

GAHC010194182018



2026:GAU-AS:2802

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

Case No. : WP(C)/6968/2018

SONARAM BORO AND 4 ORS.

S/O- LT. BEDERA BORO, VILL- KHATOWALPARA, PO- RATANPUR, PS-
TANGLA, DIST- UDALGURI, BTAD, PIN- 784523

2: SMTI NIRUPAMA BORO

D/O- MATI RAM BORO

VILL- PUB NALBARI

PO- TANGLA

PS- TANGLA

DIST- UDALGURI

BTAD

PIN- 784521.

3: SONARAM BORO

S/O- RANTENG BORO

VILL- BATAKUCHI

PO- BATAKUCHI

PS- TANGLA

DIST- UDALGURI

BTAD

PIN- 784523.

4: PRATUL KUMAR BAGLARI

S/O- KHUDI RAM BAGLARI

VILL- CHILABANDHA

PO- BHAKATPARA

PS- MANGALDOI

DIST- DARRANG

PIN- 784190.

5: SANDHI RAM BORO

S/O- LT. RABI RAM BORO

VILL- KHATOWALPARA

PO- RATANPUR

PS- TANGLA
DIST- UDALGURI
BTAD
PIN- 784523

VERSUS

THE STATE OF ASSAM AND 2 ORS.
THROUGH THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPARTMENT (SECONDARY), ASSAM, DISPUR-06.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19.

3:THE PRINCIPAL SECRETARY

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
BTAD
ASSAM
PIN- 783370

Advocate for the Petitioner : MR M H AHMED, MR. M R CHOUDHURY

Advocate for the Respondent : SC, EDU, SC BTAD

BEFORE
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

19/02/2026

Heard Mr. M H Ahmed, learned counsel for the petitioners and Mr. B Kaushik, learned Standing counsel, Secondary Education Department appearing for the respondent Nos. 1 & 2. None has entered appearance for the respondent No. 3.

2. The petitioners in the present proceedings have raised a grievance with

regard to non-provincialisation of their services along with the other teachers of Ratanpur High School, w.e.f. 01.01.2013 under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (in short, the Act of 2011).

3. Ratanpur High School was established in the year 1984 as a Single Medium School. Thereafter, basing on the approval granted by the authorities of the then Bodoland Autonomous Council vide communication dated 19.08.1999, Bodo Medium Section was introduced in the said school. The petitioners in the present proceedings were, thereafter, engaged as Assistant Teachers in the said school against the Bodo Medium. The petitioners continued to discharge their duties in the said school in the Bodo Medium Section. The Government of Assam, thereafter, enacted the Act of 2011 and therein, provided for provincialisation of the services of the teachers working in Venture Educational Institutions.

4. It is to be noted that Ratanpur High School at the time of enactment of the Act of 2011 was a Venture Educational Institution. Accordingly, the cases of the teachers and other employees in the Assamese Section as well as the petitioners in the Bodo Medium Section were forwarded for consideration by the constituted committees under the Act of 2011.

5. It is projected that the jurisdictional District Level Scrutiny Committee, upon consideration of the cases of teachers working in Ratanpur High School, both in the Assamese Medium as well as in the Bodo Medium Sections, proceeded to make recommendations for provincialisation of their services. The matter was, thereafter, further processed in accordance with the provisions of the Act and the names of the petitioners, herein, who were working in the Bodo

Medium Section came to be included in the list of employees found not eligible for provincialisation of their services. The respondent authorities, thereafter, proceeded to provincialise the services of 9 (nine) teachers and 1 (one) Grade-IV staff working in the Assamese Section of the said High School vide issuance of an order dated 22.09.2014.

6. The petitioners' case not having been provincialised under the provisions of the Act of 2011, their cases were taken up for consideration under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (in short, the Act of 2017). On such consideration, the petitioners having been found to be not eligible in terms of the criterias set out in the Act of 2017, the services of the petitioners was not provincialised.

7. The petitioners have instituted the present writ petition by projecting that a vested right had accrued to them for having their services provincialised under the provisions of the Act of 2011 and accordingly, have prayed for a direction upon the respondent authorities to provincialise their services, w.e.f. 01.01.2013 by maintaining parity with the provincialisation of services so effected vide order dated 22.09.2014 in respect of the teachers working in the Assamese Medium Section of the said school.

