

GAHC010192762024



2026:GAU-AS:3155

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

Case No. : WP(C)/4879/2024

SAROJ UPADHYAYA
S/O- LATE TIRTHARAJ UPADHYAYA, VILL.- SOCIETY, P.O. AND P.S.
SILAPATHAR, DISTRICT- DHEMAJI, ASSAM, PIN-

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
SCHOOL EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 19

3:THE INSPECTOR OF SCHOOLS
DHEMAJI DISTRICT CIRCLE
DHEMAJI
DIST.- DHEMAJI
PIN-

4:THE DISTRICT SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN
C/O- O/O THE DEPUTY COMMISSIONER
DISTRICT- DHEMAJI
ASSAM
PIN

Advocate for the Petitioner : MR. M K NEOG, MR. S K SINGHA

Advocate for the Respondent : SC, SEC. EDU., GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 27-02-2026

Heard Mr. S.K. Singha, learned counsel for the writ petitioner. Also heard Ms. D. Musahary, learned standing counsel, Secondary Education, Assam.

2. The petitioner in the present proceeding has raised a grievance with regard to non-provincialisation of his services as Assistant Teacher (Sanskrit) in Silapathar Town High School, Dhemaji, in terms of the direction passed by this Court vide order dated 17-06-2016, in W.P.(C) No. 6024/2014, and the provincialisation effected vide order dated 15-07-2024, in respect of the similarly situated Assistant Teachers (Sanskrit).

3. The petitioner was appointed as an Assistant Teacher for teaching the subject of Sanskrit in Silapathar Town High School on 11-11-2005. The school at the time of engagement of the petitioner was in its venture stage. The appointment of the petitioner was provisionally approved by the jurisdictional Inspector of Schools upon enactment of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (hereinafter referred to as "the Act of 2011"), the names of the teachers working in the Silapathar Town High School, including that of the petitioner came to be forwarded to the jurisdictional District Scrutiny Committee (DSC) for verification of their service particulars in terms of the provisions of Section 10(4) of the Act of 2011. The jurisdictional DSC upon verification of the service particulars, of the petitioner, excluded him from the list of eligible candidates now required to be forwarded to the Director of Secondary Education,

on the ground that there was no student found appearing in the High School Leaving Certificate (HSLC) examination from the school of the petitioner with the subject Sanskrit. The petitioner being aggrieved had approached the authorities of the Education Department praying for inclusion of his name in the list of eligible teachers now prepared for provincialisation of their services in the Silapathar Town High School. A process for examination is found to have been initiated in the matter basing on the representation submitted by the petitioner, however, the said process was not taken to its logical conclusion. The process in respect of other teachers being taken to its logical conclusion, the Director of Secondary Education, Assam vide order dated 12-08-2013 proceeded to provincialize the services of teachers found eligible and working in the Silapathar Town High School. The name of the petitioner, however, did not find place in the said order.

Being aggrieved the petitioner had approached this Court by way of instituting a writ petition being W.P.(C) No. 7188/2013. A coordinate Bench of this Court vide order dated 11-12-2013 disposed of the said writ petition directing the Commissioner & Secretary to the Govt. of Assam, Education (Secondary) Department, Assam to examine the case of the petitioner either by himself or through the appointed agency and to communicate to the petitioner the outcome of the said examination. The Director of Secondary Education, Assam vide order dated 13-05-2014, proceeded to reject the claim of the petitioner by holding that from the beginning till 2013 there was no student appearing with the subject Sanskrit in the HSLC examination from the school of the petitioner and further his name was also not recommended by the jurisdictional DSC. The petitioner being aggrieved with the said order dated 13-05-2014 approached this Court by

way of instituting writ petition being W.P.(C) No. 6024/2014. It is projected in the writ petition that the other similarly situated persons also holding the post of Assistant Teachers (Sanskrit), whose case for provincialisation were also rejected on the ground that there was no student appearing in their respective schools with the subject Sanskrit in the HSLC examination, had approached this Court by instituting a writ petition being W.P.(C) No. 4644/2014.

A coordinate Bench of this Court vide order dated 25-05-2016, on noticing the grievance of the petitioners, therein, and after considering the stand of the State respondent proceeded to dispose of the said writ petition by directing the respondent authorities to take consequential action for provincialisation of the services of the petitioner, therein.

