



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

WP(C) Nos. 4498/2024 & 4628/2023

I. WP(C) No. 4498/2024

Mosharraf Hussain,
S/o Mojibar Rahman,
Village-Jhagrapar Part-I, PO-Jhagrapar,
PS-Dhubri, Dist.-Dhubri, Assam,
Pin-783325.

.....Petitioner.

-Versus-

1. The State of Assam,
Represented by the Commissioner & Secretary to the
Government of Assam, Education Department (Elementary),
Dispur, Guwahati-06.
2. The Director of Elementary Education, Assam,
Kahilipara, Guwahati-19.
3. The State Level Scrutiny Committee,
Represented by the Chairman-cum-Director of Elementary Education,
Assam.
4. The District Elementary Education Officer,
Dhubri, Assam.
5. The Executive Director,
Sarba Sikhsha Abhiyan Mission (SSA), Assam,
Kahilipara, Guwahati-781019.
6. The District Scrutiny Committee,
Dhubri, represented by its Chairman,
Dist.-Dhubri, Assam.
7. Abdul Karim Mollah @ Abdul Kasim Mollah,
S/o Lt. Abdus Salam Mollah,

Vill-Kalapakani Part-II, PO-Patamari,
Dist.-Dhubri, Pin-783324.

8. Abu Taher Sheikh,
S/O Sorhab Ali,
Vill - Kalapakani Part - II, P.O. - Patamari,
Dist.- Dhubri, Assam, Pin - 783324.

.....Respondents.

For the Petitioner : Mr. I.H. Laskar,
Mr. P.K. Deka,
Mr. P. Daimary,
Mr. R. Karim,
Ms. N.M. Longkeng.

.....Advocates.

For the Respondents : Mr. A. Phukan, SC, Ele. Edu.,
Mr. J. Abedin,
Mr. K.I. Mazumder,
Mr. M.Z. Rahman, SC, SSA,
Mr. H. Das.

.....Advocates.

II. WP(C) No. 4628/2023

Abdul Karim Mollah,
S/o Late Abdus Salam Mollah,
Vill-Kalapakani, Part-II, PO-Patamari,
Dist.-Dhubri, Assam, Pin-783324.

.....Petitioner.

-Versus-

1. The State of Assam,
Represented by the Secretary to the Govt. of Assam,
Department of School Education,
Dispur, Guwahati-781006.
2. The Director of Elementary Education, Assam,
Kahilipara, Guwahati-781019.
3. The State Level Scrutiny Committee,
Represented by the Chairman-cum-Director of Elementary Education,

Assam, Kahilipara, Guwahati-781019.

4. The District Level Scrutiny Committee,
Represented by its Chairman, Deputy Commissioner,
Dhubri, Pin-783330.
5. The District Elementary Education Officer,
Dhubri, Dist.-Dhubri, Assam, Pin-783330.

.....Respondents.

For the Petitioner : Mr. J. Abedin,
Mr. N. Sarma,
Mr. K.I. Mazumder.

.....Advocates.

For the Respondents : Mr. A. Phukan, SC, Elem. Edu.,
GA, Assam.

.....Advocates.

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

Date(s) of Hearing :- 25.02.2026

Date on which judgment is reserved :- 25.02.2026

Date of pronouncement of judgment :- **27.05.2026**

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. P.K. Deka, learned counsel for the petitioner in WP(C) No.4498/2024 and Mr. J. Abedin, learned counsel for the petitioner in WP(C) No.4628/2023 as well as for the respondent No.7 in WP(C) No.4498/2024. Also heard Mr. A. Phukan, learned standing counsel for the respondents in Elementary Education Department and Mr. H. Das, learned counsel for the respondent No.8 in WP(C) No.4498/2024.

2. As parties involved in both the petitions are same, and the issues required to be addressed in both the petitions are inter-related and as agreed upon by both the parties, it is proposed to dispose of both the petitions by this common judgment and order.