8. Mr. M H Ahmed, learned counsel for the petitioners, by reiterating the facts, as noticed hereinabove, has submitted that the petitioners, herein, who were working in the Bodo Medium Section of Ratanpur High School, being similarly situated like the teachers working in the Assamese Medium Section of the said school, they could not have been deprived of provincialisation of their services.

8.1 Mr. Ahmed, learned counsel for the petitioners submits that there exists nothing adverse against the petitioners, which would have the effect of removing them from the purview of the Act of 2011. Mr. Ahmed, has further by referring to the provincialisation order dated 22.09.2014, issued in respect of the teachers working against the Assamese Medium Section of the said high school has submitted that a perusal of the same would reveal that teachers in excess of their entitlement came to be provincialised in their services. He submits that the provisions of the Act of 2011, insofar as it concerns a high school having two mediums of instructions, had provided the maximum number of posts that would be permissible to be so sanctioned for provincialisation of services of the teachers therein. He submits that the maximum number of posts having been sanctioned, teachers working in the Bodo Medium Section could not have been deprived of their right for having their services provincialised under the Act of 2011.

8.2. Mr. Ahmed, has further submitted that a vested right having already accrued to the petitioners under the Act of 2011, the setting aside of the Act by this Court, subsequently, would be of no consequence and the right as accrued in respect of the petitioners, herein, for having their services provincialised must be given its logical meaning. Mr. Ahmed, in this connection, has relied upon the decisions of the Division Bench of this Court in the case of *Mohor Ali Sheikh and Others Vs. State of Assam and Another*, reported in 2024 (5) GLT 689.

8.3. In the above premises, Mr. Ahmed, learned counsel for the petitioners submits that a direction be issued to the respondent authorities to provincialize the services of the petitioners with retrospective effect, i.e., with effect from the date the services of the teachers in the Assamese Medium Section of the same

school, came to be so provincialised.

9. Per contra, Mr. B Kaushik, learned Standing counsel, Secondary Education Department, by referring to the provisions of the Act of 2011, more particularly, the provisions of Sub Section (4) of Section 10 of the said Act has submitted that it is only on completion of the steps as envisaged, therein, that a vested right can be said to have accrued upon an employee working in a Venture Educational Institution for provincialisation of his services.

9.1. Mr. Kaushik, learned Standing counsel, Secondary Education Department submits that the said aspect of the matter would be further evident from the provisions of Section 6 of the said Act, which mandates that it is only with effect from the date of publication of the Notification under Sub Section (4) of Section 10, thereof, that the superintendence and control of all educational institutions concerned coming within the purview of the Act shall vest in the Government. Accordingly, he submits that only on the publication of the Notification by the Government after the verification process is completed that an employee working in a Venture Educational Institution, under the provisions of Act of 2011, can be said to have a vested right to have his services provincialised.

9.2. Mr. Kaushik, learned Standing counsel, Secondary Education Department submits that no vested right can be found to have accrued to the petitioners, herein, under the provisions of the Act of 2011 to have their services provincialised, inasmuch as, the name of petitioners were not published in the list of eligible teachers after completion of the process as envisaged under Sub Section (4) of Section 10 of the Act of 2011. He submits that rather the petitioners, on such verification were found to be not eligible for such provincialisation. Mr. Kaushik, submits that the teachers of the said school found

eligible for provincialisation of their services and included in the Notification so published, were provincialised vide issuance of an order dated 22.09.2014. The petitioners, herein, had not promptly made any challenge to the said order and the said order by lapse of time has attained its finality.

9.3. Mr. Kaushik, learned Standing counsel, Secondary Education Department has further submitted that the provisions of the Act of 2011, having been interfered with by this Court in the case of *Chandan Kumar Neog Vs. State of Assam and others*, reported in 2016 (5) GLT 296, the State had enacted the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

9.4. Mr. kaushik, submits that the cases of the petitioners were duly considered under the provisions of the Act of 2017. However, the petitioners, being found to have not satisfied the eligibility criteria as set out, under the provisions of 3(1)(vi) of the Act of 2017, the petitioners were not recommended for provincialisation of their services. Accordingly, he submits that the petitioners would be entitled to have their services provincialised under the Act of 2017, only on fulfillment of the eligibility criteria as mandated, therein and would not be entitled to be so provincialised under the provisions of the Act of 2011, which has since been set aside by this Court and repealed by the provisions of the Act of 2017.

