



**IN THE GAUHATI HIGH COURT**  
**(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)**  
**PRINCIPAL SEAT AT GUWAHATI**

**WP(C) No. 4387/2023**

Rahom Ali Ahmed,  
S/o Late Abed Ali Ahmed,  
Assistant Teacher (Science) of Badla Rangapani High School,  
Resident of Badla Pather, PO-Badla Bazar,  
PS-Boko, Dist.-Kamrup, Assam.

.....Petitioner.

**-Versus-**

1. The Government of Assam,  
Represented by its Commissioner & Secretary,  
Education (Secondary) Department,  
Dispur, Guwahati-06.
2. The Director of Education (Secondary) Department,  
Government of Assam, Kahilipara,  
Guwahati-06.
3. The Inspector of Schools,  
KDC, Kamrup at Amingaon,  
Pin-781031.
4. The Headmaster-cum-Secretary of Badla Rangapani High School,  
PO-Badla Bazar, PS-Boko,  
Dist.-Kamrup, Assam, Pin-781127.
5. Md. Azahar Ali Ahmed,  
S/o Late Afaj Uddin Ahmed,  
Resident of Choudhuripam, PO-Kalatoli Bazar,  
PS-Chhaygaon, Dist.-Kamrup,  
Assam, Pin-781127.
6. Abdur Rashid Ahmed,  
S/o Md. Janab Ali,  
Resident of Badla Pather,  
PO-Badla Bazar, PS-Nagarbera,  
Dist.-Kamrup, Assam.

.....Respondents.

For the Petitioner : Mr. K.N. Choudhury, Sr. Adv.,  
Mr. S. Ahmed.  
.....Advocates.

For the Respondents : Mr. B. Kaushik, SC, Sec. Edu.,  
Mr. H.K. Das,  
Mr. S.K. Das.  
.....Advocates.

**BEFORE  
HON'BLE MR. JUSTICE ROBIN PHUKAN**

Date(s) of Hearing :- 24.02.2026

Date on which judgment is reserved :- 24.02.2026

Date of pronouncement of judgment :- 05.05.2026

Whether the pronouncement is of the operative part of the judgment? :- N/A

Whether the full judgment has been pronounced? :- Yes

**JUDGMENT AND ORDER**

Heard Mr. K.N. Choudhury, learned Sr. Counsel, assisted by Mr. S. Ahmed, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned standing counsel, Education (Secondary) Department, appearing

for the respondent Nos.2—4, Mr. H.K. Das, learned counsel for the respondent No.5 and Mr. S.K. Das, learned counsel for the respondent No.6.

**2.** In this petition, under Article 226/227 of the Constitution of India, the petitioner, namely, Rahom Ali Ahmed, has challenged the impugned judgment and order, dated 31.05.2023, passed by the learned Educational Tribunal, Kamrup at Amingaon, in connection with T.S.(Edu) No.01/2017. It is to be noted here that vide impugned judgment and order dated 31.05.2023, the learned Educational Tribunal has decreed the suit in favour of the respondent No.5 herein, namely, Ajahar Ali Ahmed, declaring as the senior most Science Teacher of Badla Rangapani High School and listing him as excess teacher is illegal, and further declared that respondent No. 6 Abdul Rashid Ahmed (respondent No.6 herein) and respondent No.7 Rahom Ali Ahmed (petitioner herein) as the second and third Science Teacher and directed the respondent No.1 to 5 therein, to do the needful in respect of the claim of the plaintiff. The petitioner herein also prays for issuing direction to the respondent No. 1 and 2, to give effect to the recommendation, dated 14.03.2013, (Annexure-1), published on the official website of respondent No.2, whereby petitioner's name was rightly recommended at serial No. 6, for provincialization as Asstt. Teacher (Science) whereby in the same list, respondent No.5 was held to be an excess teacher due to lack of requisite qualifications/subject combination as per SEBA Regulation.

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

“The petitioner herein was appointed as a Science Graduate Teacher at Badla Rangapani High School on 25.02.2006, and he

joined on 27.02.2006, and thereafter, he has been rendering his services in the said school. In the said school, prior to his joining, one Md. Azahar Ali Ahmed, the respondent No.5 and one Abdur Rashid Ahmed, the respondent No.6, were also working as Science Teachers and they were appointed on 12.09.1996 and 24.04.1999, respectively, and at that time, the school was at venture stage. Thereafter, the State of Assam, the respondent No.1, has enacted the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, to provincialize all the venture educational institutions, so as to streamline the process of provincialization of the venture educational institutions in the State of Assam and accordingly, it had directed the Headmaster of all such educational institutions to submit particulars of all eligible employees (both teaching and non-teaching) in terms of Section 4(1) of the Act of 2011 for finalization of the process of provincialization of the institutions. Thereafter, the Headmaster of the school (respondent No.4) has submitted particulars of teaching and non-teaching staff of Badla Rangapani High School to the Inspector of Schools.

