educational Institution which must be on 31.12.2010 or prior to that date.â??

12. Section 4(2)(iii) of the Act of 2017 provides that as on 01.01.2017, the teacher or tutor concerned must have rendered at least six years continuous service from the date of joining in the concerned Venture Educational Institution and such date of joining must be on 31.12.2010 or prior to that date.

If a teacher or tutor was appointed on or prior to 31.12.2010 and from the date of initial appointment had rendered six years continuous service as on 01.01.2017 such teacher/tutor would be entitled for consideration for provincialisation.

13. The petitioner in the instant case was admittedly appointed on 10.10.1997 i.e. prior to 31.12.2010. Therefore, it would be for the authorities concerned under the Act of 2017 i.e. the District Scrutiny Committee of the district to verify from the record as to whether as on 01/01/2017 the petitioner had rendered at least six years continuous service in the school from the date of her joining i.e. 10.10.1997. If the answer arrived at is yes, a legal right would flow u/s 4(2)(iii) of the Act of 2017 for such provincialisation subject to fulfillment of other conditions as may be prescribed. But be that as it may, once the legal right had accrued to the petitioner for being considered for provincialisation under the Act of 2017, it is incumbent upon

all concerned to send the service particulars of the petitioner to the District Scrutiny Committee of the district concerned i.e. Kamrup (Rural) in the present case for its consideration and verification of the factual background of the claim of the petitioner, and also for determining as to whether the petitioner is entitled to provincialisation.

14. In the instant case, we find that by taking recourse to the resolution No.4 dated 18.07.2017 of the executive meeting of Kamalpur Senior

Secondary School, the service particulars of the petitioner were not duly forwarded for its consideration. The act on the part of the school authorities

in not forwarding the service particulars of the petitioner, in our view, is a violation of the legal right of the petitioner under the Act of 2017.

15. True, the resolution No.4 dated 18.07.2017 shows that the petitioner had been released from her duties as a teacher in the school. But the legal

right of the petitioner to be considered for provincialisation under the Act of 2017 accrued as on May, 2017 when the Act of 2017 was brought into

effect. A subsequent act of releasing the petitioner by the school authorities cannot come in the way from her service particulars being sent to the

District Scrutiny Committee for its consideration which itself is a legal right of the petitioner.

16. In view of such determination of the legal right of the petitioner for being considered for provincialisation, we direct the authorities of the Kamalpur

Senior Secondary School to forthwith transmit all the service particulars of the petitioner to the District Scrutiny Committee of Kamrup (Rural) district,

who shall determine the entitlement of the petitioner u/s 4(2)(iii) of the Act of 2017 and other relevant provisions. All the service particulars of the

petitioner as it stood on the date the Act of 2017 came into its force i.e. in May, 2017 be transmitted accordingly.

17. As regards the resolution No.4 of the executive meeting of the Kamalpur Senior Secondary School, releasing the petitioner from her service by

stating that she remained absent from the classes from 2010 to 2015, we direct the Director of Secondary Education, Assam to cause an enquiry as to

under what circumstances the said resolution was taken by the executive meeting of the Kamalpur Senior Secondary School and also as to the

veracity of the correctness of the factual depiction in the resolution No.4 that the petitioner remained continuously absent from the classes from the

year 2010 to 2015. For the purpose, the entire records from the school be called for by the Director and the Director to also make an independent

enquiry from the students etc of the school during that period to verify as to whether the petitioner was continuously absent from her classes or not. If

the result of the enquiry is different from the factual depiction made in the resolution No.4, appropriate action under the law be taken by the Director

against the school authorities including the Principal While undertaking the enquiry the Director shall also look into the aspect whether due procedure

of law was followed while arriving at the resolution No.4 dated 18.07.2017 of the executive committee of the school.

18. The requirement of sending the service particulars by the school authorities of Kamalpur Senior Secondary School be done within a period of

seven days from the date of receipt of the certified copy of this order and the District Scrutiny Committee of Kamrup (Rural) shall examine the matter

and pass its reasoned order within a period of one month thereafter. For the purpose, the District Scrutiny Committee shall also embark upon a factual

verification as to whether the petitioner had rendered six years of continuous service from the date of her appointment on 10.10.1997 as a teacher in

Education subject in the Kamalpur Senior Secondary School as on 01.01.2017. Depending on the outcome of such enquiry, appropriate order be

passed by the District Scrutiny Committee. The enquiry by the District Scrutiny Committee be made also independent of the materials that the school

authorities may send. The Director in the enquiry shall also look into whether due procedure of law was followed i.e. an enquiry before the resolution

No.4 was passed.

19. Writ petitions stand allowed in the above terms.