9.5. In support of his such submissions, Mr. Kaushik, has relied upon the decision of the Hon'ble Supreme Court in the case of *State of Manipur and Others Vs. Surjakumar Okram and Others*, reported in (2022) 19 SCC 723, for the proposition that on repeal of an Act, the said Act is obliterated from the statute books and the repeal is not a matter of mere form, but is of substance.

Further, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly.

9.6. Mr. Kaushik, has placed reliance on a decision of a Division Bench of this Court in the case of *Smti. Purnabati Brahma Vs. State of Assam and others* passed vide judgment and order dated 13.11.2019 in WA No. 283/2019, wherein, under similar circumstances, the Division Bench had refused to accord approval to the contentions raised before it that the appellants, therein, had a vested right under the Act of 2011 before its interference, mandating issuance of directions for provincialisation of their services with retrospective effect.

10. I have heard the learned counsels for the parties and also perused the materials available on record.

11. The facts, noticed hereinabove, are not in dispute.

12. The Ratanpur High School was a functioning Venture Educational Institution since 1984. On 19.08.1999, the authorities of the Bodoland Autonomous Council had accorded approval for introduction of a Bodo Medium Section, in the said school. Accordingly, on such establishment of a Bodo Medium Section in the school, the petitioners were recruited at various point of time as Assistant Teachers. Upon enactment of the Act of 2011, the cases of all teachers as well as staff working in the said school, both in the Assamese Medium Section as well as Bodo Medium Section, were taken up for consideration for provincialisation of their services. The District Scrutiny Committee had recommended the cases of the teachers of both the said sections of the said school for provincialisation of their services. It is seen that thereafter, on further processing of the matter, the teachers and staff working in

the Assamese Medium Section were found to be eligible for provincialisation of their services. Accordingly, a Notification was issued declaring such eligibility in respect of the said teachers. The cases of the petitioners, although, was considered, their names came to be included in a list published of teachers not found eligible, for provincialisation of their services. The said position as obtaining in the matter was not put to challenge at that relevant point of time by the petitioners, herein. Subsequently, vide an order dated 22.09.2014, the services of the teachers working in the Assamese Medium Section, found eligible for provincialisation of their services, were so provincialised, w.e.f. 01.01.2013. The said order is also not found to have assailed by the petitioners before this Court and/or any other forum.

13. The projection made by the petitioners in the matter is that when a school is found to be eligible for provincialisation of services of its teachers and staff under the provisions of Act of 2011, persons left out from the purview of such provincialisation, but working in the said school with the requisite eligibility criteria, must also be deemed to have been provincialised in their services by applying the deeming provisions under Section 4 of the Act of 2011.

14. It is submitted that on the schools being held to be eligible for provincialisation of services of the employees working, therein, a vested right accrues to each employees working in such school for having their services provincialised and the subsequent setting aside of the Act of 2011 by this Court, would be of no consequence given the vested right already accrued upon such teachers. The said submission on the face of it, looks attractive, but, however, the same in the considered view of this Court is erroneous. The provisions of the Act of 2011, more particularly, Sub-Section (4) of Section 10 of the said Act

mandates the procedure, which is required to be carried out before an institution and the employees working therein, can be held to be eligible for provincialisation of their services.

15. Sub Section (4) of Section 10 of the Act of 2011, being relevant, is extracted hereinbelow:

“10.(4) The District Scrutiny Committee shall forward the verified list of eligible teachers school-wise in accordance with the number of posts specified in the Schedule appended to this Act, to the concerned Director who shall, after making such further scrutiny as may be required, shall forward the same to the concerned Department of the State Government for consideration and for issuing Notification in respect of the eligible institutions and employees eligible for getting their services provincialised.”

16. A perusal of the provisions of Sub Section (4) of Section 10 of the Act of 2011, reveals that after the names of the employees concerned working in a Venture Educational Institution is processed and the matter is placed before the State Government, the State Government is required to further process the matter and publish a notification, notifying the names of the employees working in an eligible institution, found to be eligible for provincialisation of their services.