Thereafter, the Inspector of Schools had forwarded the same to the District Scrutiny Committee, headed by respondent No.3 and found the petitioner to be eligible for provincialization of his services as Science Teacher of Badla Rangapani High School and accordingly, included his name at Sl.No.6 of the list of employees, found eligible for provincialization, and published on the official website of the education department and the respondent No.5 was held to be an excess teacher in the said list for want of requisite qualification, for which his name was not included in the list of employees found to be eligible. Thereafter, the respondent No.5

submitted a representation before the respondent No.2 on 18.04.2013 and prayed for inclusion of his name in the list of eligible employees of the school, on the pretext of being the senior most Science Teacher and while the application dated 18.04.2013, was pending for consideration before the respondent No.2, the respondent No.5 had approached this Court by filing WP(C) No.2913/2013 and prayed for inclusion of his name in the list of eligible employees for provincialization of his services in terms of Section 4 of the Act of 2011. And while the said writ petition was pending for disposal, a Division Bench of this Court has set aside and quashed the Act of 2011 in the case of **Chandan Kumar Neog and Ors. v. State of Assam and Ors.**, reported in (2016) 5 GLT 296, and vide said judgment and order, this Court was also pleased to dispose of all the writ petitions, where the issue of seniority was in dispute, directing those parties to approach the concerned Educational Tribunal to decide the question of seniority between and among them. And thereafter, the Government of Assam was pleased to enact the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017, which came into force w.e.f. 11.04.2017.

Thereafter the respondent No.5 had instituted a suit before the Educational Tribunal, Kamrup at Amingaon, under Section 19(2) of the Act of 2017, being T.S.(Edu) No.01/2017, praying for setting aside the particulars of teachers shown in the website of the respondent No.2 wherein he was enlisted as an excess teacher of Badla Rangapani High School and also prayed for declaring him as the senior most Science Teacher and to provincialize his service in the school as the 1<sup>st</sup> Science Graduate Teacher w.e.f. 26.07.2013

i.e. the date on which services of other employees of the school had been provincialized, as he has been an appointee of 12.09.1996. Thereafter, the petitioner herein, entered appearance in the aforementioned suit and contested the same by filing written statement and that one Abdur Rashid Ahmed, also entered appearance, as he was impleaded as respondent No.6 and thereafter, the learned Tribunal vide impugned judgment and order dated 31.05.2023, had decreed the suit in favour of the respondent No.5, to the prejudice of the present petitioner, with complete disregard to the relevant rules and regulations, and in contravention to Section 19(1) of the Act of 2017, in terms of which, previous sanction of the State Government is a condition precedent and *sine qua non* for initiating any proceeding before any Educational Tribunal.”

- 4.** Being aggrieved, the petitioner approached this Court by filing the present petition on the following grounds:-
  - A. The learned Tribunal had failed to appreciate the fact that the Tribunal got no jurisdiction to try and adjudicate the suit for being filed without previous sanction of the State Government as required under Section 19(1) of the Act of 2017.
  - B. The learned Tribunal had failed to appreciate that the District Level Scrutiny Committee acted bona-fide, while scrutinizing the eligibility of the private parties and rightly recommended the petitioner’s name for provincialization as he was duly eligible for provincialization.
  - C. The learned Tribunal had failed to appreciate the fact that under the Act of 2017, the requisite qualification of an employee is not

the seniority, which has to be considered as requisite parameters for provincialization, though the seniority was stipulated under the Act of 2011.

- D. The learned Tribunal has failed to appreciate the fact that the petitioner did not challenge the initial appointment of the respondent No.5 despite a statement being made in paragraph 14 of his written statement to the effect that the appointment of the respondent No.5 was null and void.
- E. The learned Tribunal had failed to take note of the fact that the respondent No.5 filed an application on 18.04.2017, before the respondent No.2 with a similar prayer, but the fate of the said application was never brought on record by the respondent No.5 in course of adjudication of the matter before the learned Tribunal.
- F. The learned Tribunal had committed error while decreeing the respondent No.5 as the senior most teacher, disregarding the fact that the petitioner did not have the requisite subject combination in terms of SEBA Regulation, for which the impugned judgment and order is bad and illegal for being passed in contravention of Section 2(t) of the Act of 2017.
- G. The learned Tribunal had failed to take note of the fact that since the respondent No.5 sought for relief as per the Act of 2017, it is incumbent upon him to comply with the other requirements as stipulated in various provisions of the Act of 2017.
- H. The learned Tribunal had failed to take note of the fact that consent or connivance of a private party cannot confer eligibility

upon a person to appoint him in respect of a post, if he or she is not actually qualified as per the existing rules and regulations.

