
(2018) 04 GAU CK 0002

In the Gauhati High Court

Case No : WP(C) 3596 of 2013, MC 3358 of 2014

SUSHIL NAMASUDRA

APPELLANT

Vs

THE STATE OF ASSAM AND 9 ORS

RESPONDENT

Date of Decision : 10-04-2018

Acts Referred:

Citation : (2018) 04 GAU CK 0002

Hon'ble Judges : MICHAEL ZOTHANKHUMA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Heard Mr. M Pathak, learned counsel for the petitioner. Also heard Mr. PJ Saikia, learned counsel for respondent No.7. Mr. J Chutia, learned counsel

appears for respondent Nos. 3 to 6. Mr. GP Bhowmik, learned senior counsel appears for respondent No.10 and Ms. S Rasool, learned counsel

appears for the respondent Nos. 1 and 2. The petitioner's case is that the petitioner is serving as an Assistant Teacher since 18.1.2006 in the

Raisen ME School in Hamren Sub-division of Karbi Anglong District. The respondent No.7 Jai Singh Chauhan, a B. Com. Graduate joined the school

on 27.11.2003.

But since he was appointed as a science teacher, he was shown as under qualified. After some posts were sanctioned for the Karbi Anglong District,

through the order dated 16.5.2013, the petitioner's service was provincialised. However, the post of science teacher was shown as vacant. But

through the impugned corrigendum dated 12.6.2013, the respondent No.7 is now provincialised as an assistant teacher, by deleting the petitioner's

name from the list of provincialised teachers, while the post of assistant teacher

(Science) is shown to be vacant.

Learned counsel for the petitioner refers to the attendance register to project that the respondent No.7 did not attend the school for about 2 years

between January, 2006 to January, 2008 and accordingly, he argues that the teacher with a service break, could not have been considered for

provincialisation. The counsels for the respondents, on the other hand submit that the petitioner's case is based upon the Assam Venture

Educational Institutional Provincialisation of Services Act, 2011, which has been struck down by the Division Bench of this Court in the case of

Chandan Kumar Neog & Ors vs- State of Assam & Ors., reported in 2016 (5) GLT 296. They also submit that in view of the order dated

19.03.2015 passed by this Court in WP (C) No. 4612/2011, WP (C) No. 6109/2012 and WP (C) No. 2272 of 2013, the Government of Assam has

established Educational Tribunals to adjudicate disputes between teaching staff and non-teaching staff of provincialised schools. They submit that as

the Educational Tribunals have been established by the State Government, the present matter which is a claim for provincialisation, should also be

referred to the Educational Tribunal. I have heard the counsels for the parties. The notification dated 03.12.2015 issued by the Government of Assam

and the Notification dated 02.06.2016 issued by the Commissioner and Secretary to the Government of Assam, Elementary Education Department are

reproduced below:

NOTIFICATION

Dated 3

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Â December, 2015

No.ELC/WP (C) 2272/2013/403/194- In compliance or order dated 19

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Â March, 2015

passed by the Hon'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 Hon'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. ??

??NOTIFICATION

GOVERNMENT OF ASSAM

ELEMENTARY EDUCATION DEPARTMENT-DISPUR, GUWAHATI-6

No.ELC/WP (C) 2272/2013/403/196, Dated Dispur, the 2

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Â 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 Department??.

The present case will have to be sent to the concerned Educational Tribunal, Karbi Anglong, as the present case relates to a claim for provincialisation of the Service of the petitioner vis-a-vis the respondent No.7. Accordingly, as there is an alternative remedy available, the petitioner is given the liberty to approach the Educational Tribunal, Karbi Anglong with his grievance within a period of 2(two) months from today. In the event that the petitioner approaches the Educational Tribunal, Karbi Anglong with his grievance withinÂ 2(two) months from today, the interim order dated 28.06.2013 passed by this Court, which is to the effect that provincialisation benefit should not be granted to the respondent No.7 as an Assistant Teacher of Raisen M.E. School, on the strength of the impugned corrigendum dated 12.06.2013, shall continue to be in operation, until and unless, the Educational Tribunal decides otherwise. Writ petition is accordingly disposed of.