3. It is to be noted here that WP(C) No.4498/2024, is preferred by the petitioner, namely, Mosharraf Hussain challenging the impugned order, dated 04.02.2021, issued by the respondent No.2, by which the service of the teacher in Kalapakani Sakatun Nessa M.E. Madrassa have been provincialized without, however, the service of the petitioner, who has been rendering service as an Assistant Teacher in the subject Social Science. The petitioner has also prayed for issuing direction to the respondent authorities, to provincialize his service.

3.1. And in WP(C) No.4628/2023, the petitioner, namely, Abdul Karim Mollah, has challenged the order, dated 18.07.2023, whereby

the provincialization of service of the petitioner, dated 05.02.2021, has been cancelled, without assigning any reason. The petitioner also prayed for issuing direction to the respondents, more particularly the respondent No.2, to restore the order of provincialization, dated 05.02.2021, in respect of the petitioner, and also prayed for allowing him to continue his service in the said institution, as Tutor, with all consequential benefits.

Background Facts:-

4. The background facts, leading to filing of the WP(C) No.4498/2024 and WP(C) No. 4628/2023 are briefly stated as under:-

“The petitioner was appointed as an Assistant Teacher in Kalapakani Sakatun Nessa M.E. Madrassa on a temporary basis, on 14.06.2008, by the Managing Committee of the said Madrassa. And accordingly, he joined as Assistant Teacher and has been discharging his duties, teaching Social Science. Thereafter, the District Scrutiny Committee has prepared a report for provincialization of service, as per the statement submitted by the Headmaster of the concerned Madrassa and his name was mentioned at Sl.No.3, as an Assistant Teacher, against Social Science subject, whereas the respondent No.7, namely, Abdul Karim Mollah, who is the petitioner in WP(C) No.4628/2023, is shown as Hindi Teacher, against the subject language. Thereafter, vide Notification, dated 04.02.2021, the respondent No.2, has provincialized the services of 5(five)

teachers, including private respondent No.7, and thereby deprived of the writ petitioner, from being provincialized, although, he was the only Social Science teacher in the said Madrassa.

Then, in the year 2017, the Government has enacted the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (hereinafter referred to as the Act of 2017) and Section 3 of the said Act prescribes eligibility criteria for selection of educational institutions, for provincializing the services of teachers and tutors. And Clause (xi) of Section 3(1) of the Act of 2017, provides for the number of teachers or tutors in a venture upper primary school.

The total number of enrolment of students in the Kalapakani Sakatun Nessa M.E. Madrassa was above 100, and as per Section 19 and 25 of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 (hereinafter referred to as the Act of 2009) in the aforesaid Madrassa, there is a requirement of full-time head teacher, and at least one teacher each for (i) Science and Mathematics, (ii) Social Studies and (iii) Languages, and as per the provisions of the Act of 2009 and the Act of 2017, the service of the petitioner should have been provincialized as Assistant Teacher, against the subject Social Science, since he, all along, has been teaching Social Science subject. But, vide impugned

Notification, dated 04.02.2021, the respondent No.2 in contravention to the provisions of the Act of 2009, in a most illegal and arbitrary manner, did not provincialize the service of the petitioner, in the post of Assistant Teacher, against the subject Social Science. Instead, the services of respondent No.7 and other teachers have been provincialized in the post of Assistant Teacher in the aforesaid Madrassa and further, the report of the District Scrutiny Committee prepared on the basis of the statement forwarded by the Headmaster of the aforesaid Madrassa, the name of the respondent No.7 and other provincialized teachers were shown against the subject – Language, except Meheboob Alom Ahmed, who was provincialized against Mathematics and Science subjects.

Thereafter, being aggrieved by the impugned order, dated 04.02.2021, the present petitioner has preferred one writ petition, being WP(C) No.2143/2021, before this Court. But, vide order, dated 16.03.2022, this Court was pleased to dispose of the same without determining the rights of the parties and directed the respondent No.2, to examine the matter as to whether the said Madrassa has 236 nos. of students and if yes, as to whether one additional post of teacher can be provincialized over and above three teachers, who were provincialized under the Act of 2017, and further directing the respondent No.2 to examine as to which teacher of the said school is to be provincialized against such

additional post and in doing so, the case of the petitioner shall be given due consideration.