**5.** The respondent No.6, Md. Abdur Rashid Ahmed has filed his affidavit-in-opposition, wherein he takes a stand that he is certainly eligible and qualified for the post of Science Teacher and his case was considered for provincialization, by the District Scrutiny Committee, Kamrup(R) and his name was listed at Sl.No.5 of the list of employees, found to be eligible for provincialization, on the website publication and he is senior to the writ petitioner and his subject combination comprises of Mathematics, Botany and Zoology i.e. Bio and neither the writ petitioner nor the respondent No.5 possessed the Bio combination and that the respondent No.5 is senior to him and also to the writ petitioner, as per date of joining in the said school and he has also contested the T.S.(Edu) No.01/2017 and taken the stand that he is the 2<sup>nd</sup> senior most Science Teacher in the school and that the suit was decreed vide judgment and order dated 31.05.2023, by holding that the respondent No.5 is the senior most Science Teacher of the school and that there is no contravention of the provision of the Act of 2017, in determining the seniority amongst the parties for consideration of two incumbents out of 3 persons i.e. the respondent Nos.5, 6 and the writ petitioner and that without any reason, he has been entangled in the proceeding since the year 2013.

**6.** The respondent No.4 has also filed affidavit-in-opposition, wherein he takes a stand that the respondent No.5 is the senior most science graduate teacher of the school and he joined on 12.09.1996, and he submitted the particulars of teaching and non-teaching staff as per the seniority of the staff and never made any category of excess teacher as alleged and he has no role in preparing the list of eligible employees of

the school dated 14.03.2013, and the writ petitioner has joined in the school only on 25.02.2006, after 10 years of sincere and dedicated service of the respondent No.5 in the school and that the petitioner is also found irregular in service since 02.11.2021 to 26.05.2022.

**7.** The respondent No.5 has also filed his affidavit-in-opposition, wherein he has taken a stand that the Managing Committee of the Badla Rangapani High School in Kamrup, appointed him on 12.09.1996, as Science Graduate Teacher and he continued to render his service without any break and his appointment was also approved by the Inspector of Schools, KDC, Guwahati and after his joining as Science Graduate Teacher, two more Science Graduate Teachers, being the respondent No.6 and the writ petitioner were appointed on 24.04.1999, and 25.02.2006, respectively, and both are junior to him and Badla Rangapani High School was taken up for provincialization as per Assam Venture Educational Institutions (Provincialization of Service) Act, 2011 and the Headmaster of the school had forwarded the particulars of teaching and non-teaching staff to the Inspector of Schools for the purpose of provincialization and his name was in the DISE data as Assistant Science Teacher of Badla Rangapani High School during the year 2012-13. Then in the last part of 2012, he came to know from the official website of Kamrup district that he has been shown as Assistant Science Teacher, but in the column, he has been shown as excess Teacher within the Boko LAC area, whereas the other two junior Science Teachers, namely, Abdul Rashid Ahmed (respondent No.6) and the writ petitioner, Raham Ali Ahmed, who were appointed on 24.04.1999 and 25.02.2006, respectively, and under the Act, only two science teachers' posts can be provincialized according to the seniority. Thereafter, the Headmaster of Badla Rangapani High School, to whom he had reported the matter, had

written a letter to the Inspector of Schools certifying that he is not an excess teacher, rather he is the senior most Science Teacher of the school and after receiving the said letter from the Headmaster, the Inspector of Schools, KDC, Amingaon, forwarded the same to the Director of Secondary Education for re-examination of the matter. Then, having received no response, he filed writ petition, being WP(C) No.2913/2013, with the prayer that his name should be included as the senior most Assistant Teacher of Badla Rangapani High School for the purpose of provincialization. Then vide order dated 27.05.2013, while issuing notice, this court was pleased to pass interim order directing the respondent authority not to grant the benefit of provincialisation to the respondent No.6 and the writ petitioner. Subsequently, vide order dated 26.05.2017, this Court was pleased to dispose of the said petition with a direction to approach the concerned Educational Tribunal to decide the question of seniority between them. And in the meantime, the Government has sanctioned 10 posts of Badla Rangapani High School, including two posts for Science Teacher, but due to operation of interim order the services of the Science Teachers remained vacant, but the services of other teachers and non-teaching staff of the school got provincialized vide order dated 25.03.2013, w.e.f. 01.01.2013. The said writ petition came up for consideration on 26.05.2017, after the decision of the Full Bench in **Abdul Gafur Mondal v. State of Assam & Ors.**, reported in **2015 (2) GLT 337**, whereby it was directed to constitute Educational Tribunal to determine the issues relating to teaching and non-teaching staff of venture educational institutions for the purpose of provincialization and accordingly, the Government has appointed District & Session Judges as well as the Additional District & Session Judges of each District as Educational Tribunal vide Notification, dated 02.06.2016, and thereafter, disposed of the writ petition filed by the petitioner, directing them to

