

GAHC010100352022



2026:GAU-AS:7523

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

Case No. : WP(C)/3521/2022

MD.AZIZUL HOQUE
HEAD TEACHER, DAKHIN KADAMONI PATHER VLP SCHOOL, VILL.
KADAMONI PATHER, P.S. BATADRAVA, DIST.- NAGAON, ASSAM. PIN-
782123.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19..

3:THE MISSION DIRECTOR SSA
ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE DEPUTY COMMISSIONER
NAGAON
P.O.
P.S. AND DIST.- NAGAON
ASSAM.

5:DISTRICT MISSION CO-ORDINATOR-CUM-DISTRICT ELEMENTARY
EDUCATION OFFICER
NAGAON
P.O.

P.S. AND DIST.- NAGAON
ASSAM.

6:THE SUB-INSPECTOR (S.I.) OF SCHOOLS
BATADRAVA CIRCLE
DIST.- NAGAON
ASSAM

-BEFORE-

HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocates for the appellant	: Mr. Z. Hammad,
Advocate for the respondents	: Mr. A. Phukan, Standing Counsel, Respondent Nos. 1, 2, 5 & 6.
Date of which Judgment is reserved	: 24.02.2026
Date of pronouncement of Judgment	: 29.05.2026
Whether the pronouncement is of the operative part of the Judgment?	: N/A
Whether the full judgment has been	: Yes

JUDGMENT & ORDER (CAV)

Heard Mr. Z. Hammad, learned counsel for the petitioner and Mr. A. Phukan, learned Standing Counsel for the respondent Nos. 1, 2, 5 & 6. None appeared for the respondent Nos. 3 & 4.

2. In this petition, under Article 226 of the Constitution of India, the

petitioner has challenged the Order, dated 28.04.2022, passed by the Director, Elementary Education, Assam; and also prayed for issuing direction to the respondent authorities to return the DISE code in favour of the petitioner's school and also to provincialise the service of the petitioner and the other 2 (two) teachers, on the basis of the materials available on record.

Background facts :-

3. The background facts, leading to filing of the present petition, are briefly stated as under -

"The petitioner, namely, Md. Azizul Hoque, is the Headmaster of Dakhin Kadamoni Pather L.P. School (Venture). The said school was established on 03.09.1996. The school has its own land and the petitioner, along with two other persons were appointed as Head Teacher and Assistant Teachers, respectively, vide Resolution No. 4 of the General Meeting, dated 03.09.1996, by the Managing Committee of the said school and since then, they are working regularly in the school, till date. Their names also figured in every official documents/records of the school and the DISE code No. 0102715 was issued for the year 2009-10.

Thereafter, another Assistant Teacher, namely, Md. Habibur Rahman, was appointed by the Managing Committee as 2nd Assistant Teacher on 02/01/2009, through Resolution No. 1 and he joined there and worked as 2nd Assistant Teacher till the end of 2009.

Thereafter, on 05/05/2011, an Executive meeting was

conducted in the school, wherein, as per resolution No. 1, it was decided that as the earlier respondent Habibur Rahman did not give any importance to his unauthorised absence in the school therefore, as per resolution No. 2 of the said meeting, service of said Habibur Rahman was terminated and discharged.

Thereafter, on 01/01/2013, in another meeting, the Executive Committee of the said school, as per resolution No. 1, appointed one Mushida Khatun as Assistant Teacher on 01/01/2013, and she has been continuously serving in the school.

The school was last inspected by the concerned S.I. of the Schools, Batadrava Circle, on 10/10/2013, and he found everything as per the requirements.

Thereafter, on 28/02/2014, the District Elementary Education Officer, Nagaon, verified all the records and documents of the petitioners' said school and found everything genuine and correct and also recommended that DISE code can be given to the petitioners' school and accordingly, DISE code was allotted to the said school.