Thereafter, the petitioner has submitted the order of this Court, dated 16.03.2022, before the respondent No.2. But, the same failed to yield any result for which the petitioner had instituted the Cont.Cas(C) No.95/2023. And during the pendency of the said contempt petition, the respondent No.2 had passed the impugned order, dated 18.07.2023, cancelling the provincialization of service of the respondent No.7, based on the report of hearing, in respect of the WP(C) No.2143/2021.

Thereafter, the respondent No.2 had issued the order dated 21.06.2024, stating that after due verification by the SLSC and the Joint Committee, had recommended that 5(five) nos. of teachers for provincialization as Tutor against the said school, wherein the name of the petitioner is reflected as the sole teacher for the subject of Social Science. Moreover, it was also stated that the Kalapakani Sakatun Nessa M.E. Madrassa is not entitled for provincialization of services of more than 5 teachers, as per Section 3(1)(xi) of the Act of 2017 based on the enrolment for the year 2016-17 and 2017-18 and thereafter, the contempt petition was closed.

Thereafter, the petitioner has approached the respondent No.2 and submitted his representation on 01.07.2024, and furnished a copy of the detailed order, dated

21.06.2024, issued by the respondent No.2, with a copy of the judgment and order, dated 16.03.2022, passed in WP(C) No.2143/2021. But, the same failed to evoke any response from the respondents.

Then, after cancellation order dated 18.07.2023, so passed by the respondent No.2, the respondent No.7, Abdul Karim Mollah, also approached this Court by filing a writ petition, being WP(C) No.4628/2023, challenging the order, dated 18.07.2023, suppressing the material fact that the present petitioner is the only Social Science teacher of the said Madrassa, and he has obtained the interim stay of the order dated 18.07.2023, issued by the respondent No.2.

And under such circumstances, he has approached this Court by filing the present petition seeking the relief as aforesaid and the respondent No.7 of this petition has already filed the WP(C) No.4628/2023, challenging the order dated 18.07.2023.”

5. The respondent No.2, the Director of Elementary Education, Assam, has filed affidavit-in-opposition, wherein it is stated that under Section 3(1)(xi) of the Act of 2017, in case of Venture Upper Primary School, there shall be minimum three teachers or tutors at least one teacher each for (a) Science and Mathematics, (b) Social Studies and (c) Languages, and the said Section also provides that for additional posts, it shall be considered in accordance with the norms and standard, stipulated under Sections 19 and 24 of the Act

of 2009. It is also stated that the District Scrutiny Committee, Dhubri, submitted proposal for provincialization of services as per the Act of 2017 against Kalapakani Sakatun Nessa M.E. Madrassa (now M.E. School) with the following 6(six) teachers:

- (i) Abu Taher Sheikh, Language.
- (ii) Sekender Ali, Language.
- (iii) Mosharraf Hussain, Social Science.
- (iv) Meheboob Alom Ahmed, Maths & Science.
- (v) Kashem Ali, Language.
- (vi) Abdul Karim Mollah, Language.

5.2. It is also stated that based on the recommendation of the District Scrutiny Committee, Dhubri, the proposal, as received from the District Elementary Education Officer (DEEO), Dhubri, was placed before the State Level Scrutiny Committee, followed by the Joint Committee, and as per decision of the Committee, vide minutes dated 24.07.2020, the Joint Committee decided to verify the following parameters of DISE data maintained by NUEPA, New Delhi of the proposed school as per the Act of 2017:

- (a) Whether the name of school appears in the DISE data maintained by NUEPA, New Delhi for the year 2009 or before?
- (b) Whether the name of the incumbent appears in the DISE data of 2011 and afterwards?
- (c) Enrollment position of the school during 2016-17 and 2017-18.

