



GAHC010015702020



2021:GAU-AS:11499

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/462/2020

MARJAN BEGUM
WORKING AS ASSTT. TEACHER (SCIENCE) SINCE 1997 IN THE JUNGLE
BLOCK HIGH SCHOOL, D/O- LT. MOTOSIN ALI TALUKDAR, W/O-
SHAZUDDIN LASKAR, R/O- VILL. DOBOKA NALA, P.O. JUNGLE BLOCK,
P.S- DOBOKA, DIST. NAGAON, ASSAM, PIN- 782428.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPTT., DISPUR, GHY.-06.

2:THE SECY. TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GHY-06.

3:THE DY. SECY. TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
DISPUR
GHY.-06.

4:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY.-19.

5:THE INSPECTOR OF SCHOOLS
NAGAON DISTRICT CIRCLE (NDC)
DIST.- NAGAON
ASSAM
PIN- 782001.



6:THE HEAD MASTER
JUNGLE BLOCK HIGH SCHOOL
P.O. JUNGLE BLOCK
DIST. NAGAON
ASSAM
PIN- 782428.

7:MD. AHMED ALI TALUKDAR
S/O- LT. MOTOSIN ALI TALUKDAR
R/O- VILL. DOBOKA NALA
P.O. JUNGLE BLOCK
P.S.- DOBOKA
DIST.- NAGAON
ASSAM
PIN- 782428

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr P K Deka.

Advocate for the respondent(s): Mr B Kaushik,
SC, Education Department

Date on which judgment was reserved :**NA**

Date of pronouncement of judgment : **11.06.2026**

Whether the pronouncement is of the :

operative part of the judgment?:**NA**

Whether the full judgment has been :**Yes**
pronounced?

JUDGMENT AND ORDER (ORAL)

The petitioner, by this application, filed under Article 226 of the Constitution of India, has endeavoured for issuance of a writ in the nature of mandamus, directing the respondent authorities to provincialize the services of the petitioner



as an Assistant Teacher (Science) of Jungle Block High School. The petitioner has also prayed for release of her service benefits w.e.f. 01.01.2013 at par with the other teaching and non-teaching staff members of the said school, who were allowed benefits of provincialization w.e.f. 01.01.2013.

2. It is the petitioner's case that she was appointed as an Assistant Teacher (Science) of Jungle Block High School (hereinafter, referred to as 'the School'), in the district of Nagaon, by the School Managing Committee, vide resolution No. 3, dated 30.11.1997. Accordingly, appointment order was issued on the said date and the petitioner joined in her duty on 02.12.1997. The petitioner has been serving in the said school as Science Teacher (Zoology and Botany) till date.

3. It is also the further case of the petitioner that before her appointment, one Abdul Khalek was appointed as a Science Teacher in Zoology, Geography and Mathematics subjects and he too, is working in the said school till date. It be stated here that prior to coming into force, the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011 (hereinafter, referred to as 'the 2011 Act'), the Board of Secondary Education, Assam had formulated norms that one Assistant Teacher (Science) with Zoology and Botany subjects and another Assistant Teacher (Science) with Physics, Chemistry and



Mathematics subjects were required for a High School. Since neither the petitioner nor said Abdul Khaleque were with the subjects of Physics, Chemistry and Mathematics, the School appointed respondent No. 7, as the third Assistant Teacher (Science) of the School, vide appointment order dated 20.08.2004 and he has been working in the said post till date.

4. The petitioner further states that the 2011 Act was amended in the year 2012 and as per the schedule of the said Act of 2011 and the amendment Act of 2012, two Assistant Teachers (Science) were required to be provincialized for each and every High School throughout the State of Assam. It is further provided under Section 4 (2) of the said Act that provincialization of teachers should be based on seniority basis. The petitioner states that amongst the three Assistant Teachers (Science) of the School, Abdul Khalek is the seniormost, he having joined in the year 1994 and the petitioner is second in seniority in the said subject and respondent No. 7 is the juniormost. The respondent authorities, under the 2011 Act, proceeded to provincialize the post of teaching and non-teaching staff of the School and in pursuance thereof, the Headmaster of the School submitted proposal for provincialization of the services of two Assistant Teachers (Science), i.e., the petitioner and Abdul Khaleque.