Thereafter, said Habibur Rahman came back from Chennai, after his unauthorised absence in the school and he came to know about his discharge from the post of Asstt. Teacher, and then he started another school in the year 2014, using same name and style as Dakhin Kadamoni Pather LP School, manufacturing and using all the documents and records of the original school headed by the petitioner and he managed the concerned Block Elementary

Education Officer (BEEO), Batadrava Circle and with his help, his name was included in the DISE code of Dakhin Kadamoni Pather LP School and also submitted papers of the original school by manufacturing the same, for provincialisation of their posts and their fake school.

Thereafter, the petitioner alongwith local public submitted one representation to the concerned Block Elementary Education Officer, stating the whole facts and thereby, praying for inquiry and taking necessary action. Thereafter, the Block Elementary Education Officer, Batadrava, Nagaon, had issued a letter on 16/07/2014, to discuss about different subjects of the school in question, keeping the petitioner in dark and thereafter, the petitioner approached the Block Elementary Education Officer, Batadrava, Nagaon, on different occasions, but the same failed to evoke any response.

Thereafter, the petitioner submitted a complaint petition to the Deputy Commissioner, Nagaon and then, the Addl. Deputy Commissioner (Education), Nagaon, had issued a letter on 08/08/2014, to the District Elementary Education Officer, Nagaon, requesting him to examine the illegally established school headed by said Habibur Rahman, but no enquiry was conducted till date.

Though the petitioner had submitted the required papers before the authorities for provincialisation of his posts with others, their names were not forwarded by the local and district authorities to the higher authority. Later on, the petitioner came to know that instead of his name, the District Elementary Education

Officer (DEEO), on 12/09/2014, had submitted a forwarding letter to the Director, Elementary Education, Assam for provincialisation of the posts of said Habibur Rahman as Head Teacher and another unknown person, namely, Ariful Siddique, as Assistant Teacher of their fake school, namely, Dakhin Kadamoni Pather LP School. Although, the concerned DEEO shown in his letter dated 16/07/2014, said Habibur Rahman as the Head Teacher and Tajuddin as Asstt. Teacher of the school in question, for which, the petitioner and his school were deprived from getting the benefits of the provincialization and other Government facilities.

Being aggrieved, the petitioner preferred one CR Case, being CR Case No. 1060/2014, on 15/10/2014, before the Court of learned SDJM, Nagaon, and the same is pending before the said learned court.

Thereafter, the petitioner had filed a writ petition, being WP(C) No. 5638/2014, before this Court, praying to insert his name, alongwith the names of two other teachers in the particulars of their school submitted by the District Elementary Education Officer, Nagaon, on 12/09/2014, to the Director, Elementary Education, Assam, for its provincialization, removing the names of said Habibur Rahman and others there from. Accordingly, on 21/09/2015, the writ petition was disposed of directing the Chairman, District Scrutiny Committee, Nagaon, to dispose of the representation to be submitted by the petitioner herein, alongwith the disposal order, on or before 31/12/2015, by a reasoned & speaking order, with a further direction that till such

disposal, the post of said Habibur Rahman and one other teacher of his school shall not be provincialised.

Thereafter, the petitioner had submitted his representation, along with a copy of the said writ petition, on 09/10/2015, before the Chairman, District Scrutiny Committee, Nagaon, for compliance and thereafter, on 17/12/2015, the District Elementary Education Officer, Nagaon, issued a letter to the petitioner and the President, School Management Committee, requesting them to attend a hearing in this regard, at the D.C. Conference Hall, Nagaon, to decide the matter. The petitioner alongwith the President, SMC, attended the said hearing and accordingly, the Chairman, District Scrutiny Committee, Nagaon, on 19/8/2016, has passed a decision, to the effect that the school headed by the petitioner was the original Dakhin Kadamoni Pather Venture LP School. He also filed one application on 29.10.2015, to the Deputy Commissioner, Nagaon, for getting back the DISE Code, which was blocked on the basis of wrong direction of the BEEO, Batadrava Education Circle, Nagaon, Assam.