5.3. Further it is stated that as per instruction of the Joint Committee, vide minutes dated 24.07.2020, the SSA, Assam submitted the DISE data verification report maintained by NUEPA, New Delhi, from which the enrolment position of the petitioner's school i.e. Kalapakani Sakatun Nessa M.E. School during 2016-17 and 2017-18 are shown as 170 and 137, respectively and as per Section 3(1)(xi) of the Act of 2017, the said school was entitled for provincialization of services of 5(five) nos. of teachers based on the enrolment position 170, during 2017-18. Accordingly, (i) Abu Taher Sheikh (Language), (ii) Sekender Ali (Language), (iii) Meheboob Alom Ahmed (Maths & Science), (iv) Kashem Ali (Language) and (v) Abdul Karim Mollah (Language) are found to be fulfilled all the criteria laid down in the Act of 2017.

5.4. It is also stated that after the recommendation of the State Level Scrutiny Committee, as well as the Joint Committee, the proposal was submitted to the Government for creation of posts against Kalapakani Sakatun Nessa M.E. School. Subsequently, the Government had sanctioned posts of Tutors, as mentioned above, and connected Notification was issued on 05.02.2021. Thereafter, the petitioner approached this Court by filing WP(C) No.2143/2021, and thereafter, a meeting of the State Level Scrutiny Committee was convened on 12.12.2022, and upon verification of the data in respect of the petitioner's school, discrepancies have been found in the recommendation of teachers as the names of teachers recommended are different in hard copy in prescribed format and

the copies of prescribed format sent through email and more than one language teacher was provincialized in violation of Section 3(1)(xi) of the Act of 2017. And thereafter, the State Level Scrutiny Committee decided to recommend the name of the petitioner as Social Science teacher of Kalapakani Sakatun Nessa M.E. Madrassa to the Government for provincialization of services as per the Act of 2017, by cancelling the service of one of the language teachers (junior most amongst the language teachers).

5.5. It is also stated that the service of Abdul Karim Mollah, the respondent No.7, was initially provincialized as Tutor along with 4(four) others against Kalapakani Sakatun Nessa M.E. School vide Notification, dated 04.02.2021, which is also under challenge in the present writ petition, has approached this Court in WP(C) No.4628/2023, challenging the order dated 18.07.2023, passed by the respondent No.2, whereby the provincialization order, dated 05.02.2021, in favour of the respondent No.7 has been cancelled. However, vide order dated 11.08.2023, by an interim order, passed in WP(C) No.4628/2023, the order dated 18.07.2023 is stayed.

5.6. Further, it is also stated that as per recommendation of the District Scrutiny Committee, Dhubri, the following teachers are eligible for provincialization of services as Tutor, under the provision of the Act of 2017 against the Kalapakani Sakatun Nessa M.E. School:-

- (i) Abu Taher Sheikh, Language.
- (ii) Sekender Ali, Language.

- (iii) Meheboob Alom Ahmed, Maths & Science.
- (iv) Kashem Ali, Language.
- (v) Mosharraf Hussain, Social Science.

6. The respondent No.7, the writ petitioner in WP(C) No.4628/2023, has filed affidavit-in-reply to the affidavit-in-opposition filed by the respondent No.2, wherein he had taken a stand that the SLSC and the Joint Committee after due verification, recommended and approved 5(five) teachers for provincialization and that though the name of the petitioner was recommended by the DLSC, Dhubri, but the SLSC and the Joint Committee did not approve the same. Further, it is stated that as per enrolment data of the school, it needs 5 nos. of teachers and one head teacher and that the District Level Scrutiny Committee has rightly recommended the names of 6 teachers and at present there are 236 nos. of students in the school and in view of that number of students, as per the Act of 2009, 7(seven) teachers, plus the Headmaster, all total 8 teachers are required in the said school, and that the authority has decided in the meeting, dated 12.12.2022, to provincialize the service of the writ petitioner against the subject of Social Science by cancelling the junior most amongst the language teachers. But, the respondent No.7 is not the junior most language teacher and that the respondent No.7 has not infringed the right of the petitioner and the petition is devoid of merit and therefore, it is contended to dismiss the same and it is also contended that the

petitioner did not possess the required educational qualification in the Higher Secondary School.