5. Respondent No. 7, namely, Md Ahmed Ali Talukdar, being allegedly



aggrieved for his non-recommendation by the Headmaster of the School, filed a writ petition being WP(C) No. 5330 of 2012, before this Court, praying for provincialization of his service as Assistant Teacher (Science), on the ground that he is teaching the subjects, i.e., Physics, Chemistry and Mathematics. He raised the argument that for a High School, one Assistant Teacher with the above combination is required in a particular school, and he being the only one, teaching the same, his services should be provincialized. This Court by interim order dated 15.11.2012, passed in the said writ petition had directed the respondent authorities that provincialization benefits for the Science Teacher in the school should not be considered without providing for a Science Teacher with the combination of Physics, Chemistry and Mathematics, which are said to be the Royal subjects.

6. Thereafter, by order dated 22.09.2014, the Director of Secondary Education, Assam, had directed by letter dated 13.08.2014, that 272 numbers of teaching and non-teaching posts have been created for Nagaon district under 2011 Act, and by the said order, it was also reflected that posts were allotted to the school w.e.f. 01.01.2013, and in a chart appended therein, in respect of Graduate Teacher (Science), two numbers of posts were stated for provincialization of the same, and thereafter, by another chart, the incumbents



holding various posts in the school were stated for provincialization, wherein the name of Abdul Khaleque finds place and in respect of the second teacher, the same was kept vacant due to the Court case, i.e., Writ Petition No. 5330 of 2012.

7. The said writ petition was disposed of by order dated 23.11.2015, by which this Court had directed the District Level Scrutiny Committee ('DLSC', for short) to examine the case of the present petitioner and respondent No. 7, arrayed as such, herein, within a stipulated period. In pursuance to the said order, the DLSC held its meeting on 11.02.2016, and resolved that as per Section 4(2) of 2011 Act, the provincialization of the services of the employees, should be based on seniority in the respective category, without looking into the subject combination. In view of the said resolution, the DLSC directed the Inspector of Schools, to pass a speaking order on the basis of the said resolution. The Inspector of Schools had examined the resolution of the said DLSC along with the records and particulars as well as the staff pattern of the school, and recommended provincialization of the services in respect of the petitioner and Abdul Khaleque. The Inspector of Schools further had stated in its speaking order that Ahmed Ali Talukdar, being the juniormost teacher in the particular category could not be recommended.



8. Subsequent to the said order, dated 30.07.2016, it is in the information of the petitioner that the case of Abdul Khaleque for provincializing his service was initiated by the respondent authorities, but the said authorities remained silent as far as the petitioner is concerned. As such, the petitioner submitted representations on 08.09.2017, as well as on 08.11.2018, but the same were not considered and that the petitioner had to approach this Court by filing the present application. The petitioner further states that the said order dated 30.07.2016, passed by the Inspector of Schools was never put to challenge by respondent No. 7, and that the same had attained finality.

9. It is also the case of the petitioner that vires of 2011 Act was put to challenge before the Division Bench of this Court, and the Division Bench vide judgment and order dated 23.09.2016, passed in WP(C) No. 3190 of 2012, reported in **2016 (5) GLT 296**, declared the 2011 Act, as unconstitutional, with the further direction that the Government of Assam, should promulgate a new legislation for provincialization of services of the teachers and other staffs of venture educational institutions of Assam. In compliance of the said direction the Government of Assam, had enacted the new Act, namely, the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (hereinafter, referred to as 'the 2017 Act'),



and the same came into force w.e.f. 12.05.2017.

10. The petitioner, however, submits that all the exercises for provincialization of her service were completed before 22.09.2014, i.e., the date on which the Director of Secondary Education, had ordered for provincialization of other staffs of the school, where the petitioner has been working. She further states that it is only due to the pendency of the writ petition filed by respondent No. 7, and the interim order dated 15.11.2012, the services of the petitioner could not be provincialized despite there being a second post of Assistant Teacher (Science) being eligible for provincialization. She also stated that it is due to the inaction on the part of the respondent authorities in provincializing her services, her service was left out for provincialization and that she should not be made to suffer on that count. She also stated that services of similarly situated Assistant Teachers of other categories were provincialized w.e.f. 01.01.2013, as per 2011 Act, but her service was not regularized due to the case filed by a junior Assistant Teacher, who does not come within the zone of consideration, as per Section 4 (2) of 2011 Act.

