

GAHC010101572021



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

Case No. : WP(C)/3259/2021

AKLIMA KHATUN
W/O ASHRAFUL ALOM
RESIDENT OF VILLAGE AND PO JHAPUSABARI PART II
PS GOLAKGANJ, DIST DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI 781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 781019

3:THE DEPUTY COMMISSIONER
DHUBRI
DHUBRI
ASSAM
783301

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DHUBRI
ASSAM
783301

5:THE DEPUTY INSPECTOR OF SCHOOLS
DHUBRI
DHUBRI
ASSAM

786125

6:THE BLOCK ELEMENTARY EDUCATION OFFICER

AGOMONI
DHUBRI
ASSAM
783301

7:THE SCHOOL MANAGING COMMITTEE OF THE KUTI KOLONI L.P
SCHOOL
REPRESENTED BY ITS PRESIDENT
PO JHAPUSABARI
DHUBRI
ASSAM
783335

8:JULFIKAR RAHMAN
S/O AZIZUR RAHMAN
RESIDENT OF BAMUNDANGA PART I

PO JHAPUSABARI
DHUBRI
ASSAM
783301

9:AYUB ALI SARKAR

S/O ABDUL KARIM SARKAR
RESIDENT OF VILLAGE JHAPUSABARI PART III
PO JHAPUSABARI
DIST DHUBRI
ASSAM 78333

Advocate for the Petitioner : MR A HAWARI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

13.07.2021

Heard Mr. S Islam, learned counsel for the petitioner. Also heard Mr. PN Sarma, learned counsel for respondents No.1, 2, 4, 5 and 6 being the Elementary Education Department of the Government of Assam and Mr. SR Barua, learned counsel for the respondent No.3, being the Deputy Commissioner, Dhubri.

Issue notice, returnable by six weeks.

Extra copies of the writ petition be served on the learned counsel for the respondents within three days.

Steps for service of notice on the respondents No.7, 8 and 9 by registered post with A/D within three days.

There is a dispute of seniority between the petitioner and the respondent No.9 Ayub Ali Sarkar as teachers in the Kuti Koloni LP School. The relevance of the seniority dispute is that it would also have its effect as to who between the two would be provincialised under the *Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017* (for short, the Act of 2017). In furtherance of such grievance, the petitioner had earlier instituted WP(C)No.8515/2019 in which the order dated 20.11.2019 was passed wherein in paragraph 7, it was provided as follows:

“In view of the nature of dispute and considering the submissions of the learned counsel for the parties, it is directed that, till returnable date, even if the authorities may go ahead with the process for provincialisation in respect of the post of Assistant Teacher in Kuti Kolony L.P. School, Jhapusabari, Dhubri, no final order of provincialisation shall be issued in favour of respondent No. 9 herein without leave of this Court.”

A reading of the interim order in paragraph 7 of the order dated 20.11.2019 in WP(C)No.8515/2019 goes to show that there is a restraint order on the respondents not to issue any final order of provincialisation without the leave of the Court.

In the aforesaid circumstance, the order impugned dated 24.06.2021 has been passed by the Director of Elementary Education Assam by which the respondent No.9 Ayub Ali Sarkar has been provincialised. As the order in is violation of the earlier interim order dated 20.11.2019 in WP(C)No.8515/2019, the order impugned dated 24.06.2021 of the Director of Elementary Education Assam provincialising the services of respondent No.9 Ayub Ali Sarkar shall remain stayed until further orders.

List after six weeks.

JUDGE

Comparing Assistant