7. The respondent No.8, the In-Charge Headmaster of Kalapakani Sakatun Nessa M.E. Madrassa, has also filed his affidavit-in-opposition, wherein it is stated that for provincialization of the school, under the Act of 2017, the information and particulars were submitted before the District Level Scrutiny Committee along with the statement, dated 03.06.2017, showing the educational and professional qualifications of all the teachers, serving in the said school, namely, the respondent No.8 himself (Social Science & English), Sekender Ali (English & Assamese), Mehbub Alom Ahmed (Mathematics & Science), Abdul Karim Mollah (Hindi), Kashem Ali (Arabic) and the petitioner (Assamese & Social Studies) and the District Scrutiny Committee has approved the same and thereafter, the matter was placed before the State Level Scrutiny Committee, and the State Level Scrutiny Committee has approved the service of the respondent No.8, and 4 other teachers, vide order, dated 04.02.2021. But, in the final approval the writ petitioner was left out from the benefit of provincialization.

7.1. Thereafter, the petitioner has preferred the WP(C) No.2143/2023, challenging the provincialization of 4 teachers and the said petition was disposed of in the line of the order dated 16.09.2021, passed in WP(C) No.4670/2021, whereby direction was issued upon the District of Elementary Education to examine as to whether the said school has 236 nos. of students and if yes, as to

whether one additional post of teacher can be provincialized and further, it is provided that if the school is entitled to one additional post of teacher, then the case of the petitioner (Mosharraf Hussain) shall be given due consideration. His further contention is that the writ petitioner did not have the required educational qualification, as at the time of entry, he did not acquire the educational qualification and on the date of joining he did not possess the required educational qualification i.e. 45% in HSLC/HS, at the time of his appointment as required by the Rule of 2005, and under the given facts and circumstances, it is contended to dismiss the petition.

Submissions:-

8. Mr. P.K. Deka, learned counsel for the petitioner, in WP(C) No.4498/2024, has supported the order, dated 18.07.2023, by which the respondent authority had corrected the mistake of non-provincialisation of service of the petitioner, vide impugned order 04.02.2021. He submits that order, dated 18.07.2023, was passed in accordance with the provisions of Section 3(i) (xi) of the Act of 2017. He further submits that this court in WP(C) No. 4628/2023, vide order dated 11.08.2023, was pleased to stay operation of the order dated 18.07.2023, and thereby the petitioner is deprived of the benefit of provincialisation. He also submits that in the writ WP(C) No. 4628/2023, the petitioner was not arrayed as a party and this goes to show that he has no grievance against the petitioner. Under such circumstance, Mr. Deka has contended to allow this petition and to vacate the stay order dated 18.07.2023.

8.1. Per contra, Mr. Abedin, learned counsel for the petitioner in WP(C) No. 4628/2023, has supported the order dated 11.08.2023, by which the order of cancellation of provincialisation of service of the petitioner, dated 18.07.2023, issued by the respondent No.2, was stayed. Mr. Abedin also submits that the DLSC and the SLSC and Joint Committee, having considered all aspect, had recommended for provincialisation of service of the petitioner, and accordingly, the service of the petitioner was provincialized, vide order dated 05.02.2021. And in that view of the matter, the order of cancellation, dated 18.07.2023, issued by the respondent No.2, is illegal and arbitrary and as such, the same requires interference of this court. He further submits that the earlier order of provincialisation, dated 05.02.2021, in respect of the petitioner may be restored. Mr. Abedin has also pointed it out that given the enrolment position of the students as per Annexure-3 of WP(C) No. 4498/2024, in the year 2016, in the School was 170 and as such, provincialisation of service of another teacher in the said Madrassa is justified, and since the petitioner herein is rendering service for a long period, his claim for provincialisation may be considered.