Thereafter, said Habibur Rahman filed one writ petition, being WP(C) No. 2304/2017, challenging the order dated 19/08/2016, issued by the Addl. Deputy Commissioner (Edn.), Nagaon cum Chairman, DLRC, Nagaon, and the said writ petition was disposed of vide order dated 04/02/2020, with a direction that the Act of 2011 has been struck down by this Court in the year 2016, as unconstitutional and the Act of 2011, no longer exists and since the order dated 19/08/2016, was passed under the Act of 2011,

nothing survives in this writ petition to be adjudicated and thereafter, disposed of the same.

Thereafter, on 05/05/2017, the S.I. of Schools, Batadrava Circle, Nagaon, Assam had inspected the school of the petitioner, namely, Dakhin Kadamoni Pather L.P. School and prepared the Inspection report on the same day, with observation and declaration that the petitioner is found to be the Headmaster, alongwith two other Assistant Teachers of the said school and he also found 160 Nos. of students and the infrastructure of the school was also found there.

Thereafter, the Deputy Director, Elementary Education, Assam, vide his letter dated 13/01/2020, directed the District Elementary Education Officer, Nagaon, to submit a report in the light of order dated 21/09/2015, passed by this Court. But, the same has not been attended to. And because of the inaction of the District authority, his school and his post, alongwith other teachers, have been deprived of the benefit of provincialisation. And being deprived of provincialisation, the petitioner had filed one appeal on 10/02/2021, under Section 14 of The Assam Education (Provincialisation of services of Teachers and Re-organisation of Educational Institutions) Act, 2017, before the Chairman, State Level Scrutiny Committee cum Director, Elementary Education Officer, Assam, narrating everything in detail. But the same also failed to evoke any response.

Thereafter, the petitioner had filed another writ petition, being WP(C) No.1386/2021, before this Court, for insertion of his name,

alongwith 2 other petitioners in the particulars of their school submitted by the District Elementary Education Officer, Nagaon on 12/09/2014, to the Director, Elementary Education, Assam, for provincialization, removing the names of the private respondents there from. Accordingly, on 03/03/2021, the writ petition was disposed of directing the State Level Scrutiny Committee cum Director of Elementary Education, Assam, to give consideration to the appeal of the petitioner, dated 10/02/2021.

Thereafter, on 10/03/2021, the petitioner had submitted the said disposal order alongwith with an Appeal and a copy of the writ petition to the Director, Elementary Education, Assam for compliance. But, the same also failed to evoke any response.

Thereafter, the petitioner had initiated one contempt proceeding, under Article-215 of the Constitution of India and Section 12 of the Contempt of Courts Act, 1971, read with Contempt of Courts (Gauhati High Court) Rules, 1977, and in the mean time, one communication, dated 31/07/2017, was made by the DEEO, Nagaon, to the Mission Director, SSA, Kahilipara, for either renewal of DISE code of the petitioner or to issue a fresh DISE code, on the basis of speaking order passed by the Deputy Commissioner, Nagaon. But, the Director, Elementary Education, Assam, without considering the said communication, dated 31/05/2017, made by the DEEO, Nagaon and the Inspection Report, dated 05/05/2017, issued by the SI of Schools, Batadrava Circle, vide impugned order, dated 28/04/2021, rejected the genuine claim of the petitioner, for provincialisation of his service

and other two teachers of Dakhin Kadamoni Pather LP School, with the wrong observation that the school of the petitioner does not fulfill the criteria of enrolment of students for provincialisation of service as per the Act of 2017. Being aggrieved, the petitioner has approached this Court by filing the present petition, seeking the reliefs as aforesaid."