11. Being aggrieved by the said inaction, the petitioner had filed a writ petition being WP(C) No. 462 of 2020, praying for provincialization of her services under 2011 Act, as she was the second seniormost Assistant Teacher



(Science), i.e., after Abdul Khaleque. This Court, by order dated 28.10.2021, had disposed of the said writ petition with the observation that since the DLSC had recommended the case of the petitioner for provincialization of her service and that the Inspector of Schools, had also passed the speaking order, pursuant to the said recommendation, again recommending for provincializing the petitioner's service, the petitioner is entitled to the relief claimed. By the said order, the Court further directed the Director of Secondary Education, to bring the recommendation of DLSC made in favour of the petitioner to its logical end and by passing an appropriate order. It was also directed that the case of the petitioner comes within the provision enshrined under Section 4 (1) of 2011 Act, i.e., deemed provincialization, and as such, the authorities were directed to give the benefits of provincialization to the petitioner w.e.f. 01.01.2013. The said exercise was directed to be completed within a stipulated time.

12. However, the State respondents being allegedly aggrieved by the said judgment and order dated 28.10.2021, filed a review application, which was registered and numbered as Review Petition No. 90 of 2024. It is noticed that the said review application was filed after much delay. The review Court during its proceeding had considered only two grounds, out of six grounds mentioned in the said petition. The first ground considered was to the effect that 2011 Act



was held unconstitutional by the Division Bench of this Court and the learned Single Judge's order, while disposing of the writ petition to the effect that benefit should be given to the petitioner from 01.01.2013 and that his case was under Section 4 (1) of 2011 Act, was an error apparent on the face of the record. The second ground raised by the respondent authorities and which was considered by the Review Court was that the recommendation given by the DLSC, pursuant to which Inspector of Schools passed the order mentioned above, was not found in the records and the same was also an error apparent.

13. The Court, while considering the said review application, had, at the outset, did not reject the review application on the ground of delay, although the same was taken note of by the Court. The Court while answering to the second ground, i.e., the recommendation of the DLSC was not found in the records, concluded that the said ground could not be accepted, in view of the fact that the meeting held by the DLSC, and the decision taken by them was stated in the order passed by the Inspector of Schools. However, in answer to the first ground that 2011 Act was held to be unconstitutional, the Review Court held that when an Act is struck down by a Court the said Statute becomes void for all purposes. The Court further held that giving the petitioner, the benefit of provincialization w.e.f. 01.01.2013 in terms of 2011 Act, should be recalled as



the same appears to have been passed per incuriam. However, at that juncture, a point was raised by the respondent/writ petitioner that in cases of similar nature, this Court had given appropriate relief to the similarly situated employees under 2011 Act, and that the same was upheld by the Apex Court, the Review Court held that in a review jurisdiction, the scope being limited, the same cannot be entered into and it was left to be decided by a writ Court under writ jurisdiction as permissible in law. The review Court further directed that writ petition being WP(C) No. 462 of 2020, be revived for consideration on the said point. As such, the writ petition, i.e., WP(C) 462 of 2020 is revived and is being taken up for adjudication.

SUBMISSIONS:-

14. The Learned counsel for the petitioner, Mr P K Deka, submits that by order dated 28.10.2021, passed by this Court in WP(C) No. 462 of 2020, i.e., the present application, this Court had directed that the Director of Secondary Education should bring the recommendation of DLSC made in favour of the petitioner to its logical end and it was further directed that since the instant case is a case of deemed provincialization under Section 4 (1) of the 2011 Act and further since the DLSC had examined the matter and recommended for provincialization of the petitioner's services, the benefits of provincialization



should be given from 01.01.2013. He further submitted that against the said order, a review application was filed and in the same, the Hon'ble High Court had taken two grounds for consideration, the first ground being, as to whether after declaring the statute as unconstitutional by a Court of law, any action under the Act, declared as invalid would also be invalid in law, and in answer to the first ground, the review Court had reached a finding that a law which is struck down by a Court of law becomes nonest for all purposes and that the benefit of provincialization cannot be given to the petitioner w.e.f. 01.01.2013, in terms of the 2011 Act. The learned counsel further submits that as far as the second ground is concerned, the review Court had rejected the same on the ground that Inspector of Schools had written categorically in the letter that DLSC had passed a resolution recommending that the services of the petitioner should be provincialized. However, he submits that the review Court, on the submissions made by the learned counsel for the petitioner that in cases of litigants, who are similarly situated, this Court as well as the Apex Court had granted relief as per 2011 Act, the same was kept open to be considered by a writ Court. The learned counsel further submits that the case of the petitioner was processed much before the 2011 Act was declared as unconstitutional. He has placed the letter of the Inspector of Schools, wherein it was stated that the DLSC had examined the records and had recommended that the petitioner



being senior to the other incumbent, namely, Ahmed Ali Talukdar, the services of the petitioner should be considered for provincialization. He has also placed the order dated 22.09.2014, issued by the Director of Secondary Education, Assam, wherein it was reflected that two posts of Graduate Teacher (Science) were sanctioned for provincialization and one incumbent holding the said post was provincialized by the said order and the other incumbent could not be provincialized in view of the pendency of the Court case being WP(C) No. 5330 of 2012. He further submits that it is due to the interim order dated 15.11.2012, because of which the said post was kept vacant and the petitioner could not be provincialized in her services due to the same.