approach the Educational Tribunal, and that all the posts of Badla Rangapani High School have been provincialized w.e.f. 01.01.2013, vide order dated 26.07.2013, but the posts of Science Teacher left to be provincialized till date due to the interim order passed by this Court in WP(C) No.2913/2013. Thereafter, he had approached the Educational Tribunal by instituting the T.S.(Edu) No.01/2017 and the learned Tribunal, after hearing both the parties, vide order dated 31.05.2023, declared him as the senior most Science Graduate Teacher of Badla Rangapani High School and also declared that listing him as excess teacher was illegal and it was also decreed that the respondent No.6, Abdul Rashid Ahmed and respondent No.7, the writ petitioner- Rahom Ali Ahmed are the 2<sup>nd</sup> and 3<sup>rd</sup> Science Teacher of Badla Rangapani High School and that the grounds for filing the present writ petition are not at all sustainable and the same are misconceived and on such count, the writ petition is liable to be dismissed.

**8.** Mr. Choudhury, learned Senior Counsel for the petitioner, submits that the finding, so recorded by the learned Tribunal is not at all sustainable. *Firstly*, Mr. Choudhury has pointed out that firstly, the respondent No.5 has instituted the proceeding before the Tribunal without there being any sanction from the State Government, as required under Section 19 of the Act of 2017.

**8.1. Secondly**, Mr. Choudhury submits that the Act of 2011, had already been set aside and in view of the saving clause i.e. Section 24 of the Act of 2017, seniority is not the criteria for provincialisation now and the case of the petitioner has to be considered only under the Act of 2017, not under the Act of 2011, as nothing has been saved in the Act. Mr. Choudhury also submits that the petitioner herein is eligible and his name has been recommended by the District Level Scrutiny Committee and the

District Level Scrutiny Committee has rightly rejected the case of the respondent No.5

**8.2.** Mr. Choudhury also submits that as per *Regulation For Recognition of High Schools, High Madrassa, 1988*, specially Regulation J(ii) provides that the subject combinations of the B.Sc. teachers shall be such that all the B.Sc. teachers taken together shall cover 6 weekly periods in mathematics, 2 periods in Physics, 2 periods in Chemistry and two period in Biology per section. Referring to Note 5 of the said Regulation Mr. Choudhury submits that the B.Sc. teachers shall be so selected that their subject combination covers all major branches of science and mathematics.

**8.3.** Mr. Choudhury also submits that the criteria of seniority was stipulated under the Act of 2011, but under the Act of 2017, the same is not the criteria and that the respondent No.5, though he is senior most, he does not possess the requisite subject combination in terms of Regulation 1988 for which the impugned judgment passed by the Tribunal is bad and illegal being in contravention of Section 2(t) of the Act of 2017, according to which "teacher" means Teachers, Assistant Teachers, Classical Teachers and also includes Lecturers, Assistant Professors, Associate Professors, Professors, Principal, Vice-Principal, Demonstrator, Headmaster, Assistant Headmaster, Superintendent, Assistant Superintendent and any person of the teaching faculty working in the Venture Educational Institution having required educational and professional qualification as per norms and standards fixed by the Right of Children to Free and Compulsory Education Act, 2009, National Council for Teachers Education Act, 1993, University Grants Commission Act, 1956 and the relevant rules and regulations framed there under

and any other Act as the case may be, as applicable on the day of provincialisation and whose services are provincialised under this Act in the post of teacher or in any other post in the teaching faculty but, not as tutor under this Act.

**8.4.** Under such circumstances, Mr. Choudhury submits that even the petitioner's claim also cannot be adjudicated under the Act of 2011 and the same has to be considered under the Act of 2017, and under such circumstances, Mr. Choudhury has contended to allow the petition.

**9.** However, Mr. S.K. Das, learned counsel for the respondent No.6, submits that there is no complaint against the respondent No.6 and his service has already been provincialized under the Act of 2011 and as such, the Act of 2017 is not applicable in his case and unnecessary he has been dragged into the litigation and he has been unable to enjoy the fruit of provincialization of his service till date due to the interim order dated 16.08.2023, passed by this Court in the present petition, which is in still in operation. Mr. Das submits that the respondent No.6, has also filed one interlocutory application, being I.A.(Civil) No.1274/2025, for vacating the interim order dated 16.08.2023, passed in the present petition, being WP(C)/4387/2023 and under such circumstances Mr. Das has contended to allow the interlocutory application.