Thereafter, the writ petition preferred by the petitioner being W.P.(C) No. 6024/2014, was taken up for final consideration and a coordinate Bench of this Court vide order dated 17-06-2016, proceeded to dispose of the said writ petition following the judgment and order dated 25-05-2016 passed in W.P.(C) No. 4644/2014. The coordinate Bench vide the said order while interfering with the order dated 13-05-2014, directed the respondent authorities to provincialise the services of the petitioner by following the provisions of Section 3 of the Act of 2011. The State respondents, being aggrieved by the judgment and order dated 25-05-2016 passed in W.P.(C) No. 4644/2014 had initially instituted a review petition against the same, however, the review petition was withdrawn and an appeal came to be preferred assailing the said judgment and order dated 25-05-2016, before the Division Bench of this Court. A delay having occasioned in institution of the

said writ appeal, an interlocutory application being I.A.(C) No. 1447/2022, came to be instituted. The Division Bench of this Court vide order dated 05-12-2022 proceeded to condone the delay in instituting the connected writ appeal, assailing the judgment and order dated 25-05-2016.

The writ petitioners in W.P.(C) No. 4644/2014, being aggrieved by the order dated 05-12-2022, assailed the same before the Hon'ble Supreme Court by instituting a SLP being SLP(C) No. 985/2023. The Hon'ble Supreme Court upon considering the issues arising in the matter was pleased vide order dated 12-02-2024 to grant leave and disposed of the said appeal by directing for implementation of the judgment and order dated 25-05-2016 in their cases.

Accordingly, in terms of the directions passed by the Hon'ble Supreme Court, the Director, Secondary Education, Assam vide order dated 15-07-2024 proceeded to provincialise the services of the petitioners in W.P.(C) No. 4644/2014. The petitioner being similarly situated had approached the Director, Secondary Education, Assam by way of representation dated 16-08-2024 praying for provincialisation of his service. However, same being not considered, the present writ petition came to be instituted.

4. Mr. S.K. Singha, learned counsel for the petitioner after reiterating the facts noticed, hereinabove, had submitted that the petitioner, herein, is similarly situated like the petitioners in W.P.(C) No. 4644/2014. He further submits that no appeal having been preferred against the order dated 17-06-2016, the same has attained its finality. He submits that the order dated 17-06-2016, was not being implemented, only on the ground that the judgment and order dated 25-05-2016, passed in W.P.(C) No. 4644/2014,

was under challenge and the matters having reached the Hon'ble Supreme Court, the same was pending, therein. He submits that the Hon'ble Supreme Court having directed for implementation of the judgment and order dated 25-05-2016, the petitioner being similarly placed with the petitioners in W.P.(C) No. 4644/2014, the services of the petitioner was also mandated to be provincialized by adopting the same yardsticks as applied in respect of the petitioner in W.P.(C) No. 4644/2014.

5. Ms. D. Musahary, learned standing counsel, Secondary Education, Assam, appearing for the respondents, has submitted that after passing of the order dated 17-06-2016, in favour of the petitioner, herein, the Act of 2011 came to be declared to be unconstitutional and invalid by the Division Bench in this connection in the case of ***Chandan Kr. Neog & Ors. Vs. State of Assam & Ors.*** reported in ***(2016) 5 GauLT 296***. She submits that the Act of 2011 having been set aside, there would arise no occasion for considering the case of the petitioner, herein, under the provisions of the said Act, inasmuch as, during the validity of the same the case of the petitioner was not considered under the Act of 2011, in terms of the provisions of Section 10(4), thereof. She further submits that the services of the petitioners in W.P.(C) No. 4644/2014, was provincialised strictly in accordance with the directions passed by the Hon'ble Supreme Court *qua* the said writ petitioners and the said direction would not stand attracted in case of the petitioner, herein. Accordingly, she submits that the claim of the petitioner in the present writ petition would not mandate an acceptance.