15. The learned counsel further submits that all these exercises which were undertaken was much before the law, i.e., the 2011 Act was declared unconstitutional. He further submits that in view of the fact one Junior Teacher had challenged his non-provincialization and due to the proceedings of the said writ petition, the petitioner had to suffer because of the various orders by this Court, particularly, the said interim order. He also submits that a list was published by the Government under Section 10 (4) of 2011 Act, wherein the School was mentioned at Serial No 4, and the name of the petitioner finds place at Serial No. 2 in the respective subjects and since two posts of Assistant



Teacher (Science) were required to be provincialized, the petitioner being at Serial No. 2, had all the rights for her services to be provincialized. He, as such, submits that violation, i.e., non-provincialization of the petitioner's service was in teeth of Article 14 and 16 of the Constitution of India. To substantiate his arguments, he relied on two judgments, namely, ***Kamalprasad Dubey -vs- State of Madhya Pradesh***; reported in **2026 SCC OnLine SC 576**, by which the Hon'ble Apex Court had held on the facts mentioned therein that the same attracted violation of Article 14 and 16 of the Constitution and that the concept of equality of law and equal treatments are enforceable in matters of employment. He also relied on the judgment passed by the Hon'ble Apex Court in ***Kiran Basudev -vs- Gwalior Development Authority & Others*** ; reported in **2021 SCC OnLine SC 3200**, wherein the Hon'ble Apex Court had held that although the creation of a post or a supernumerary post was not directed by High Court, but Article 14 of the Constitution of India could not be permitted for violation in respect of one of its employees against others, who were admittedly junior to the appellant.

16. On the other hand, Mr B Kaushik, learned Standing Counsel for Education Department, submits that although exercises were undertaken for provincialization of services of the petitioner under the 2011 Act, but the same



being held unconstitutional by the Hon'ble Division Bench of this Court, the said exercises cannot be taken to its end under the 2011 Act, in the instant case, more so, due to the fact that declaring any Act as unconstitutional makes the Act nonest for all purpose. He submits that although exercise was undertaken for provincialization of the petitioner's services, but no right had accrued to the petitioner before the 2011 Act was declared to be unconstitutional. He further submits that the provision of deemed provincialization provided under Section 4(1) of 2011 Act, has to be in pursuance to the exercise undertaken under Section 10 (4) of the said Act and under Section 10 (4) of the 2011 Act, it is provided that the recommendation given by the DLSC, should be placed before the Director of Secondary Education, who will in its turn, after making a further scrutiny, forward the same to the concerned Department of the State Government for consideration and for issuing notification in respect of the eligible institutions and employees. He submits that in the instant case, apart from the recommendation given by District Scrutiny Committee, if, at all given, no further action was undertaken as per Section 10 (4) of the 2011 Act and as such, he submits that no right had accrued to the petitioner before the 2011 Act was held unconstitutional.

17. The learned counsel also submits that an employee or a teacher of the



School would get the status of an employee under the State Government only under Section 6 of the 2011 Act and Section 6 of the 2011 Act provides that after the publication of the notification under Section 10(4) of the said Act, superintendence and control of the educational institution will vest in the State Government. He submits that only after eligibility of the petitioners are examined, the notification will, thereafter be issued, and subsequently, the teachers' services will be provincialized. He also submits that the recommendation by DLSC is also questionable since the same was not found available in their records. He also submits that although the review Court had stated on the submissions made by the learned counsel for the petitioner that the similarly situated teachers were given benefits under the 2011 Act, but he submits that the facts in those writ petitions were different in nature to the effect that the student-teacher ratio taken into account for provincialization of the teachers, were stated to be bad. He reiterated that apart from the DLSC's recommendation, nothing further was done in case of the petitioner, and as such, no right had accrued to him. To substantiate his arguments, he has placed reliance on the following judgments:-

(i) ***State of Manipur and Others -vs- Surjya Kumar***

Okram; reported in 2022 SCC OnLine SC 130, by which the



Hon'ble Supreme Court had given the principles which would be applicable in case, a statute is declared unconstitutional by any Court of law.