**10.** Per contra, Mr. H.K. Das, learned counsel for the respondent No.5, submits that the Headmaster has filed an affidavit in this petition and it is stated that he is no longer in the school and it is an admitted fact that the respondent No.5 is the senior most to the petitioner and he has written one letter to the Director and the same is yet to be disposed of, and the factum of he being the senior most Science Teacher in the school, has already been adjudicated by the learned Tribunal. Mr. Das

also submits that the respondent No.5 was appointed on 12.09.1996 while the petitioner was appointed on 25.02.2006, and that the Notification regarding provincialization of service of the petitioner has already been issued and only the posting order has to be made and the case of the respondent No.5 does not fall under the Act of 2017.

**10.1.** Mr. Das further submits that Section 24 is not applicable in the case of the respondent No.5 as the school was already provincialised and two posts of Science Teachers had already been created and allotted to Badla Rangapani High School and his service has already been deemed to be provincialised by operation of law, under Section 4(1) of the Act of 2011. In support of his submission he has referred to a decision of a co-ordinate bench of this court in **Dilip Das v. State of Assam & Ors.**, reported in **2019 (2) GLT 135**. He also submits that though the learned counsel for the petitioner has referred to Section 19 of the Act of 2017, yet, the said Section is not applicable in case of 3<sup>rd</sup> party, and 3<sup>rd</sup> party cannot raise such an issue, although the Government has the right to agitate the same, but the Government has not raised any such issue.

**10.2.** Mr. Das further submits that the petitioner herein, had not taken any stand in respect of sanction, in the written statement filed by him before the learned Tribunal, which is annexed as Annexure-5 and without such issue being raised before the learned Tribunal, now he cannot raise such contention. In support of this contention, Mr. Das has referred following decision:-

- (i) **Paleti Sivaramakrishnaiah v. Executive Engineer, N.C. Canals Sathenapalli and another**, reported in **1978 SCC OnLine AP 215**;

**10.3.** Further, referring to another decision of a division bench of this court in **Mohor Ali Sheikh & Ors. v. State of Assam & Anr.**,

reported in 2024 (5) GLT 689, Mr. Das submits that Section 24 of the Act of 2017 is not applicable in the case in hand and that Section 24, rather protect all such action taken for provincialisation of service of teachers prior to 23.09.2016, and that those employees, in whose favour recommendations were made by the scrutiny committee had a vested right for their claim to be taken to its logical conclusion under the under the Act of 2011.

**10.4.** Mr. Das also submits that since two posts of Graduate Teachers of Science have already been created and allotted to Rangapani High School, vide order dated 26.07.2013, much prior to repealing of the Act of 2011, the respondent No.5 has accrued vested rights for enjoying the benefit of provincialisation with effect from 01.01.2013, from which date the teachers and staffs of the of Rangapani High School was provincialised vide order dated 26.07.2013. He also submits that the petitioner, as per affidavit of the respondent No.4, the Head Teacher of the School, is very much irregular in attending the school.

**11.** Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also gone through the decisions referred by Mr. H.K. Das, learned counsel for the respondent No.5. Also gone through the relevant provisions of law.

**12.** Before a discussion is directed, to the contention being raised in the present petition, the pertinent question to be answered is which of the Act, i.e. the Act of 2011 or the Act of 2017 will apply here in this case. Form the contention being made in the petition and also from the submission of learned counsel for the petitioner it appears that herein this

case the Act of 2017 will apply since the earlier Act of 2011 was repealed and nothing has been saved under Section 24 of the Act 2017. Whereas, according to Mr. H.K. Das, learned counsel for the respondent No.5, the Act of 2011 will apply here in this case as the Rangapani High School was already provincialised vide order dated 26.07.2013, with effect from 01.01.2013, much prior to repeal of the Act of 2011. According to Mr. Das as per Section 24 of the Act of 2017, the teachers, whose services were provincialised prior to 23.09.2016, shall continue and since by operation of law i.e. Section 4(1) of the Act of 2011 the services of the respondent No.5 is deemed to have been provincialised, the applicable Act will be 2011.

**12.1.** There appears to be substance in the submission of Mr. Das, learned counsel for the respondent No.5, and the decision referred by him in the case of **Mohor Ali (supra)** also fortified the same. Notably, in the case of **Mohor Ali (supra)** a division bench of this court, in para No. 144 and 146, has held as under:-

**144.** “It would be relevant to mention herein that Section 24 of the Act of 2017, which is the repealing provision of the Act of 2011, does not lay down that the rights and privileges that had accrued upon the Venture Educational Institutions under the Act of 2011 would stand extinguished with retrospective effect. Rather, Section 24 protects all action taken for provincialisation of services of teachers prior to 23.09.2016. Such action, in our considered opinion, would also mean and include actions taken by the Departmental Authorities in processing the application submitted by the respective Venture Institutions prior to 01.01.2006 seeking permission/affiliation/permission/concurrence as well as the decisions and recommendations of the District Scrutiny

Committees, if any, recommending provincialisation of the services of the teaching and non-teaching staffs of the different Venture Educational Institutions. We are of the view that those employees, in whose favour, recommendations were made by the Scrutiny Committee had a vested right for their claims to be taken to its logical conclusion under the Act of 2011. As such, such vested rights of those employees could not have been taken away by the subsequent enactment of the Act of 2017.”