8.2. On the other hand, Mr. A. Phukan, learned standing counsel for the respondents in Elementary Education Department, submits that the order, dated 18.07.2023, was passed by correcting the mistake done in the order dated 04.02.2021. He also submits that as per provisions of Section 3(i) (xi) of the Act of 2017, there is a requirement of provincialisation of service of teacher in the subject Social Science and as no teacher in the subject Social Science was

provincialised vide order, dated 04.02.2021, the same was corrected by order dated 18.07.2023, by the respondent No.2. Therefore, Mr. Phukan has contended to dismiss the WP(C) No. 4628/2023.

8.3. 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 gone through the relevant provision of law. Also perused the orders so impugned in both the petitions.

Consideration and Analysis:-

9. The basis facts, in both the petitions, are not in dispute. The petitioner in WP(C) No.4498/2024, namely, Mosharraf Hussain was appointed as an Assistant Teacher in Kalapakani Sakatun Nessa M.E. Madrassa on a temporary basis, on 14.06.2008, by the Managing Committee. Then he joined as Assistant Teacher and has been discharging his duties, by teaching Social Science in the said Madrassa. Thereafter, the District Scrutiny Committee has forwarded his name at Sl.No.3 of the report, for provincialisation of his service, as an Assistant Teacher against Social Science subject. In the said report the respondent No.7, namely, Abdul Karim Mollah, who is the petitioner in WP(C) No.4628/2023, is shown as Hindi Teacher, against the subject language.

9.1. Thereafter, vide notification, dated 04.02.2021, the respondent No.2, has provincialized the services of 5(five) teachers, including private respondent No.7, and thereby deprived of

Mosharraff Hussain, the writ petitioner in WP(C) No. 4498/2024, from being provincialized, although he was the only Social Science teacher in the said Madrassa. Then being aggrieved Musarraff Hussain has challenged the order, dated 04.02.2021, in WP(C) No.2143/2021, before this Court and the same was disposed of vide order dated 16.03.2022, directing the respondent No.2, to examine the matter as to whether enrolment in the said Madrassa was 236 nos. of students and if yes, as to whether one additional post of teacher can be provincialized over and above three teachers, who were provincialized under the Act of 2017, further, the respondent No.2 was directed to examine as to which teacher of the said school is to be provincialized against such additional post and in doing so, the case of the petitioner shall be given due consideration.

9.2. Then due to inaction of respondent No.2, Musarraff Hussain has instituted the Cont.Cas(C) No.95/2023. Only then the respondent No.2 had passed the impugned order, dated 18.07.2023, cancelling the provincialization of service of the respondent No.7, based on the report of hearing.

9.3. Thereafter, the respondent No.2 had issued the order dated 21.06.2024, stating that after due verification by the SLSC and the Joint Committee recommended that 5(five) nos. of teachers for provincialization as Tutor against the said school and wherein the name of the petitioner is reflected as the sole teacher for the subject of Social Science. It was also stated that the Kalapakani Sakatun Nessa M.E. Madrassa is not entitled for provincialization of

services of more than 5 teachers, as per Section 3(1)(xi) of the Act of 2017 based on the enrolment for the year 2016-17 and 2017-18 and thereafter, the contempt petition was closed vide order dated 24.06.2024.

9.4. Then, after order of cancellation, dated 18.07.2023, being passed by the respondent No.2, the respondent No.7, Abdul Karim Mollah, also approached this Court by filing WP(C) No.4628/2023, challenging the order, dated 18.07.2023, wherein, interim stay of the order dated 18.07.2023, was granted.

10. It is to be noted here that Clause (xi) of Section 3(1) of the Act of 2017 is read as under :-

“3(1)(xi). In case of Venture Upper Primary School there shall be minimum three teachers or tutors at least one teacher each for (a) Science and Mathematics (b) Social Studies and (c) Languages:

Provided that for additional posts it shall be considered in accordance with the norms and standard stipulated in the Schedule under sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009.”