4. The respondent No. 2, the Director of Elementary Education, Assam, Kahilipara, has filed the affidavit-in-opposition, wherein, a stand has been taken that as per the Order passed by this Court on 07.11.2023, in Writ Petition No. 3521/2022, directing the Director of Elementary Education, Assam, to depute an officer of a rank higher than the Inspector of Schools to carry out an inspection of Dakhin Kadamoni Pather LP School and take an appropriate decision on the claim of the petitioner for provincialisation, one Joint Secretary from the Department of School Education, in absence of Joint Director or Additional Director; was deputed to inspect the school of the petitioner, Accordingly, one Smti. Rupashree Bhattacharjee, the Deputy Secretary, Government of Assam, Department of School Education, Dispur, was deputed to carry out a spot enquiry of Dakhin Kadamoni Pather LP School. After enquiry, an inspection report was submitted, which is enclosed with the affidavit-in-opposition as 'Annexure-I'.

4.1 Notably, perusal of the said inspection report indicates that Smti. Rupashree Bhattacharjee, along with one Smt. Jawahira Tabassum, Deputy Director, Directorate of Elementary Education, Assam, had conducted spot inspection of Dakhin Kadamoni Pather Venture LP School, located at Village Kadamoni Pather, P.S.-Batadrava, under Nagaon district and on spot enquiry, she found that the school is a Kacha house and the walls and the

pillars are made of bamboo with a single room. The basic needs of the school are not available in the school and there is no environment of learning for students. Further, no teachers and students were found present in the school at the time of spot inspection. Since, there were no teachers and students attending the school at the time of spot inspection, the proceeding books and other documents relating to enrollment of the school could not be verified and the photo of the school was captured and is attached with the report.

5. The respondent No. 1, Secretary to the Government of Assam, Education (Elementary) Department, Assam, has filed an additional affidavit on 23.07.2025, wherein, a stand has been taken that the inspection was carried out on 29.01.2024, at 10 AM, in a working day. In spot enquiry, it was found that the school in question is a Kacha house and the walls and pillars are made up of bamboo with a single room and that, there were no teachers and students found attending the classes during the class hours. And there was no one present in the school premises during the class hours, be it the teachers or the students; due to which the proceeding books and the other documents, relating to enrollment could not be verified and seized.

6. The petitioner has filed his reply to the affidavit-in-opposition filed by the respondent No. 2, wherein, he has stated that the school of the petitioner was inspected without giving any prior notice and on that day, he, along with the only other teacher (his brother), had to leave the school at 9:15 A.M. because of the sudden demise of their paternal uncle and therefore, the students were also asked to leave the school early. And, as the school was in venture stage, the visit of the Deputy Secretary was not

informed to anyone; and that as per the report of the SI of Batadrava school, the students shown is 160 in Nos. for the 2017 and the same was not disputed and under such circumstances, it is contended by the petitioner to allow this petition.

Submission of learned counsel for the petitioner:-

7. Mr. Hammad, learned counsel for the petitioner submits that the petitioner is the original Headmaster of Dakhin Kadamoni Pather L.P. School and that one Habibur Rahman was also appointed in the said school as Assistant Teacher by the Managing Committee. But, after rendering service for some years, he defaulted and left for Chennai. Thereafter, the petitioner and the School Management Committee had discharged said Habibur Rahman from the school. But, after returning from Chennai and coming to know about his discharge from the said school, Habibur Rahman started another school in the same name, in that locality and he, with the help of the Block Elementary Education Officer, Batadrava, who happens to be his close relative; has managed the documents and forwarded his name and the name of his school to the authority for provincialisation. Though, the petitioner had preferred several representations to the authorities, but the same have failed to evoke any response and thereafter, he had preferred one writ petition before this Court, wherein, a direction was issued to inspect the petitioner's school by an Officer, not below the rank of Joint or Additional Deputy Director.

7.1. Thereafter, one Deputy Director was deputed to inspect the school, who, after inspection, found that the school was closed on that day. He also submitted that the said inspection was carried out without informing the

petitioner and on that day, the petitioner and the other Assistant Teacher's paternal uncle had suffered demise, for which, they had to leave the school at 9:15 AM in the morning and closed the school. He also submits that in fact, the petitioner's school is the original school of Dakhin Kadamoni Pather and the said fact is apparent from the report submitted by the ADC (Education), Nagaon, and in that view of the matter, the impugned order, dated 28.04.2022, passed by the Director, Elementary Education, Assam, is illegal and arbitrary and the same is liable to be quashed. Mr. Hammad also submits that the respondent authorities may be directed to provincialise the school and services of the petitioner and the other two teachers.