17. Section 6 of the Act of 2011, being relevant, is extracted hereinbelow:

“6. With effect from the date of publication of the notification under sub-section (4) of section 10, the superintendence and control of all educational institutions coming within the purview of this Act shall vest in the State Government.”

18. A perusal of the provisions of Section 6 of the Act of 2011, would reveal that the same mandates that with effect from the date a Notification under Sub Section (4) of Section 10 is so published, the superintendence and control of the

Educational Institution coming within the purview of the Act shall vest in the State Government. A conjoint reading of Sub Section (4) of Section 10 and Section 6 of the Act of 2011 would go to reveal that on the date the Notification is issued publishing the names of the eligible institutions and the employees working therein, found eligible for provincialisation for their services, a right accrues to such employees for having their services provincialised under the provisions of Act of 2011.

19. Section 4 of the Act of 2011 also mandates that the services of the employees of all eligible Venture Educational Institutions shall be deemed to have been provincialised with effect from the date of coming into effect of the Act and they shall become the employees of the State Government.

20. The Notification under Section 4 of the Act of 2011 in view of the express provisions of sub Section (4) of Section 10 of the Act of 2011, in the considered view of this Court is a reiteration of the right already vesting in such eligible employees of an eligible Venture Educational Institution for having their services provincialised. Accordingly, when a claim is made by an employee of a Venture Educational Institution for having his service considered under the provisions of the Act of 2011, after the same was set aside by this Court, this Court is to examine as to whether a Notification, notifying the eligibility of such employees was so issued by the Government, before the said Act was set aside.

21. In the event a Notification has been published, notifying the eligibility of an employee of a Venture Educational Institution for having his services provincialised, after the procedure under Sub-Section (4) of Section 10 of the Act of 2011, before the setting aside of the Act of 2011, the non-publication of the consequential notification under Section 4 of the Act of 2011, before the

setting aside of the Act of 2011, is inconsequential. Under such circumstances, given the express provisions of Section 6 of the Act of 2011, the services of the employee concerned must be deemed to have been provincialised on the publication of the notification as contemplated after completion of the process involved under Sub Section (4) of Section 10 of the Act of 2011.

22. Support in the connection is drawn from the decision of the Division Bench of this Court in the case of *Mohor Ali Sheikh* (supra) wherein, the Division Bench of this Court had upheld the said view with regard to the vested right accruing to an employee for provincialisation of his services under the provisions of the Act of 2011.

23. Having drawn the said conclusions, this Court from the materials brought on record does not find that in respect of the petitioners, herein, a Notification as envisaged under the provisions of Sub Section (4) of Section 10 was published. Accordingly, no right can be said to have accrued to the petitioners for having their services provincialised under the Act of 2011, before the same was set aside by this Court. Accordingly, the claim of the petitioners, herein, for having their services provincialised with retrospective effect under the provisions of the Act of 2011 would not mandate acceptance.

24. Support in this connection is drawn from the decision of the Division Bench in the case of *Smti. Purnabati Brahma* (supra), wherein under similar circumstances, the Division Bench had concluded as follows:-

“9. The case as projected by learned counsel for appellant to the effect that the appellant was vested with rights under the Act of 2011 on the date when judgment was rendered in Chandan Kumar Neog (supra), cannot be accepted. The very fact that the services of the petitioner had not been provincialised and therefore, the writ

petition was filed, makes it clear that the case of the petitioner would not be covered within the four corners of the decision rendered on the review petition. Admittedly, the petitioner was not getting salary as provincialised employee. Therefore, it would be a fallacy in law and facts to consider that right had already been vested in the writ petitioner under the Act of 2011, which admittedly has been struck down as constitutionally invalid. The Review Court has held that doctrine of prospective overruling would not apply as the said power is vested only with the Supreme Court of India. It is in such circumstances it has been provided in Para 19(supra) of judgment rendered by the Review court that "the rights of the employees who have been benefited under the struck down statute can be taken care of by giving retrospective effect to the proposed legislation, if the legislature so decides. Till then it is ordered that the services of the provincialised category and their status as govt. employees shall not be disturbed and they will continue to receive all the benefits which they are getting under the Provincialisation Act, 2011, since struck down by the judgment under Review."