6. I have heard the learned counsel for the parties and have also perused the materials available on record.

7. As noticed, hereinabove, upon rejection of the claim of the petitioner vide order dated 13-05-2014, the petitioner had instituted a writ petition being W.P.(C) No. 6024/2014, assailing the same. The similarly situated persons had also assailed the similar direction by way of instituting a writ petition being W.P.(C) No. 4644/2014. A coordinate Bench of this Court vide judgment and order dated 25-05-2016, passed in W.P. (C) No. 4644/2014, had proceeded to allow the said writ petition directing the respondent authorities to take consequential action with regard to the provincialisation of the services of the petitioners, therein. The said direction was so passed by the coordinate Bench of this Court by drawing the following conclusions:-

“7. A perusal of the provisions of the Act would go to show that the number of students required to be enrolled in the particular subject is not a condition precedent for the purpose of provincialisation. The schools of the petitioners are High School (two class) and the categories of staff that are required to be provincialised are laid down in the Schedule which includes Classical Teacher/Language Teacher (for Non-Assamese Medium schools). For Classical Teacher/Language Teacher for Non-Assamese Medium School, the maximum number of posts (General) that can be provincialised is two (one for Classical Teacher and one for Language). The eligibility criteria for selection of educational institutions for provincialisation of its employees are laid down under Section 3 (ii) of the Act, which provides that the minimum total enrollment of students in a class is 25 if it is a High School. Subject-wise minimum number of students is not prescribed.

8. It is not in dispute that the petitioners are otherwise eligible and their provincialisation is held up on the ground that there are no students taking up the subject of Sanskrit in the last couple of years. The stand taken, according to the understanding of the Court, is not backed up by any statutory provision. When subject of Sanskrit is available in the schools for the students to opt and take, the reasoning given is not sustainable in law. It is also seen from the documents annexed with the Affidavit-in-reply that from Donyi Polo High School, Ghagarmuch High School and Pandhowa High School no students had appeared in HS LC Examination in the subject of Sanskrit during the years 2009, 2010 and 2011, nonetheless, the services of the Sanskrit Teachers in those schools were provincialised.

9. In that view of the matter, I am of the considered opinion that the writ

petition deserves to be allowed and, accordingly, the respondents are directed to take consequential action for provincialisation of the services of the petitioners within a period of three months from the date of receipt of a certified copy of this order."

8. Thereafter, the writ petition as preferred by the petitioner assailing the order dated 13-05-2014, passed by the Director, Secondary Education, Assam was taken up for final consideration. A coordinate Bench of this Court rejected the contentions raised in the matter by the State respondents and further by noticing the judgment and order dated 25-05-2016 proceeded to interfere with the order dated 13-05-2014 with a further direction to the respondent authorities to consider the case of the petitioner for provincialisation by strictly following the provisions of Section 3 of the Act of 2011. The conclusions drawn by the coordinate Bench in the matter being relevant are extracted, here-in-below:-

“

It is not in dispute that the writ petitioner is otherwise eligible for being considered for provincialisation as per the scheme of the Act of 2011. Mr. Saikia, learned counsel for the Department has fairly admitted that there is no statutory provision which disqualified a teacher from being considered for provincialisation of his services under the Act of 2011 merely on the ground that there is no enrolment of students in the discipline of such teacher. He, however, submits that it is a matter of prudent practice to recommend teacher for provincialisation only from those disciplines where more number of students have enrolled since such disciplines need to be supported on priority basis.

The said submission of Mr. Saikia cannot be accepted primarily for two reasons. (i) As per the provision of Section 3 of the Act of 2011 provincialisation of the teaching and non-teaching staff of the school is required to be done on the basis of respective seniority of the candidates in each category. The said requirement of following seniority being the mandate of the Act, any departure there-from cannot have the approval of this Court. (ii) Secondly, the teacher cannot be held responsible either for the less number of students joining a particular discipline or appearing in the HSLC examination. The entitlements for career advancement of every teacher would have to be dealt with in strict adherence to

the provisions of the Act of 2011, as otherwise, the same may not stand the scrutiny of Articles 14 and 16 of the constitution of India.