146. “From a plain reading of Section 6 (General Clauses Act, 1897) it is clear that right, if any, including privileges that had vested under the Act of 2011, would stand protected under Section 6 of the Act of 2015 even after the repeal of the Act of 2011.”

**12.2.** This being the factual and legal position, this court is of the view that herein this case, the Act of 2011 will be applicable since Rangapani High School was provincialised with effect from 01.01.2013, vide order dated 26.07.2013, which was much prior to 23.09.2016, on which the Act of 2011 was repealed and in view of the decision of division bench of this court in **Mohor Ali (supra)** the teachers whose services were provincialised prior to 23.09.2016, shall continue.

**13.** Further it appears that the basic facts here in this case are not in dispute. As per the affidavit filed by the Headmaster of Badla Rangapani High School, the respondent No.4 and also the Annexure-A to his affidavit, indicates the date of joining the petitioner and respondent No.5 and 6 as under:-

<b>Sl. No.</b>	<b>Name</b>	<b>Date joining</b>	<b>of</b>	<b>Subject combination</b>
01.	Azahar Ali Ahmed	12.09.1996		Mathematics,

			Chemistry, Zoology
02.	Abdur Rashid Ahmed	24.04.1999	Mathematics, Botany, Zoology
03	Raham Ali Ahmed	25.02.2006	Physics, Chemistry, Mathematics

**13.1.** Further, Annexure-A to the affidavit of respondent No.4 also indicates that the petitioner herein was very irregular w.e.f. 02.11.2021 to 26.05.2022, and from 27.05.2022, till the date of issuance of the said Annexure on 04.10.2023. He remained absent unauthorizedly and Mr. Das, learned counsel for the respondent No.5 has rightly pointed this out in his argument and there appears to be substance in the same.

**14.** Now moving forward to the contention of the petitioner, that at the time of filing of the title suit, before learned Tribunal by the respondent No.5, sanction from the Government, as required under Section 19 of the Act of 2017 was obtained for institution of the suit. Mr. Choudhury, the learned counsel for the petitioner, also argued the same with vehemence.

**14.1.** However, upon a perusal of the Section 19 of the Act of 2017, this court is unable to agree with the said contention. Section 19 of the Act of 2017 deals with suit and proceeding. Sub-Section 1 provides as under:-

- (1) No suit, prosecution or other legal proceeding shall lie for anything in good faith done under this Act, except with the previous sanction of the State Government.
- (2) To adjudicate disputes for redressal of grievances relating to the teaching staff of the Non-Government Educational Institution as well as disputes concerning disciplinary action,

**genuineness of establishment of school and claim for provincialisation in respect of teaching staff of Venture Educational Institution, there shall be an Educational Tribunal for each district within their respective Territorial Jurisdiction. The District and Sessions Judges and the Additional District and Sessions Judges of each District are designated as Educational Tribunal.**

**14.2.** Thus, a careful perusal of the section indicates that it contains two subsections. And both the Sub-Sections appears to have been enacted anticipating two kinds of suits, one against the Government Officials, who had acted in good faith to implement the provisions of the Act and the other is for redressal of grievances relating to the teaching staff of the Non-Government Educational Institutions as well as disputes concerning disciplinary action, the genuineness of establishment of school and claim for provincialisation in respect of teaching staff of Venture Educational Institution etc.

**14.3.** Sub-Section (1) of Section 19 deals with previous sanction of the State Government. It provides that the previous sanction of the State Government is required to institute suit, prosecution, or other legal proceeding for anything done in good faith under the Act. The wordings, i.e.- '**anything done in good faith**', so used in the Sub-Section, to the considered opinion of this court, the legislature has intended to protect the Government Officials, who had acted under the Act in good faith while implementing any provision of the Act.

**14.4.** Further, Sub-Section (1), appears to be a parimateria provision, with that of Section 35 of the *Protection of Women from Domestic Violence Act, 2005* and Section 16 of the *Public Premises*

*(Eviction of Unauthorised Occupation) Act 1971*, and Section 49 of the *Unlawful Activities (Prevention) Act, 1967*.

**14.5.** Notably, Section 35 of the Protection of Women from Domestic Violence Act, which provides that - “No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.”