25. Further, the Act of 2011 having been set aside by this Court and also repealed by the provisions of the Act of 2017, the Supreme Court in the case of *Surjakumar Okram* (supra) with regard to the effect of repeal of a statute had concluded as follows:

"23. In State of U.P. v. Hirendra Pal Singh, this Court was of the following opinion: (SCC p. 314, para 22)

"22. It is a settled legal proposition that whenever an Act is repealed, must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under Section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly...."

26. Accordingly, in view of the fact that the Act of 2011 had been

subsequently set aside and it not being permissible to trace out a right being accrued to the petitioners before setting aside of the Act of 2011, the prayer made by the petitioners in the present proceedings for having their services regularized under the Act of 2011 would not mandate acceptance by this Court. Accordingly, the said prayer made by the petitioners stands rejected.

27. Having noted the above position, this Court also notices that the Director of Secondary Education, Assam, in the affidavit filed in the matter has brought on record the fact that the cases of the petitioners were considered under the provisions of the Act of 2017. However, the petitioners, having been found to have not fulfilled the criteria as laid down under the provisions of Section 3(1) (vi) of the Act of 2017, their cases for provincialisation of their services under the provisions of the Act of 2017 was not taken to its logical conclusion.

28. Section 3(1) (vi) of the Act of 2017 reads as follows:

“3(1) (vi) In case of a Venture High School or a Venture Higher Secondary School or a Venture Junior College or a Venture Degree College, the concerned Venture Educational Institution must have a consistent good academic performance which would mean that at least 30% of the candidates appearing for the final examination as a whole must have passed in the last three consecutive examinations held during previous three consecutive years prior to the date of coming into force of this Act.”

29. A perusal of the provisions of Section 3(1)(vi) of the Act of 2017 would reveal that a Venture Educational Institution for the purpose of having the services of its employees working, therein, provincialised, must have a consistent good academic performance which would mean that at least 30% of the candidates appearing for the final examination as a whole must have passed in the last three consecutive examinations held during the previous three

consecutive years prior to the date of coming into force of the Act of 2017.

30. The contentions raised in the affidavit filed by the respondent No. 2 reveals that for the period under consideration in terms of the provisions of Section 3(1)(vi) of the Act of 2017, that the pass percentage of the students appearing in the HSLC examination from the Bodo Medium Section of the Ratanpur High School was much below 30% as mandated in the Act of 2017. The same position is disputed by Mr. M H Ahmed, learned counsel for the petitioners, although, an affidavit in reply disputing the said fact was not brought on record.

31. This Court has further examined the provisions of the Act of 2017 and finds that Section 3(1)(xiii) to be relevant for the purpose and accordingly, the same is extracted hereinbelow:

“3(1)(xiii) In case of mixed medium school for provincialisation of teacher and /or tutor each medium of instruction of such school shall be treated as a separate school except for the post of Head of the institution who shall be the Head of the Institution in respect of both the schools.”

32. A perusal of the provisions of Section 3(1)(xiii) of the Act of 2017, reveals that in case of a mixed medium school for provincialisation of teachers and/or tutors, each medium of instruction of such school shall be treated as a separate school except for the post of Head of Institution, who shall be the Head of the Institution in respect of both the said schools. A legal fiction has been brought into play in the case by the provisions of Section 3(1)(xiii) pertaining to the same school which is now deemed to be separate independent schools for the purpose of consideration of the eligibility of the employees working in each of the medium section for provincialisation of their services. Accordingly, the pass

percentage now mandated under the provisions of Section 3(1)(vi) of the said 2017 Act in the considered view of this Court has to be satisfied independently by each of the medium sections of a particular school.

33. As Mr. Ahmed, learned counsel for the petitioners has disputed the pass percentage of students in the HSLC examination of the Bodo Medium Section of the School in question as set out in the affidavit filed by the Director, this Court provides that it would be permissible for the petitioners to institute appropriate proceedings before the jurisdictional Educational Tribunal as constituted under the provisions of Section 19 of the Act of 2017 in this connection.

34. It is reiterated that in the event the petitioners are so successful in establishing that the pass percentage of the students of Bodo Medium Section of the school is equal to more than 30%, then the provincialisation of the services of the petitioners would permissible to be so done only under the provisions of the Act of 2017 and not under the Act of 2011.

35. With the above observations and direction, the present writ petition stands disposed of.

JUDGE

Comparing Assistant