- (ii) ***Central Bureau of Investigation -Vs- R R Kishore; reported in (2023) 15 SCC 339,*** by which the Hon'ble Apex Court had upheld the principles laid down in the earlier case in respect of a statute being declared unconstitutional and further held that once the statute is declared unconstitutional, the same becomes void ab initio, still born, unenforceable and nonest in view of Article 13 (2) of the Constitution of India.
- (iii) A judgment delivered by this Court in Writ Appeal No. 283 of 2019 ***(SmtPurnabati Brahma vs. State of Assam and Others),*** by which the Hon'ble Division Bench of this Court has held that post declaration of 2011 Act as unconstitutional, any subsequent Act with regard to provincialization of service would be governed by 2017 Act, unless rights have accrued to the employee concerned.
- (iv) A judgment delivered by this Court in Writ Petition (Civil) No. 1694 of 2021 ***(Ketekibari High School & Others -vs-***



State of Assam & Others), by which this Court has held that unless the procedure provided in Section 10 (4) of the 2011 Act, is undertaken, the final consideration and decision for provincialization of services cannot be taken under Section 4 of the said Act.

18. He further submits that the list shown by the petitioner is neither sealed nor there is any date, where the school is shown at Serial No. 4 and petitioner is shown at Serial No. 2 of the respective subject. The learned counsel had raised doubts about the authenticity of the same

These are the submissions of the learned counsels.

ANALYSIS AND FINDINGS

19. From a simple reading of the facts of the instant case, it is crystal clear that the petitioner was appointed as an Assistant Teacher for the Science Stream in the school in the district of Nagaon, by the School Managing Committee vide resolution dated 30.11.1997 and she joined in the said capacity on 02.12.1997. It is also clear that she has been serving in the said school as a Science Teacher in the subjects of Zoology and Botany. While she was serving in the said school, there was one more Assistant Teacher, namely, Abdul Khaleque,



in the same Science stream, but with the subjects of Zoology, Geography and Mathematics, who was appointed before her appointment, i.e., on 17.11.1994. As such, it can be seen that Abdul Khaleque was senior to the petitioner in the said category of Science stream. It is also apparent that during the said appointments, 2011 Act was not in force and the norms applicable at that juncture were that, services of two numbers of Assistant teachers of each category should be provincialized in respect of all the schools. It was further provided as per norms that one Assistant Teacher (Science) with Zoology and Botany and another Assistant Teacher (Science) with the Royal combination, i.e. Physics, Chemistry and Mathematics, should be considered for provincialization of the services. Since Abdul Khaleque was not a Science Teacher with Royal combination, respondent No. 7, who had the royal combination was appointed as Assistant Teacher (Science) by appointment order dated 20.08.2004. When the petitioner and other Assistant Teachers were working in the said school, 2011 Act came into force, with its amendment in the year 2012, and by the said Act, both 2011 Act as well as the Amendment Act of 2012, two numbers of Assistant Teachers of each stream were to be considered. Further, under Section 4 (2) of the said Act, it is provided that provincialization of the services of the teachers should be based on seniority. It is noticed in the instant case that Abdul Khaleque was the seniormost Science teacher in the school and the



petitioner was the second in seniority in the said stream in the school. As such, under the provision of 2011 Act, petitioner is entitled to be regularized in her service along with Abdul Khaleque. The petitioner, in fact, had acquired the right of provincialization of her services in the school by the operation of law.

20. The respondent No. 7 being eligible under the norms as stated above, i.e., before 2011 Act came into force, to the effect that he is a Science Teacher with the Royal combination and further, due to the non-consideration for provincialization of his services, filed writ petition as mentioned above, i.e., Writ Petition No. 5330 of 2012. This Court vide interim order dated 15.11.2012, had directed the respondent authorities, not to give provincialization benefits to the Science Teachers without providing for a Science Teacher with Royal subjects. However, during the pendency of the aforesaid writ petition, 2011 Act came into force and under the said Act, it is provided under Section 4 (2) as follows:-

*“**Section 4 (2):-**The numbers of employees in both teaching and non-teaching cadre in each of the Venture Educational Institutions, services of whom are provincialized or to be provincialized under this Court, shall not exceed as specified in the Schedule appended to this Act.*

Provided that where the number of such employees serving in such Venture Educational Institutions exceeds the number as specified in the



Schedule, the provincialization of the services of the employees shall be on the basis of seniority in the respective category in the concerned educational institution. The State Government shall not have any liability whatsoever in regard to such excess employees:

Provided further that the State Government shall have no liability whatsoever in respect of any past liability of the Venture Educational Institutions whose employees have been provincialized.