Mr. Singha, learned counsel for the petitioner has also drawn the attention of this Court to the judgment and order dated 25-05-2016 passed by the Single Judge of this Court in W.P.(C) No. 4644/2014 wherein similar contention raised on behalf of the Education Department had been negated and this Court has held that since the Act does not prescribe any subject wise minimum number of students, hence, such criteria cannot be employed for considering provincialisation of its employees. In the said order, this Court had also observed that the Department had earlier provincialised the service of Sanskrit teacher in Donyi Polo High School, Ghagarmuch High School and Pandhowa High School even though no student had appeared in the HSLC examination for the subject of Sanskrit during the year 2009, 2010 and 2011.

For the reasons stated hereinabove, I am of the opinion that the petitioner has been able to make out a strong case warranting interference by this Court in the matter. Accordingly, the impugned order dated 19-05-2014 stands interfered with. The respondents would now consider the case of the petitioner for provincialisation by strictly following the provisions of Section 3 of the Act of 2011."

9. At this stage, it is to be noted that there was no appeal filed against the order dated 17-06-2016, passed by the coordinate Bench of this Court in W.P.(C) No. 6024/2014. However, the judgment and order dated 25-05-2016 passed in W.P.(C) No. 4644/2014 was assailed by the respondent authority initially by way of filing a review petition and subsequently, by instituting a writ appeal. As noticed, hereinabove, the delay occasioning in instituting the writ appeal having been condoned by the Division Bench of this Court vide order dated 05-12-2022 passed in I.A.(C) No. 1447/2022, the same was assailed by the petitioners in W.P.(C) No. 4644/2014, before the Hon'ble Supreme Court. The Hon'ble Supreme Court after granting leave to appeal proceeded vide order dated 12-02-2024, to dispose of the said appeal interfering with the order dated 05-12-2022 and directing the State respondent to implement the order dated 25-05-2016. The operative portion of the said order being relevant is extracted, here-in-below:-

“17. Needless to state that though the appellants were waiting in the corridors of justice from the year 2016 for implementation of the just order passed in their favour by the learned Single Judge of the High Court, they have been denied the fruits thereof for almost eight years.

18. As such, we direct the State to implement the order dated 25th May, 2016 passed by the learned Single Judge of the High Court qua the appellants herein within a period of four weeks from today.”

10. Thereafter, it is seen that the respondent authorities had vide order dated 15-07-2024, provincialised the services of the petitioners in W.P.(C) No. 4644/2014. However, the said benefit was not extended to the petitioner, herein. The plea taken by the State respondent in the present proceeding is that the services of the petitioner is not liable to be so provincialized in view of the fact that a Division Bench of this Court in the case of **Chandan Kr. Neog (Supra)** had already declared the Act of 2011 as unconstitutional and invalid and the State respondent, thereafter, had enacted “The Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017” (in short “the Act of 2017”). The said plea as taken by the respondents is now being examined. This Court finds that while the services of other teachers working in the school were provincialized by the respondents vide issuance of an order dated 12-08-2013, the case of the petitioner was not so provincialized only on the plea that there were no students appearing with the subject Sanskrit in the HSLC examination from the school, wherein, the petitioner was so appointed. The said ground was examined by the coordinate Bench of this Court in the judgment and order dated 25-05-2016 passed in W.P.(C) No. 4644/2014 as well as vide order dated 17-06-2016 in W.P.(C) No. 6024/2014 and the said plea was found to be untenable. The coordinate Bench of this Court had

found that the Act of 2011 did not prescribe any subject-wise requirement of minimum number of students and accordingly, the said plea cannot be taken for non-consideration of the case of the petitioner for provincialisation of his services. The coordinate Bench had also noted that the services of the similarly situated Assistant Teachers teaching the subject of Sanskrit came to be provincialized, although, there were no students appearing with the subject Sanskrit in the HSLC examination during the year 2009, 2010 and 2011. As already noted, hereinabove, the order dated 17-06-2016 was not implemented, inasmuch as, the State respondent had assailed the judgment and order dated 25-05-2016 passed in W.P.(C) No. 4644/2014, initially by way of instituting a review petition and thereafter, by way of instituting an appeal. The proceeding, thereafter, had reached the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 12-02-2024 had directed the State respondents to implement the judgment and order dated 25-05-2016 *qua* the petitioners in W.P.(C) No. 4644/2014. In case of the petitioner, herein, the writ petition filed by him being W.P.(C) No. 6024/2014 having been disposed of vide order dated 17-06-2016, by following the decision rendered vide judgment and order dated 25-05-2016 in W.P.(C) No. 4644/2014, the petitioner, herein, was similarly placed as that of the petitioners in the W.P.(C) No. 4644/2014. The case of the petitioner being similarly situated like that of the petitioners in W.P.(C) No. 4644/2014, only because in the writ petition instituted by the petitioner being W.P.(C) No. 6024/2014, no further proceeding, thereon, was instituted by the State respondent and/ or by the petitioner, herein, he cannot be denied the benefit flowing therefrom. The proceeding as instituted in W.P.(C) No. 4644/2014 and the orders passed, thereon, by the Hon'ble Supreme Court in the