**14.6.** And Section 16 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, which provides that – “No suit, prosecution or other legal proceeding shall lie against the Central Government or the [statutory authority] or the appellate officer or the estate officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.”

**14.7.** Further, Section 49 of the Unlawful Activities (Prevention) Act, 1967, which provides that “No suit, prosecution or other legal proceeding shall lie against:-

- (a) the Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorised in this behalf by the Government or the District Magistrate or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder; and

(b) any serving or retired member of the armed forces or para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

**14.8.** Thus, this court is unable to record concurrence with the contention of the petitioner that for institution of suit before the Educational Tribunal, by teachers of any of the venture educational institution, the sanction has to be obtained from the Government. And it would be practically impossible for such teachers, to obtain such sanction, first from the Government, and then to institute the suit before the Tribunal. If Section 19(1) is interpreted in such a way, then it would frustrate the very object of the establishment of the Educational Tribunal under Sub-Section (2) to the said Section 19.

**15.** Another aspect of the matter, Mr. H.K. Das, learned counsel for the respondent No. 5, has pointed out is that the petitioner herein, in his written statement, had never raised such plea. There appears to be substance in the said contention. And the decision of High Court of Andhra Pradesh, in the case of **Paleti Sivaramakrishnaiah (supra)**, so referred by Mr. Das, it has been held that such a plea has to be taken at the earliest opportunity. Moreover, Mr. Das has also pointed it out that such a plea ought to have been raised by the state respondent only. But, no such plea was raised by the state respondent.

**15.1.** Notably, in para No. 21 of the said decision it has been held as under:-

**21. In Purna Chandra Sarkar vs. Radharani Dassya, AIR 1931 Cal 175 it is observed that the plea of want of notice under Section 80 of the CPC, which**

is a clear bar to the institution of the proceedings against public officer must be taken to the earliest possible opportunity and must be specially pleaded. Where such a plea is taken by the defendant at a very late stage of the suit and at a time when the plaintiff would be precluded by the law of limitation from bringing a further suit against the defendant, the defendant must be deemed to have waived the privilege of notice.

**15.2.** Again, in the para No. 26 it has been held as under:-

“In view of this catena of decisions I am of the opinion that the lower appellate court was wrong in allowing the plea of waiver for the first time to be raised in the appeal at the time of argument and the second defendant must be deemed to have waived the notice in the circumstance of the.

Para No.18. “From all these decisions the following principles emerge. In suit against government or against a public officer in discharge of his official duties Notice under section 80 CPC is mandatory. In respect of any act purporting to be done in his official capacity notice under Section 80 CPC is necessary. Such a notice is mandatory and should be strictly complied with. Even a mandatory provision can be waived if it is not concerned with public interest, but in the interest of the party that waive it. Notice under Section 80 of the CPC is meant for the benefit of the party to whom it is intended. Notice under section 80 can be waived by the party for whose benefit it is intended.”

**16.** Thus, the petitioner, having not raised the issue before the learned Tribunal, in the title suit, now he cannot take such a plea in this petition.

**17.** This court has considered the submission Mr. Choudhury in respect of Regulation For Recognition of High Schools, High Madrassa, 1988, specially Regulation J(ii) which provides that the subject combinations of the B.Sc. teachers shall be such that all the B.Sc. teachers taken together shall cover 6 weekly periods in mathematics, 2 periods in Physics, 2 periods in Chemistry and two period in Biology per section. Referring to Note 5 of the said Regulation Mr. Choudhury submits that the B.Sc. teachers shall be so selected that their subject combination covers all major branches of science and mathematics. But, this aspect was dealt with by a co-ordinate bench of this court in **Syed Saidul Islam vs. State of Assam and Other (W.P. (C) No. 5660 of 2013)** as under:-

“The question as to whether seniority should be the sole question for provincialization of the teachers who belong to the same category came up for consideration before this Court in WP(C) No. 2803 of 2013 (Add Latifur Rahman Choudhury Vs. State of Assam & Ors.). Holding that it is seniority in the category which counts, this court held as follows:-

"6. The provisions dealing with provincialization of service of the employees of Venture Educational Institutions are adumbrated in Section 4 of the Act, which is reproduced herein below:-

"4. Employees to be Government servant.--  
(1) The services of he employees of all eligible Venture Educational Institutions under Section 3 and who have already completed ten years of service in such Educational Institution without any break from the date of affiliation, recognition,

concurrence or permission as the case may be, of the concerned educational institutions as on the date of coming into force of this Act, shall be deemed to have been provincialized and they shall become employees of the State government with effect from that date.