Submission of learned counsel for the respondent:-

8. Per contra, Mr. Phukan, learned Standing Counsel for the respondent Nos. 1, 2, 5 & 6 has vehemently opposed the petition. He submits that a photograph taken by the Deputy Director, while inspecting the petitioner's school and the finding, so recorded by the said Deputy Director during inspection, shows that it was only a single room and she did not find any teachers or any students in the said school on that day, though, she had visited the school at about 10:30 AM, on a working day.

8.1 Mr. Phukan further submits that the Director, Elementary Education has rightly rejected the claim of the petitioner and the impugned order suffers from no infirmity or illegality requiring any interference of this Court and therefore, he has contended to dismiss the petition.

Consideration and analysis:-

9. Having heard the submissions advanced by the learned counsel for both the parties, this Court has carefully gone through the petition and the

documents placed on record and also perused the impugned order, dated 28.04.2022.

10. In order to deal with the issue with greater precision, this court deemed it necessary to extract the impugned order dated 28.04.2022 herein below:-

**GOVERNMENT OF ASSAM
OFFICE OF THE DIRECTOR OF ELEMENTARY EDUCATION,
ASSAM KAHILIPARA. GUWAHATI-19**

**No. EPD/H/42/2021/123 dated Kahillpara, the 28
April, 2022**

O R D E R

**Perused: The Hon'ble High Court order dated
03/03/2021 passed in WP(C) No. 1386/2021-
Azizul Haque Vs State of Assam.**

**Read:-1. The Assam Education
(Provincialisation of Services of Teachers
and Re-organisation of Educational
Institutions) Act 2017.**

**2. The proposal for provincialisation of
services of teachers of VLP and RUP Schools
as submitted by DEEO, Nagaon alongwith
minutes of DSC, Nagaon under the Act, 2017.**

**3. Minutes of the State Level Scrutiny
Committee (SLSC) Committee meeting held on
28/01/2022.**

**Findings: The school of the petitioner, Dakhin
Kadomoni Pathar LP School was established on
03/09/1995 at village Kadomoni Pathar under Nagoan
District and the petitioner, Azizul Haque was**

appointed as Head Teacher of the school. The DISE Code of the school for the year 2009-10 is 0102715. Thereafter, one teacher of the said school, Habibur Rahman was terminated from the school by the School Management Committee due to unauthorised prolonged absenteeism. The said teacher had established another school in the same name, Dakhin Kadomoni Pathar LP School within the same village. The petitioner filed a case in the Hon'ble High Court on this matter vide WP (C) 5638/2014. The Hon'ble High Court passed order dated 21/09/2015 in the said Writ Petition with direction to the Deputy Commissioner, Nagaon cum Chairman DSC, Nagaon to verify as to which school among the two with the same name is the original one. In this connection, Additional Deputy Commissioner, Nagaon cum Chairman of DCC, Nagaon conducted an enquiry by giving opportunity of hearing to the petitioner and private respondent along with hearing and passed a speaking order dated 19/08/2016 in favour of the petitioner, Azizul Haque declaring the school of the petitioner to be genuine.

The other teacher who had established another school in the car of Dakhin Kadomoni Pathar LP School filed another case in the Hon'ble High Court vide WP (C) 2304/2017 against the order dated 19/08/2016 passed by Additional Deputy Commissioner, Nagaon cum Chairman of DSC, Nagaon in pursuance of the Hon'ble High Court passed order dated 21/09/2015 in WP (C) 5638/2014. The Hon'ble High Court declined the said Writ petition and disposed of the case vide order dated 04/02/2020.

