

GAHC010158012023



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

Case No. : WP(C)/4387/2023

RAHOM ALI AHMED
S/O LATE ABED ALI AHMED, ASSISTANT TEACHER (SCIENCE) OF BADLA
RANGAPANI HIGH SCHOOL, R/O BADLA PATHER, P.O.-BADLA BAZAR, P.S.-
BOKO, DIST- KAMRUP, ASSAM

VERSUS

THE GOVERNMENT OF ASSAM AND 5 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY, EDUCATION
(SECONDARY) DEPARTMENT, GOVERNMENT OF ASSAM, 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 HEAD MASTER CUM SECRETARY OF BADLA RANGAPANI HIGH
SCHOOL
P.O.-BADLA BAZAR
P.S.-BOKO
DIST-KAMRUP
ASSAM
PIN-781127

5:MD. AZAHAR ALI AHMED

S/O LATE AFAJ UDDIN AHMED
R/O CHOUDHURIPAM
P.O.-KALATOLI BAZAR
P.S.-CHHAYGAON
DIST- KAMRUP
ASSAM
PIN-781127

6:ABDUR RASHID AHMED
S/O MD. JANAB ALI
R/O BADLA PATHER
P.O.-BADLA BAZAR
P.S.-NAGARBERA
DIST- KAMRUP
ASSA

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

16.08.2023

Heard Mr. K.N. Choudhury, learned Senior counsel assisted by Mr. A. Ali, learned counsel for the petitioner. Also heard Mr. U.K. Nair, learned Senior counsel assisted by Mr. S. Hazarika, learned counsel for the respondent No. 5; Mr. D. Kaiyum, learned counsel for the respondent No. 6 and Mr. U. Sharma, learned Standing counsel, Secondary Education Department for respondents No. 1, 2 & 3

2. The dispute which arises in the present writ petition pertains to the issue of Provincialisation of the petitioner and the respondents No. 5 & 6 under the School of Badla Rangapani High School. The claim of the petitioner is that he is an Assistant Teacher (Science) as also are the respondents No. 5 & 6. However,

the petitioner is a Teacher who has qualification in Physics, Chemistry and Mathematics whereas the respondent No. 5 has Mathematics, Chemistry and Zoology and respondent No. 6 has Botany, Zoology and Mathematics. Because of the *inter se* seniority dispute arising between the petitioner and the private respondents, the matter came before this Court earlier and pursuant to order dated 26.05.2017 passed in W.P.(C) No. 2913/2013 the matter was relegated to the concerned Education Tribunal. The Education Tribunal by its order dated 31.05.2023 has rendered a finding holding the respondents No. 5 & 6 to be senior to the writ petitioner. It is against this order that the petitioner is before this Court challenging the same.

3. The learned Senior counsel for the petitioner submits that the petitioner and the respondents No. 5 & 6 are not Provincialised as on date and their cases have been under consideration before the competent authorities, the provisions of Assam Venture Educational Institutions (Provincialisation of Services) Act 2011 are not applicable. Instead the provisions of Assam Education (Provincialization of Service of Teachers and Reorganization of Educational Institutions) Act, 2017 will be applicable and which according to the learned Senior counsel for the petitioner has also been recorded by the Tribunal in Paragraph-6 of the Judgment. It is, therefore, submitted that the provisions of Assam Venture Educational Institutions (Provincialisation of Services) Act 2011 will not be applicable where the criteria for Provincialisation was on the basis of seniority rather the criteria as mandated under the Provincialisation Act of 2017 will be applicable. It is further submitted that under the Provincialisation Act of 2017, the earlier Act of 2011 was repealed and there is no 'savings' clause under the said Act.

4. Per contra, Mr. Nair has strenuously urged that the provisions of Act of

2011 are applicable as the cases of the petitioner as well as the respondents were taken up for consideration by the competent authority during the currency of the 2011 Act. Mr. Nair refers to the Judgment of Division Bench of this Court rendered in *Kishore Kumar Deba Vs. State of Assam & Ors.* reported in *2021 (2) GLT 883* to submit that the issue has been finally settled by a Division Bench of this Court besides there being catena of Judgments rendered by other Coordinate Benches. As such, the consideration of seniority *inter se* between the petitioner and the respondent No. 5 & 6 being the criteria under the provisions of under the 2011 Act and the Provincialisation will have to be done on the basis of seniority. The Tribunal has, therefore, correctly arrived at the finding. As such the challenge made to the Tribunal ought not to be entertained and the writ petition be rejected.

5. Mr. U. Sharma, learned counsel for the Department submits that instructions are necessary in the matter

6. Mr. D. Kaiyum learned counsel for the respondent No. 6 adopts the arguments of Mr. Nair. He submits that he is senior to the petitioner and therefore the petitioner has no claim for seniority.

7. The issue raised by the contesting parties is whether in the facts of the case the provisions of the Act of 2011 or the provisions of the Act of 2017 are applicable inasmuch as under the Act of 2011, the criteria for Provincialisation was on the basis of Seniority under proviso to Section 4(2) whereas under the Act of 2017 there is no such criteria prescribed. Having heard the learned counsels for the parties, this Court is of the view that this matter will require consideration in view of the interpretation of the various provisions of Act of 2017 read with the erstwhile Act of 2011.

- 8.** Let Notice be issued, Returnable in four weeks.
- 9.** Since the learned counsels have entered appearance on behalf of the respondents No. 1, 2, 3, 5 & 6, Notices are waived. However, extra copies be furnished within one week from today.
- 10.** Steps for service of notice on the respondent No. 4 be taken by registered post with A/D within one week from today.
- 11.** Considering the submissions made by the learned counsels for the parties, it is directed that the Department will not proceed for regularization of the petitioner or the respondents on the basis of the Judgment of the Tribunal on 31.05.2023 until the next date fixed.
- 12.** Let the matter be listed again on 14.09.2023.

JUDGE

Comparing Assistant