(2) The service of all teaching and non-teaching employees, who have not yet completed ten years of continuous services without break in Venture Educational Institutional Institutions as under subsection (1) shall be provincialized with effect from the date on which they complete the required ten years of service as stipulated under subsection (1):

Provided that the numbers of employees in both teaching and non-teaching cadre in each of the institution, services of whom are provincialized under this Act, shall not exceed as specified in the Schedule appended to this Act:

Provided further that where the number of such employees serving in such Venture Educational Institutions exceeds the numbers 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 have no liability whatsoever in regard to such employees.

\* \* \*"

"7. The provisions reproduced above plainly indicate that the services of the teaching and non-teaching employees who have completed ten

years of continuous service in Venture Educational Institutions without any break from the date of the recognition thereof and to the date of the coming into force of the Act shall be treated as provincialized with effect from that date. It further provides that in the case of those teaching and non-teaching employees who are yet to complete ten years without any break in such institution shall also be provincialized from the date on which they complete the required ten years. However, a restriction is placed by the first proviso thereto which says that the number of employees in both teaching and non-teaching cadre in each of the institution, whose services are to be provincialized shall not exceed the numbers specified in the Schedule appended to the Act. Then the second proviso thereto also provides that if the numbers of such employees serving in the institution exceeds the numbers specified in the said Schedule, provincialization of the services of the employees shall be done on the basis of the seniority in the respective category in the concerned educational institution: the State Government disowns any liability in respect of excess employees. Thus, the crucial words are "seniority in the category". For example, if the petitioner is senior to the respondent No. 6 in the category, in the absence of vacancy to accommodate both of them, he will have a superior claim in the matter of provincialization by virtue of his seniority.

"8. What then is the term "category"? The term "category" is not expressly defined in the Act. In the instant case, we are concerned with the teaching staff of a High School. A clue to the

meaning of the term "category" can, however, be had from the Schedule appended to the Act. In the second column of Schedule, it is found that all the posts of Assistant Teacher (Science) are made to form one category of the teaching staff in a High School. Therefore, the term "seniority in the category" in the context of provincialization of employees of a High School under the Act can only mean seniority among the Assistant Teachers (Science) of the School. So read, the respondent No. 6, who joined the post of Assistant Teacher (Science) on 27.3.1995 in the School, is admittedly senior to the petitioner in the category of Assistant Teacher (Science) as the latter joined the School only on 21.5.1998.

9. It is, however, contended by the Mr. D.K. Bhattacharya, the learned counsel for the petitioner, that as out of the three Assistant Teachers (B.Sc.), the First Assistant Teacher (Science), namely, Md. Gias Ali Talukdar, has the subject combination of Botany, Zoology and Chemistry in B.Sc., the service of the petitioner, who is a B.Sc. with the subject combination of Physics, Chemistry and Mathematics, became essential to take classes in Physics and Mathematics, which was why he was shown as Second Assistant Teacher (Science) at the time of applying for recognition of the School. In my opinion, this contention cannot be accepted for the simple reason that seniority cannot be determined on the basis of the need for the service of the petitioner to teach Physics and Mathematics: no such provision is made under the Act. There is no dispute at the bar that the respondent No. 7 is an Assistant Teacher (Science) even though he

may be teaching only in Advanced Mathematics. Once it is held that he belongs to the category of Assistant Teachers (Science), his seniority vis-a-vis the petitioner must be determined in accordance with the 2nd Proviso to Section 4(2) of the Act. Since the respondent No. 7 is found to be senior to the petitioner and since there is no other post of Assistant Teacher (Science) to accommodate the petitioner, he has been rightly declared to be excess Assistant Teacher. No other issue, on the basis of the pleadings of the parties, survives for consideration."

**17.1.** In view of the above, the submission of Mr. Choudhury, learned counsel for the petitioner, left this court unimpressed. The learned Tribunal, though framed no issue on this point, yet it had directed a discussion to the aforesaid aspect and arrived at the finding that subject combination cannot be the criteria for the determination of seniority. And there appears to be no infirmity of illegality in the said finding of the learned Tribunal and the same is supported by a decision of this court in **Syed Saidul Islam (supra)**.

**18.** Under the given facts and circumstances, this Court finds no merit in this petition and accordingly, the same stands dismissed. Interim order, dated 16.08.2023, passed earlier, stands vacated.

**19.** Consequent upon dismissal of the petition and vacation of the interim order, now the state respondent shall take the process of filling up the two posts of Science Teachers, already created and allotted to Badla Rangapani High School, to its logical conclusion, after considering the claim being made by the respondent No. 5 and 6, under the provision of Section 4(1) of the Act of 2011, and shall give effect of such

provincialisation, with effect from 01.01.2013, on which the services of other teachers of Badla Rangapani High School were provincialised.

**20.** The parties have to bear their own costs.

**Sd/- Robin Phukan**  
**JUDGE**

**Comparing Assistant**