21. It is apparent from above that provincialization of services of the employees, shall be only on the basis of seniority in the respective category in the concerned educational institution. In the said provision, there is no requirement that the teachers teaching particular subjects should be considered for provincialization of their services, the same being done away with in 2011 Act.

22. During subsistence of the said position, the Director of Secondary Education, Assam, vide order dated 22.09.2014, provincialized the services of teaching and non-teaching staff of the school w.e.f. 01.01.2013 and in the said order, it is reflected that amongst the two posts, meant for Assistant Teacher (Science), service of Abdul Khaleque was provincialized and the other posts where the petitioner has a right to get provincialized, her services were kept



vacant due to Court case, i.e., WP(C) No. 5330 of 2012. It is noticed that had the Court case been not pending, the services of the petitioner would have got provincialized under the 2011 Act.

23. While the second post in the Science stream was kept vacant for provincialization of the services of an incumbent, the said writ petition, WP(C) No. 5330 of 2012, was disposed of, by order dated 23.11.2015, by this Court, whereby the District Level Scrutiny Committee was directed to examine the case of the present petitioner and respondent No. 7, for provincialization of services. In pursuance thereof, the DLSC, in its meeting held on 11.02.2016, examined the entire matter and resolved that as per provision of Section 4 (2) of 2011 Act, together with 2012 Amendment, the provincialization of services of employees should be based on seniority irrespective of any subject combination. The DLSC had further observed that Abdul Khaleque is the seniormost Science Teacher and the petitioner is ranked at No. 2. The DLSC further directed the Inspector of Schools, Nagaon District Circle, to issue a speaking order to that effect. Accordingly, the Inspector of Schools issued the order on 30.07.2016. It is, therefore, seen that the petitioner should have been provincialized in her service in the second post in the said category in the school. However, the authorities did not take any action in subsequent thereto, and in the meantime,



2011 Act, was declared as unconstitutional by the Hon'ble Division Bench of this Court, in the judgment rendered in ***Chandan Kumar Neog and Others -vs- State of Assam and Others***; reported in **2016 (5) GLT 296 (supra)** and it is no res integra that once a legislation is declared unconstitutional by the Court of law, the said Act becomes nonest for all purposes and it becomes nonest from Day-1, the Act comes into force.

24. After many years and after many proceedings including the contempt proceeding, the Director of Secondary Education, Assam, filed a review application being Review Petition No. 90 of 2024, on various grounds, but the review Court took into consideration only two grounds, one being after declaration of a statute as unconstitutional in the year 2016, the petitioner could not have been directed for provincialization of her services w.e.f. 01.01.2013, and the other being that the order passed by the DLSC, recommending the provincialization of the petitioner's services was not on records. As far as the first ground is concerned, the Court held that giving benefit of provincialization w.e.f. 01.01.2013, was incorrect as the same was per incuriam, and as far as the second ground is concerned, the review Court rejected the same, in view of the clear finding of the DLSC mentioned in the order of the Inspector of Schools. However, on a further submission that similarly situated employees



were given the benefit of 2011 Act, even after the same was held to be unconstitutional, the review Court expressing its inability to adjudicate the same in review jurisdiction, left the matter to be decided by the writ Court, and as such, the writ petition got revived.

25. The submission made by the learned counsel for the respondent authorities that although the exercise for provincialization of the services of incumbents of the school was conducted prior to the 2011 Act, being held unconstitutional, but since provincialization of the services of the petitioner could not be given before the said declaration, no rights were accrued to the petitioner and that the petitioner's services could not be provincialized, is in the considered opinion of the Court, cannot be acceded to. The rights of the petitioner were accrued to her even before 2011 Act came into force, since she was with the subjects of Zoology and Botany and after the promulgation of 2011 Act, which provides seniority as the eligibility criteria for provincialization of services, she again acquired the rights, because she was the second most senior Science Teacher in the school.

26. The Supreme Court in ***Gurcharansingh Baldev Singh vs- Yashwant Singh***, reported in **(1992) 1 SCC 428**, had held that when rights get accrued in a particular person under the old Act, the same cannot be taken away on the



ground of change in law. It has further held that although a right may not be vested under the old law, but it is certainly a civil right which could be enforced in a Court of law. In the said case, the appellant had submitted his application for renewal of his permit and his application was also notified, but during that juncture, Motor Vehicles Act, 1939 Act, was repealed and the Motor Vehicles Act, 1988 was brought into force, but the Supreme Court held that since the appellant got his application for renewal processed, the right had accrued unto him under the old Act. The relevant portion of the said decision is quoted hereinbelow:-

“For instance, if a Regional Transport Authority under the old Act refused renewal even though the person applying for renewal was in all respects similar to other new applicants then it could be corrected either by the tribunal or by way of writ petition under Article 226. Therefore, it is a right which is enforceable in law. This right accrued to appellant as he had already applied for renewal and his application had been notified. The legal machinery was set in motion by him. He, therefore, had a right to get his application for renewal processed and considered in accordance with 1939 Act. It would be too artificial to say that it was not a right or it had not accrued under 1939 Act. Therefore, in our opinion, by virtue of



section 6(c) of the General Clauses Act the right of the appellant to get his application considered and decided in accordance with law was saved by sub-section (4) of section 217 of Motor Vehicles Act."