The Provincialisation of Services as per Act, 2017 drive was initiated vide advertisement No. EPD-46/2017/46 dated 17/05/2017 which was published in daily newspaper on 18/05 2017 with a direction to

concerned Head of the Educational Institutions to submit the applications with duly filled up format with copy of all required documents to their respective DEEOs within a stipulated time mentioned in the advertisement and no application form of any venture Educational Institutions shall not be received thereafter.

Accordingly, the Head of schools submitted their application for along with the required documents of their respective district.

As per clause 13 (6) of the Act the DSC first scrutinized and prepared a list of Venture Educational Institutions within the district which are eligible in terms of the provision of the Act and thereafter proceed to scrutinize and verify the service records of all serving teachers who are eligible or would become eligible for being considered for provincialisation of their services.

After recommendation of those teaching staff by the DSC concerned the posal were submitted by DEOs of concerned district for placing before the SLSC Accordingly, SLSC after scrutiny of the proposal the names of eligible teachers were recommended for provincialisation of service as Tutor to the Govt. and after receipt of sanction of post of tutor this Directorate Issued the notification of provincialisation of services on 05/02/2021.

As per office records it is seen that DEEO, Nagoan had submitted the proposal for Provincialisation of Services of the teachers along with recommendation of DSC, Nagown in respect of Dakhin Kadomoni Pathar LP School.

The said proposal as received from the DEEO, Nagpan

was placed before the SLSC and the Joint Committee constituted by Govt. under the Chairmanship of Sri. R.C. Jain, retired IAS cum Chairman, SEBA for examining the proposal for Provincialisation of Services as per Act, 2017. The Committee vide its minute dated 24/07/2020 decided to instruct MD, SSA to verify the following criteria in respect of the proposals submitted for provincialisation of services:

- a) Whether the name of the school appears in the DISE data of 2009 or before.
- b) Whether the name of incumbents appears in the DISE data of 2011 and afterwards.
- c) Enrolment position of the school during 2016-17 and 2017-18.

Accordingly, SSA Assam had submitted the DiSE data maintained by NEUPA in respect of the school of the petitioner, Dakhin Kadomoni Pathar LP School. As per the report furnished by SSA, Assam it is shown as "No enrolment on U-DISE in the database maintained by NUEPA for the year 2016-17" in respect of the school of the petitioner, Dakhin Kadomoni Pathar LP School (DISE code 18100102715), the DISE Code being the same as furnished by the petitioner in respect of his school, Dakhin Kadomoni Pathar LP School.

The name of the teachers could not be recommended for provincialisation of services of The teachers against Dakhin Kadomoni Pathar LP School by the SLSC as well as the Joint Committee decision vide minutes dated 24/07/2020 due to non-fulfilment of the enrolment criteria as per the clause 3 (1)(xii) of the Act, 2017, wherein it is laid down that The DISE code of the school was 0102715 during 2009-10 and as

per DISE data there was no enrolment in the year 2016-17 in the school Dakhin Kadomoni Pathar LP School.

Being aggrieved, the petitioner, Azizul Haque filed the present Writ petition in the Hon'ble High court vide WP (C) No. 1386/2021 with the claim that DSC, Nagaon had furnished the particulars of the other fake school in the same name for Provincialisation of Services as per Act, 2017.

The Hon'ble High Court passed order dated 03/03/2021 in WP (C) 1386/2021 that the appeal dated 10/02-2021 preferred by the petitioner under Section 14 of the Act, 2017 be given its consideration and brought to its logical end. Accordingly, the State Level Scrutiny Committee cum Director of Elementary Education Department of Assam is directed to give the consideration to the appeal dated 10/02/2021 preferred by the petitioner under Section 14 of the Act, 2017 and pass a reasoned order thereof.