10.1. Further, in view of relevant Schedule of Section 19 and 25 of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 (hereinafter referred to as the Act of 2009) the requirement of numbers of teachers are extracted as under:

1. Number of teachers:-

(a) For first class to fifth class

<u>Admitted children</u>	<u>Numbers of teachers</u>
Up to Sixty	-Two
Between sixty to ninety	- Three
Between ninety-one to one hundred and twenty	- Four
Between One hundred and twenty-one to two hundred	- Five

Above One hundred and fifty children -- one Head teacher

Above Two hundred children -- Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.

(b) For sixth class to eighth class:-

1) At least one teacher per class so that there shall be at least one teacher each for-

(I) Science and Mathematics;

(II) Social Studies;

(III) Languages.

2) At least one teacher for every thirty-five children.

3) Where admission of children is above one hundred:-

(i) a full time head-teacher;

(ii) part time instructors for-

(A) Art Education;

(B) Health and Physical Education;

(C) Work Education.

10.2. Thus, it appears that in the Kalapakani Sakatun Nessa M.E. Madrassa, there is a requirement of full-time head teacher and at least one teacher each for (i) Science and Mathematics, (ii) Social

Studies and (iii) Languages and as per the provisions of the Act of 2009 and the Act of 2017, given the enrollment position of the students.

11. In the instant case, the respondent No.2, in view of the relevant provision of law, as discussed herein above, has fairly admitted in paragraph No. 8 of the Affidavit in opposition, dated 17.07.2025, that more than one language teacher was provincialised in violation of Section 3(1) (xi) of the Act of 2017.

12. Further, respondent No.2, in the affidavit dated 24.09.2025, had categorically stated that following teachers are found to be eligible for provincialization of services as Tutors, under the provision of the Act of 2017, against the Kalapakani Sakatun Nessa M.E. School:-

- (i) Abu Taher Sheikh, Language.
- (ii) Sekender Ali, Language.
- (iii) Meheboob Alom Ahmed, Maths & Science.
- (iv) Kashem Ali, Language.
- (v) Mosharraf Hussain, Social Science.

13. And in view of the aforementioned admitted facts, and in view of the cancellation of the provincialization order of the respondent No.7 and also in view of the admission made, that more than one language teacher was provincialized in violation of Section 3(1)(xi) of the Act of 2017, this Court is of the view that nothing left to be

adjudicated in the writ petition No. 4498/2024. Moreover, the respondent No. 2 had also issued an order dated 21.06.2024, after due verification.

14. Further, in view of the contention made by Mr. Abedin, learned counsel for the respondent No.7, and the data in respect of the enrolment of students in the said Madrassa, which has been projected before this Court, this Court is of the view that there is a requirement to relook the number of enrolment in the said school so as to ascertain the requirement of provincialization of another teacher.

Conclusion:-

15. In the given factual and legal scenario following observation and directions are passed:-

- (i) By a mandamus of this Court, the respondents authorities are directed to provincialize the services of the petitioner, namely Mosharraf Hussain, in WP(C) No. 4498/2024, in the subject -Social Science with effect from the date of provincialization of the said Madrassa, vide order dated 04.02.2021, and to give effect of the order, dated 21.06.2024.
- (ii) Respondent No.2 is further directed to examine the data in respect of the enrolment of students in the Madrassa, which has been projected before this Court, by the petitioner in WP(C) No. 4628, namely, Abdul Karim

Mullah and thereafter, to take a decision as to whether one additional post is required in the said Madrassa and if it is found to be justified, then the service of respondent No.7 has also to be provincialized with effect from the date of 04.02.2021.

- (iii) 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.
- (iv) The petitioners shall obtain a certified copy of this order and place the same before the respondent authorities, within a period of one week from today.

16. The parties have to bear their own costs.

Sd/- Robin Phukan
JUDGE

Comparing Assistant