considered view of this Court would also stand attracted in case of the petitioner, herein, inasmuch as, his writ petition being W.P.(C) No. 6024/2014, was disposed of by following the judgment and order dated 25-05-2016 passed in W.P.(C) No. 4644/2014.

11. The Hon'ble Supreme Court in the case of ***State of Karnataka & Ors. Vs. C. Lalita***, reported in ***AIR OnLine 2006 SC 209*** had laid down that the service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that the person similarly situated should be treated differently. Accordingly, only on the ground that the order dated 17-06-2016, passed by the coordinate Bench of this Court in W.P.(C) No. 6024/2014, was not assailed before the higher forums, the petitioner, herein, cannot be denied the benefit flowing to him on account of the direction contained, therein, which has since attained finality. The petitioner, herein, being similarly situated like the petitioners in W.P.(C) No. 4644/2014, he would also be entitled to similar treatment. The State respondents cannot be permitted to discriminate between the persons similarly situated only on the ground that the decision rendered in this case, was not assailed before the higher forums, inasmuch as, in respect of the petitioner, herein, although the order dated 17-06-2016, was not assailed before the higher forums, the judgment and order dated 25-05-2016 passed in W.P.(C) No. 4644/2014 was assailed and directions in favour of the petitioners, therein, came to be issued by the Hon'ble Supreme Court.

12. This Court also appreciates the settled position of law that when a set of employees has been given relief by the Court, all other identically placed persons need to

be treated alike by extending the benefit to them. The petitioners in W.P.(C) No. 4644/2014 having been provincialized in their services vide order dated 15-07-2024, the similar benefit was also required to be extended to the petitioner, herein. At this stage, this Court also notices that with the passing of the judgment and order dated 17-06-2016 and no appeal being preferred against the same, the said judgment had attained its finality and the rights of the petitioner for having his services provincialized under the Act of 2011 stood crystallised. Such right vested upon the petitioner cannot be denied to him only on the ground that subsequently the Act of 2011 was declared unconstitutional and invalid by this Court.

13. In view of the foregoing discussions, this Court is of the considered view that a *prima facie* case has been made out by the petitioner and accordingly, the respondent authorities are directed to provincialize the services of the petitioner under the provisions of the Act of 2011 w.e.f. the date the service of the other employees of the Silapathar Town High School, came to be so provincialized vide order dated 12-08-2013, with all consequential benefits. The Director of Secondary Education, Assam shall now issue appropriate order(s) towards provincializing of the services of the petitioner, herein with retrospective effect, w.e.f. 01-01-2013, i.e. the date on which the services of the other teachers of Silapathar Town High School came to be provincialized under the provisions of the Act of 2011. On such provincialisation the services of the petitioner w.e.f. 01-01-2013, the respondents, more particularly, the Director of Secondary Education, Assam shall fix the pay of the petitioner w.e.f. 01-01-2013 and thereafter, release to the petitioner the arrears of the salary and allowances so working out. It is further provided that while

fixation of pay of the petitioner, the revision of pay coming into force after 01-01-2013 shall also be reckoned and the arrears receivable by the petitioner be so computed after reckoning such revision of pay coming into force.

14. The said exercise be carried out and completed by the Director, Secondary Education, Assam as expeditiously as possible but not later than 04 (four) months from the date of receipt of a certified copy of this order.

15. With the said direction and observations, the present writ petition stands disposed of.

JUDGE

Comparing Assistant