The SLSC examined the following points:

1. As per Clause-3(1) (XII) of Provincialisation of Services Act-2017 the enrolment shall be verified with the DISE data as per DISE code 2009-10 or before maintained/verified to be by National University of Educational Planning and Administration, New Delhi.
2. On the other hand Govt. in Elementary Education Department has constituted a Joint Committee under the Chairmanship of Sri. R.C. Jain, retired IAS cum Chairman, SEBA for examining the proposal for Provincialisation of services as per Act, 2017. submitted for The Committee vide its minute dated 24/07/2020 decided to instruct MD, SSA to verify the following criteria in respect of the proposals

Provincialisation of services:

- a) Whether the name of the school appears in the DISE data of 2009 or before.
- b) Whether the name of Incumbents appears in the DISE data of 2011 and afterwards.
- c) Enrolment position of the school during 2016-17 and 2017-18.

In view of above, the Committee examining the stated facts is of the view that the school, Dakhin Kadomani Pathar LP School with DIS code 18100102715 does not fulfill the criteria laid down in the clause 3 (1) of the Act, 2017 since the enrolment position of the school during the year 2016-17 is shown as "No enrolment on UDISE in the database maintained by NUEPA for the year 2016-17". Hence, the Committee decided to stand by the decision of the earlier SLSC and Joint Committee constituted by Govt. and therefore the Committee also decided that the claim of the petitioner school, for provincialisation of services of the teachers against Dakhin Kadomani Pathar LP School as per Provincialisation of Services Act, 2017 cannot be considered.

Decision:

In view of above, the Committee examining the stated facts is of the view that the school of the petitioner does not fulfil the requisite criteria of enrolment of students for Provincialisation services as per act, 2017 as per the decision of the SLSC and the Joint Committee constituted by Govt. vide its minutes dated 24/07/2020. Hence, the claim of the petitioner school, for provincialisation of services of the teachers against Dakhin Kadomani Pathar LP

School as per Provincialisation of Services Act, 2017 is hereby rejected. This order is issued in compliance of the Hon'ble High Court order dated 03/03/2021 passed in WP(C) No. 1386/2021- Azizul Haque Vs State of Assam Sd./-(Smti Suranjana Senapati, ACS)

Sd./

**Director,
Elementary Education, Assam
Kahilipara, Guwahati-19**

11. It appears that the school of the petitioner has a chequered history. Though the name of the school appeared in the UDISE for the year 2009-10, the same had not been reflected in the UDISE, till 2017. It also appears that there was a dispute in respect of the DISE Code of the petitioner's school and also the school of one Habibur Rahman, who was earlier appointed in the school of the petitioner as Asstt. Teacher. Subsequently, he left the school and started another school in the same name and able to get the DISE Code of the School of the petitioner.

12. Further, from the impugned order, it appears that the Director, Elementary Education, has rejected the claim of the petitioner on the ground that the Dakhin Kadamoni Pather L.P. School, with DISE code No. 18100102715, does not fulfill the criteria laid down in the Clause 3(1)(xii) of the Act of 2017, since, the enrollment position of the school during the year 2016-17, is shown as nil in the UDISE database maintained by NUEPA for the year 2016-17. Therefore, the Joint Committee had arrived at a finding that the claim for provincialisation of Dakhin Kadamoni Pather L.P. School and provincialisation of services of the teachers, as per the Act of 2017;

cannot be considered and thereafter, the claim of the petitioner's school for provincialisation of teachers against Dakhin Kadamoni Pather L.P. School was rejected.

13. This Court has carefully gone through the Clause 3(1)(xii) of the Act of 2017. Clause 3(1) deals with the eligibility criteria for selection of educational institution for provincialisation of services of teachers tutors. Clause (xii) read as under:-

(xii) The enrolment shall be verified with the data as per DISE Code 2009-10 or before as available in the records of the National University of Educational Planning and Administration, New Delhi. There shall be physical verification of students and checking of records of attendance of students of last three years

13.1. In the case of the school of the petitioner, during the year 2016-17, in the database maintained by NUEPA was shown as 'no enrollment on UDISE'. However, the contention of the petitioner is that all along there were sufficient numbers of students in his school, in support of his contention he had produced several documents, including the school attendance registers.

