

GAHC010136322024



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

Case No. : WP(C)/3478/2024

KABIR SHYAM BASUMATARY
S/O- UPEN BASUMATARY, R/O- GARAKHIA PUKHURI,P.O.KACHUPUKHURI,
DIST.- KARBI ANGLONG, ASSAM, PIN- 782482.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ELEMENTARY EDUCATION, DISPUR, ASSAM
2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI
ASSAM
PIN- 781019.

3:THE MISSION DIRECTOR
SAMAGRA SHIKSHA
ASSAM
KAHILIPARA
GUWAHATI
ASSAM
PIN- 781019.

4:THE EXECUTIVE DIRECTOR
SAMAGRA SHIKSHA
ASSAM
KAHILIPARA
GUWAHATI
ASSAM
PIN- 781019.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HOJAI
ASSAM

6:THE DISTRICT LEVEL COMMITTEE
HOJAI
REPRESENTED BY THE ADDITIONAL DISTRICT COMMISSIONER
HOJAI
SHANKARDEV NAGAR
DIST. HOJAI
ASSAM
PIN- 782442.
7:THE DISTRICT COMMISSIONER
HOJAI
DIST. HOJAI
ASSAM
PIN- 782442

Advocate for the Petitioner : MR. I CHOWDHURY SR ADV

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 15.07.2024

Heard Mr. I. Chowdhury, learned Senior counsel assisted by Mr. A.K. Baruah, learned counsel for the petitioner.

By this writ petition, the petitioner is challenging the order dated 20.06.2024, by which he has been transferred from Swahid Choudhury L.P. School of Lanka Block to Tengtoli L.P. School of Lanka Block.

The case of the petitioner is that his transfer has been made in violation of the requirement of Sections 19 & 25 of the Right of Children to Free and Compulsory Education Act, 2009 (Act of 2009 in short). The further case of the petitioner is that the Government of Assam has enacted the Assam Elementary and Secondary School Teachers (Regulation of Posting and Transfer) Act, 2020 (Act of 2020 in short) and the transfer of the petitioner has been made in

violation of Section 3, Section 4 and Section 5(5) of the said Act of 2020. It is the further case of the petitioner that the Government of Assam has also framed the Assam Elementary and Secondary School Teachers (Regulation of Posting and Transfer) Rules, 2020, wherein Rule 15 provides for the rationalization, shifting and transfer of teachers/tutors for administrative exigencies and also to give effect to the Act of 2009. It is also the case of the petitioner that the transfer of the petitioner is in violation of provisions of Office Memorandum dated 05.05.2023, issued by the Department of School Education, which provides for rationalization of teachers and post of teachers and the Notification dated 13th December, 2022 issued by the Department of School Education.

It is the case of the petitioner that the school, in which he has been serving, i.e., Swahid Choudhury L.P. School of Lanka Block, there is an enrolment of 151 students and the number of teaching staff is 5. Therefore, as no replacement has been made due to the transfer of the petitioner, the PTR, as provided under the Act of 2009, stands violated.

Mr. P. K. Bora, learned standing counsel, Elementary Education Department, prays for some time to enable him to receive instructions.

Prayer is allowed.

List on 19.07.2024.

Till the next returnable date, the parties are directed to maintain status quo as on today.

JUDGE

Comparing Assistant