
(2022) 01 GAU CK 0034

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6290 Of 2021

Shiv Chetry And 22 Ors

APPELLANT

Vs

State Of Assam And 10 Ors

RESPONDENT

Date of Decision : 17-01-2022

Acts Referred:

Assam Education (Provincialisation Of Services Of Teachers And Re-Organisation Of Educational Institutions) Act, 2017 — Section 2(u), 6

Citation : (2022) 01 GAU CK 0034

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : B P Borah

Final Decision : Disposed Of

Judgement

1. Heard Mr. B P Borah, learned counsel for the petitioners. Also heard Mr. S M T Chistie, learned counsel for the respondents no. 1, 2, 5, 6, 7, 8, 9,

10 and 11 being the authorities under the Secondary Education Department, Government of Assam as well as Mr. I Alom, learned counsel for the

respondents no. 3 and 4 being the NCTE.

2. The 23 (twenty three) petitioners herein are subject teachers in different Senior Secondary Schools/Higher Secondary Schools in the various

districts of the State and by the order dated 04.02.2021 of the Director of Secondary Education, Assam their respective services were provincialised

as tutors.

3. Under Section 2(u) of the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017

(in short, the Act of 2017) a tutor is defined to mean and include 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 institution under the Act of 2017 who are not eligible for provincialisation of their services and whose

services cannot be provincialisation against the post of teacher under the Act of 2017 because of lack of educational and professional qualification

prescribed 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 the relevant rules and regulations framed thereunder, as the case may be. In other words, we have to understand

that a person whose service was provincialisation in the aforesaid manner, but such person does not have the requisite qualification for a teacher,

his/her service is provincialised as a tutor.

4. Further Section 6 of the Act of 2017 provides that the service of the teachers in a Venture Educational Institute from the primary level up-to the

degree level shall be considered for provincialisation against the post of teacher subject to fulfillment of eligibility criteria relating to educational and

professional qualification as laid down in the Right of Children to Free and Compulsory Education Act, 2009, National Council for Teachers Education

Act, 1993, the Assam Secondary Education (Provincialised) Service Rules, 2003, as amended in 2012 and the University Grants Commission Act,

1956. In other words, it has to be understood that if a given person has the required qualification prescribed in the four Acts, such person would be

provincialised as a teacher and if they do not have the necessary qualification, they would be provincialised as a tutor.

5. Clause 6 of the order dated 04.02.2021 by which the petitioners were provincialised provides that any tutor who had already acquired the

qualification on the date of his/her provincialisation would be entitled to the pay and allowance of a teacher from the date of issuance of such

appointment order. It further provides that a teacher who acquires the required qualification within a period of five years from the date of his/her order

or provincialisation would be entitled to the pay and allowance that of a teacher with effect from the date of acquiring such qualification.

6. Clause 6 of the order dated 04.02.2021 in our view is consistent with the provision of Section 2(u) and Section 6 of the Act of 2017 and a conjoint

reading thereof makes it discernable that any person who had the acquired qualification of a teacher on or prior to the date of provincialisation would

be entitled to the pay and allowances of a teacher from the date of provincialisation and in respect of those persons who subsequently acquired the qualification of a teacher, the pay and allowances as a teacher would be paid from the date of acquiring such qualification.

7. In the instant case, it is the case of the petitioners that on 04.02.2021 i.e. the date on which their services were provincialised, all the petitioners did

have the required qualification of a teacher and therefore, under the provision of Act of 2017 as well as clause 6 of the order dated 04.02.2021 they

are entitled to the pay and allowances of a teacher from the date of provincialisation itself.

8. We are in agreement with the learned counsel for the petitioners as regards the entitlement of the petitioners for the pay and allowances payable to

a teacher from the date of provincialisation, if the individual petitioner had acquired the required qualification on or prior to the date of provincialisation

i.e. 04.02.2021.

9. In the circumstance, we require the 23 (twenty three) writ petitioners to file individual application/representation before the Director of Secondary

Education, Assam stating in detail the qualifications that they have acquired and also from which date such qualifications have been acquired, by

enclosing the copies of relevant testimonials which may indicate such qualifications. Upon the individual application being submitted, the Director of

Secondary Education, Assam shall consider the same and pass a reasoned order thereof within a period of two months from the date of receipt of the

individual application/representation to be submitted by the petitioners.

10. The Director to pass a reasoned order by taking note of the qualifications of the individual petitioners as to whether it meets the requirement of

qualification of a teacher and on which date such qualifications were acquired. If the Director arrives at a conclusion that the petitioners have

acquired the qualification of a teacher on or prior to the date of their provincialisation i.e. 04.02.2021, the necessary order be passed for payment of

pay and allowances from 04.02.2021 and if the Director arrives at a conclusion that on the said date the petitioners did not have the required

qualification of a teacher, necessary reasoned order be passed. In the event, the

Director finds that any of the petitioners may have acquired the qualification subsequent to 04.02.2021, the pay and allowances of a teacher be paid from the date of acquiring the necessary qualification.

11. Writ petition stands disposed of as indicated above.