13.2. The contention of petitioner in respect of the enrollment of students in his school finds corroboration from the 'Annexure-18' of this writ petition, which is a report prepared by the SI of Schools, Batadrava Circle, District Nagaon, who has inspected the school on 05.05.2017, at 11:30 AM. Perusal of the report indicates that the Inspector had found the enrollment position of the petitioner's school as under -

"No. of students present today:

Class. 1 -22/15

Class. II -19/12

Class. III-21/10

Class. IV-20/18

Class. V-13/10"

He has also found 3 teachers, namely, the petitioner herein, Md. Taij Uddin Ahmed, 1st Assistant Teacher and Musstt. Murshida Khatoon, 2nd Assistant Teacher.

14. But, the Director, Elementary Education, Assam, in the impugned order, dated 28.04.2022, has not at all considered those facts. And in fact, the said report was not placed before the Director, Elementary Education, Assam.

15. Another aspect of the matter is that as per direction of this court a inspection of the school of the petitioner was carried out by a Deputy Director, and during inspection she found the school with only a single room and she did not found any teachers or any students in the said school on that day. She had visited the school at about 10:30 AM, on a working day. As per version of the petitioner on that day one of his relative had suffered demise for which he and the other teacher had to leave the school early and that the said inspection was carried out without intimation to him. But, as per the contention of the petitioner, another Assistant Teacher, namely, Musstt. Murshida Khatoon is also continuously serving in the said school. But, on the date of inspection, she was also found to be absent without any reason, even if there is explanation for absence of the petitioner with another teacher. All these facts makes the contention of the petitioner doubtful, and to remove the same a fresh inspection/enquiry is found to be

very much essential.

Conclusion:-

16. In that view of the matter and also, in view of the fact that the name of the school is reflected in the DISE code for the year 2009-10, though, no enrollment of UDISE is shown for the year 2016-17; though the report of the Inspector of School, Annexure-18 goes to show sufficient numbers of students, this Court is of the view that there is a requirement to look into the matter a fresh by the respondent No. 2, the Director of Secondary Education, Assam.

17. Accordingly, this court inclined to dispose of this petition, with the following observations and directions:-

- (i) The petitioner to file a fresh representation before the Director, Elementary Education, Assam, enclosing the 'Annexure-18', i.e., the Report submitted by the S.I. of Schools, Batadrava Circle, District Nagaon, Assam, dated 05.05.2017; along with all relevant documents to show the enrollment position of his school since the year 2009-2010 till 2016-17.
- (ii) On such representation being filed, the Director, Elementary Education, Assam, shall examine the veracity of the aforementioned report and also, it shall consider any other documents furnished by the petitioner, to substantiate the number of enrollment in his school since the year 2009-10 till 2016-17.
- (iii) Further the respondent No.2 shall enquire about the reason for non reflection of the school of the petitioner in the UDISE,

after 2009-10

- (iv) The respondent No.2 shall also carry out an inspection about the physical status of the school its land and the facilities available there and the attendance of students, by deputing a responsible official, not below the rank of DEEO.
- (v) The official, to be deputed, shall carry out the inspection with prior information to the petitioner.
- (vi) Thereafter, on receipt of the reports of such enquiry/inspection, the respondent No.2 shall pass a fresh order in respect of entitlement of the petitioner's school for provincialisation.

18. Let the aforementioned exercise be carried out within a period of 3 (three) months, from the date of receipt of certified copy of this order. The petitioner shall obtain a certified copy of this order and shall place the same before the respondent authorities, within a period of 1 week from today.

19. And in order to facilitate, in carrying out of the aforementioned exercise, the impugned order, dated 28.04.2022, passed by the Director, Elementary Education, Assam; stands set aside and quashed.

20. In terms of the above, this writ petition stands disposed of.

JUDGE

Comparing Assistant