27. Further, the Hon'ble Supreme Court in a decision rendered in ***Rajesh Mitra @ Rajesh Kumar Mitra and Another –Vs Karnani Properties Limited***, reported in **2024 INSC 719**, had held that rights accrued under the old law cannot be taken away by the new law. The relevant portion of the said judgment is reproduced hereinbelow:-

"17. In our considered opinion, the above view of the Calcutta High Court cannot be sustained. The High Court in the case of Goutam Dey (supra) has held that the new statute which touches upon the existing rights cannot be retrospective, without an express provision or necessary implication expressing the clear intent of the Legislature. Goutam Dey (supra) relied upon Section 8(c) of the West Bengal General Clauses Act to say that a new statute does not affect existing rights. Section 45 of the 1997 Act repealed the 1956 Act but that cannot mean that rights accrued under the old Act are extinguished altogether with the enforcement of the new Act. The enforcement of a new statute ipso facto will not take away the rights already accrued under a repealed statute, unless this intention is reflected in the new statute."

28. In the instant case, the petitioner being the second most senior Science Teacher for provincialization of her services, had already acquired her rights for



the same and as such, it cannot be said that she will have to apply for provincialization of her services under the new law, i.e., 2017 Act, which came into force on 12th of May, 2017.

29. Further, under Section 4 (3) of 2011 Act, it is provided that services of teaching or non-teaching employee, in a venture educational institution shall be considered for provincialization, only if they have the requisite qualification prescribed by the Rules and under Section 10 of the said Act, it is provided that District Scrutiny Committee after scrutinization, will prepare a list of eligible Venture Educational Institution and will further scrutinize and verify the service records of the employee for consideration of provincialization of their services and shall forward the verified list of eligible teachers in accordance with the number of posts to the concerned Director, who shall again forward the same to the concerned Department for consideration and for issuing notification. The provision enshrined under Sections 4 (3) and 10 (3) and (4) of 2011 Act is reproduced below:-

“4 (3) *The services of a teaching or non-teaching employee in a Venture Educational Institution upto higher secondary level shall be considered for provincialisation, only if they have the requisite academic and professional qualifications prescribed by the relevant Rules at the time*



of their initial appointment. In case of employees of a Degree College, they must have acquired such requisite educational as well as professional qualification as may be determined by the University Grants Commission from time to time: Provided that if an employee is required to acquire any prescribed academic or professional qualifications, services of such employee may be considered for provincialisation if otherwise eligible, but in such case the provincialisation would be subject to acquisition of such prescribed qualifications within a period of five years from the date of coming into force of this Act, and during this intervening period, he may continue to work under the existing terms and conditions under which he was working, until his services are provincialised. In case of his failure to acquire the required academic or professional qualifications within the stipulated period, his services shall stand terminated with effect from the date of expiry of stipulated period of five years.

10 (3) *The District Committee shall first scrutinize and prepare a list of all Venture Educational Institutions within the district, which are eligible in terms of the provisions of this Act and shall thereafter proceed to*



scrutinize and verify the service records of all the serving employees, who are eligible or would become eligible for being considered for provincialisation of their services.

(4) The District Scrutiny Committee shall forward the verified list of eligible teachers school-wise in accordance with the number of posts specified in the Schedule appended to this Act, to the concerned Director who shall, after making such further scrutiny as may be required, shall forward the same to the concerned Department of the State Government for consideration and for issuing Notification in respect of the eligible institutions and employees eligible for getting their services provincialised.

