
(2018) 05 GAU CK 0204
In the Gauhati High Court
Case No : Writ Prtition (C) No.1283 of 2015

Shajamal Ali

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 28-05-2018

Acts Referred:

Assam Education (Provincialization of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 — Section 19(2)

Citation : (2018) 05 GAU CK 0204

Hon'ble Judges : MICHAEL ZOTHANKHUMA, J

Bench : Single Bench

Advocate : A Rahman

Final Decision : Disposed Off

Judgement

1. Heard Mr. S Hoque, learned counsel for the petitioner. Also heard Mr. JH Saikia, learned counsel for the respondent No.8. Mr. N Sarma, learned

counsel appears for the Elementary Education Department whereas Ms. B Devi, learned counsel appears for the respondent No.3.

2. The petitioner's case in brief is that he is the Headmaster of No.1 Pub Kurihamari L.P. School in the district of Nalbari. The petitioner filed

WP (C) No. 4988 of 2013 along with other Headmasters of other schools for getting a DISE Code in respect of the school. WP (C) No. 4988 of

2013 was disposed of vide order dated 02.09.2013, by directing the competent authority to pass a speaking order on the grievance of the petitioner. In

pursuance to the above, respondent Nos. 3 and 4 issued the DISE Code in respect of the petitioner's school. However, the name of the petitioner

did not appear in the said DISE Code and instead the name of the respondent No. 8 appeared as Headmaster of the said school in question.

3. Being aggrieved, the petitioner has filed the present writ petition.
4. It is submitted that the respondent No. 8 was never associated with the school in question beyond the year 2003 and as such, the name of the respondent No.8 could not have appeared as headmaster of the school in the DISE Code.
5. On the other hand, the learned counsel for the respondent No.8 submits that the petitioner was never the Headmaster of the said school and actually the wife of the petitioner was Headmistress of the school. Respondent's counsel also submits that the petitioner does not have the educational qualification to be appointed as Headmaster of the said school and that on verification of the certificates submitted by the petitioner, it was found that the petitioner had not passed the examination which he had claimed to have passed.
6. The petitioner's counsel on the other hand submits that the petitioner has the required educational qualification and those documents need to be brought on record.
7. I have heard the learned counsels for the parties.
8. Section 19 (2) of the Assam Education (Provincialization of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 states as follows:

“To adjudicate disputes for redressal of grievances relating to the teaching staff of the Non-Governmental Educational Institution as well as disputes concerning disciplinary action, genuineness of establishment of school and claim for provincialization in respect of teaching staff of Venture Educational Institutions, there shall be an Educational Tribunal for each district within their respective Territorial Jurisdiction. The District and Sessions Judges and the Additional District and Sessions Judges of each District are designated as Educational Tribunal.”
9. In view of the above Section 19 (2) and in pursuance to the order dated 19.03.2015, passed by this Court in WP (C) No.4612 of 2011, 6109 of 2012 and 2282 of 2013, the Government of Assam has established Educational Tribunals to adjudicate disputes between teaching and non-teaching staff of provincialized schools. The notifications dated 03.12.2015 and 02.06.2016 issued by the Government of Assam are reproduced below:

“NOTIFICATION

Dated 3 rd December, 2015

No.ELC/WP (C) 2272/2013/403/194- In compliance or order dated 19 th March, 2015 passed by the Honâ??ble High Court in WP (C) No.

4612/2011, WP (C) No.6109/2012 and WP (C) No. 2272/2013 and as per recommendation of the Honâ??ble High Court, the Governor of Assam is

pleased to designate the Court of District Judges and Additional District Judges of each district to function as Educational Tribunals to adjudicate

disputes relating to the teaching and non-teaching staff of the non-government educational institution as well as disputes concerning disciplinary action

and claim for provincialisation in respect of teaching and non-teaching staff of venture educational institutions within their respective territorial

jurisdiction from the date of issue of this Notification. Further, for this purpose, Governor of Assam is also pleased to include District of Dima Hasao,

Karbi Anglong and Baska within the jurisdiction of District Judge Court of Cachar, Nagaon and Udalguri respectively, until further order. â??

â??NOTIFICATION

Dated 02.06.2016

GOVERNMENT OF ASSAM

ELEMENTARY EDUCATION DEPARTMENT-DISPUR, GUWAHATI-6 No.ELC/WP (C) 2272/2013/403/196, Dated Dispur, the 2 nd June,

2016

Sub: Regarding functions of Educational Tribunals.

Ref: Your endorsement dated 23/05/2016 in this Deptt. file No.ELC /WP Â© 2272/2013/403.

Sir,

In inviting a reference to the above, I am directed to inform you that Govt. Notification issued vide No.ELC WP (C) 2272/2013/403/194- dated 03/12/2-

15, designating the Court of District Judges and Additional District Judges of each district to function as Educational Tribunals to adjudicate disputes

relating to the teaching and non-teaching staff of the NonGovt. Educational Institutions as well as disputes relating disciplinary action and claim for

provincialisation, will be applicable in case of Secondary & Higher Education Department also, from the date of publication of the above notification.

A copy of the said Notification is enclosed herewith.

Yours faithfully

Sd./- Preetom Saikia, IAS Commissioner & Secretary to the Govt.

of Assam Elementary Education Departmentâ??.

10. In view of there being disputed questions of facts involved in the present case, the present case should be decided by the Educational Tribunal

concerned. Petitioner is accordingly given the liberty to approach the Educational Tribunal, Nalbari, with his grievance within a period of one month

from today. The interim order passed by this Court on 11.03.2015 shall not be disturbed during the one month period given to the petitioner to approach

the concerned Educational Tribunal. Thereafter, the petitioner may pray for a fresh interim order, if so advised, before the Educational Tribunal. In

view of there being a alternative remedy available, the writ petition is disposed of with the above observations.