30. Although the said requirement under Section 10 (4) of the 2011 Act, is not contemplated under Section 4 of the said Act, but for argument sake, even if it is considered that District Scrutiny Committee has to see the eligibility of the teachers in the instant case, it was seen and it was recommended by the DLSC. Further, since seniority is the only eligibility criteria for provincialization and in



presence of two posts, being required for the said stream, the petitioner is eligible and as such, the DLSC had recommended her name, and this recommendation was done in the year 2016, i.e., before 2011 Act was held to be unconstitutional. To be more precise, the order of the Inspector of Schools was passed on 30.07.2016, and 2017 Act came into force on 12th of May, 2017. Had the exercise been undertaken under Section 10 (4) of the 2011 Act, the petitioner would have been provincialized in her service much before the 2017 Act came into force. Further, the said recommendation by the DLSC and the right accrued to the petitioner by the operation of law much before the 2011 Act was declared unconstitutional, cannot be stated to be a mere inchoate right, that is a right which does not exist in law. The petitioner had the established right to be provincialized in her service under 2011 Act and the rights which gets accrued cannot be taken away by the new law. Under the General Clauses Act, more specifically, Section 6 thereof, provides that when an Act is repealed, any action duly done cannot be washed away. It also provides that repeal of any Act cannot affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Under 2017 Act, the repeal and saving Clause provided in Section 12 of the said Act mandated that on repeal of 2011 Act, all the teachers who were provincialized prior to 23.09.2016, shall continue as such, and their cases will be reviewed as per eligibility norms for



provincialization of services provided under the 2017 Act. In the instant case, the senior most Science Teacher of the school was regularized in his service vide order dated 22.09.2014 and the same was made effective from 01.01.2013, but the petitioner was left out due to the pendency of the writ petition, as stated above. In the aforesaid repeal and saving Clause, it was provided that the employees, whose services were provincialized before 23.09.2016, would although continue to work as provincialized/regular teacher, will be seen as to whether they possess the required qualifications under the new Act or not. The petitioner being eligible and the right being already accrued to her, should have been there in the order dated 22.09.2014 at Serial No. 6 of the second chart given in respect of the incumbents.

31. In ***Chandan Kumar Neog (supra)***, the Hon'ble Division Bench of this Court, had struck down 2011 Act, mainly on the ground that fixing maximum number of employees whose services can be provincialized in the concerned category, results in classification not based on intelligible differentia. The relevant portion of the said judgment is quoted hereinbelow:-

“39. Therefore, we feel that a piecemeal exercise will not serve the purpose. But at the same time, to suggest how the Provincialisation Act should be re-shaped would be intruding into the domain of the legislature.



Moreover amendment exercise might have to be preceded by a consultative process with all the stakeholders and this is surely the responsibility of the State. That apart it is certainly difficult to separate the bad from the good portion of the Provincialisation Act. Under these compulsions, being convinced with the arguments of the petitioners, we declare that the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011 is constitutionally invalid. As the State has decided to bring in a fresh legislation, considering the likely time needed for the process, we direct the State to do their exercise as committed in the additional affidavit, expeditiously and preferably in the next 6(six) months. It is ordered accordingly.”

32. Pursuant to the said judgment, a review application was filed being Review Petition No. 167 of 2016, on the ground that when the judgment was rendered rights were vested in the appellant and no findings were recorded to that effect, and the Hon'ble Division Bench vide Judgment and Order dated 02.01.2017, had held that rights of the employees who have been benefitted under the struck down statute can be taken care of by giving retrospective effect to the proposed legislation if the legislature so decides. It was also ordered that till then, the services of provincialized category and their status as



Government employees shall not be disturbed and they will continue to receive all the benefits which they were getting under the 2011 Act. It will not be out of context to mention herein that the High Court while striking down the 2011 Act, could not invoke the doctrine of prospective overruling since the said power can be exercised only by Supreme Court.

33. Further, in the application filed for review of the order dated 28.10.2021, by which the writ Court had directed the Director of Education to give the benefit of provincialization to the petitioner w.e.f. 01.01.2013, under 2011 Act, the review Court, in its order dated 30.10.2025, had held that due to 2011 Act being held unconstitutional, the said benefit was incorrect and the same was recalled. However, the review Court had left open the decision of giving appropriate relief to the petitioner under 2011 Act. Accordingly, it is in the considered opinion of this Court that, since rights of getting the services provincialized had accrued to the petitioner under 2011 Act, the benefits should be given to the petitioner. Non-according of the said benefits would result in violation of Articles 14 and 16 of the Constitution of India. As such, this Court directs the Director of Secondary Education, to provincialize the services of the petitioner under the Act of 2011 from the date when Writ Petition No. 5330 of 2012 was disposed of, i.e., w.e.f. 23.11.2015. The Director of Secondary



Education is directed to complete the exercise within a period of one month from the date of receipt of a certified copy of this order.

With the above observation the writ petition is disposed of.

JUDGE

Comparing Assistant