

GAHC010282482023



2026:GAU-AS:7271

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

Case No. : WP(C)/7443/2023

RAFIQUL ISLAM
SON OF LATE KASHEUR ALI, RESIDENT OF VILLAGE- GHILAZARI, P.O.
GHILAZARI, IN THE DISTRICT OF BARPETA (ASSAM), PIN- 781316

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER AND SECRETARY
GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM-CUM-CHAIRMAN
STATE LEVEL SCRUTINY COMMITTEE
KAHILIPARA
GUWAHATI- 781019

4:THE DISTRICT SCRUTINY COMMITTEE
BARPETA
REPRESENTED BY ITS CHAIRMAN
DEPUTY COMMISSIONERS
BARPETA P.O. AND DISTRICT- BARPETA (ASSAM)
PIN- 781316

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BARPETA-CUM-THE MEMBER SECRETARY
DISTRICT SCRUTINY COMMITTEE

P.O.- BARPETA
DISTRICT- BARPETA (ASSAM)
PIN- 781316

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
GOBARDHANA BLOCK
BARPETA ROAD
DISTRICT- BARPETA (ASSAM)
PIN- 78131

Advocate for the Petitioner : MR. B HUSSAIN, MR. A K HUSSAIN

Advocate for the Respondent : GA, ASSAM, SC, FINANCE,SC, ELEM. EDU

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr AK Hussain

Advocate for the respondent(s): Mr P Saikia, GA, Assam
Ms N Phukan, SC,
Elementary Education
Department.

Date on which judgment was reserved :**NA**

Date of pronouncement of judgment :**21.05.2026**

Whether the pronouncement is of the :

operative part of the judgment?:**NA**

Whether the full judgment has been :**Yes**

pronounced?

JUDGMENT AND ORDER (ORAL)

Heard Mr A K Hussain, learned counsel for the petitioner. Also heard Mr P Saikia, learned State Government Advocate, Assam, appearing on behalf of the State respondents and Ms N Phukan, learned Standing Counsel, Elementary

Education Department.

2. By this application, the petitioner has prayed for setting aside the impugned order dated 06.04.2023, by which the order of provincializing the services of the petitioner was cancelled. The petitioner has also prayed for setting aside the District Scrutiny Committee's recommendation, where the name of the petitioner was not recommended for provincialization of his service. The further prayer made was in respect of salaries to be released to the petitioner from 05.02.2021, i.e., the date when the service of the petitioner was provincialized.

FACTS:

3. It is the case of the petitioner that the petitioner was appointed to the post of Section Teacher in Naba Milan ME Madrassa, Borbarijhar, on the basis of the resolution adopted by the Managing Committee of the said school, vide order dated 30.12.1992. Thereafter, the petitioner joined the post of Section Teacher on 01/01/1993. Thereafter, while giving the details of the Tutors eligible for provincialization, the name of the petitioner's finds place at Serial No. 8 with the same enrollment as in case of other teachers and in the DISE data, the petitioner's name was reflected at Serial No. 7 and the said details for provincialization were given for the year 2010-2011. It is noticed that in the DISE data maintained from 2010-11 to 2017-18, the name of the petitioner was at Serial No. 7. Thereafter, the services of the petitioner were provincialized vide order dated 5th of February, 2021 and the said provincialization was given effect from 1st of January, 2021 and it was further mentioned that the Tutors will receive the fixed salary from the said date. However, when the petitioner was

not receiving his salary, he filed a writ petition before this Court and during the pendency of the said writ petition, the impugned order was passed.

4. In the impugned order dated 6th of April, 2023, it was stated that a hearing was conducted in connection with release of first wages to the 8 (eight) numbers of newly provincialized Tutors, as per 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 during the said hearing, the proposal submitted by the DEEO for provincialization of the services as per the Act of 2017, the proposal submitted by the DEEO with regard to releasing the first wages were considered and the findings were recorded. At the first instance, it was recorded that DEEO had submitted proposal with recommendation of the DSC for provincialization of 4 (four) Tutors which did not include the name of the petitioner. In the second, it was recorded that the DEEO had submitted the proposal for provincialization of services along with the school and teachers' data, through e-mail against the said school, and there, the petitioner's name was reflected. In the third, it was stated that the office submitted proposal to the Government for creation of posts against the said school and that the Government sanctioned posts and subsequently, the office of the Director of Elementary Education issued the provincialization notification on 04.02.2021, i.e., one day before the services of the petitioner was provincialized and that after the said provincialization, the DEEO, Barpeta, had proposed for release of first wages to the 8 (eight) numbers of new provincialized teachers. In response to the proposal, the Director of Elementary Education conducted a hearing as stated above for verification of the documents of the said teachers. It is, thereafter, stated that the hearing committee submitted the report stating that the DEEO had submitted the proposal for

provincialization of the petitioner and another, without the recommendation of the DSC.

5. Be that as it may, the said proposal from the DEEO was placed before the SLSC as well as the Joint Committee constituted by the Government for provincialization of services as per the 2017 Act, and in pursuance thereof, both the committees had recommended the Tutors against the said school for provincialization, wherein the petitioner's name finds mention at Serial No. 6 and subsequent thereto, the office of the Director of Elementary Education, submitted proposal to the Government for creation of Tutor posts against the said school and Government had sanctioned the post as asked for and the Director of Elementary Education had issued the provincialization notification on 04.02.2021, and a day after, i.e., on 05.02.2021, the petitioner's services were provincialized. It was further stipulated in the impugned order that the DEEO had submitted the proposal for Release of the first wages to 8 (eight) numbers of Tutors including the Tutors of the said school. Accordingly, a verification of documents were done on 17.02.2022 and the hearing committee submitted a report that the petitioner along with another were appointed by the SMC, after they had acquired the requisite qualification and the age. It is also reflected that the DEEO had suggested the names of tutors without recommendation of the DSC by way of an e-mail to the Director of Elementary Education. The hearing committee, after hearing concluded that the petitioner and another, whose services were provincialized, were not entitled for provincialization of their services, as they were not recommended by the DSC and as such, the provincialization of the service by way of the order dated 05.02.2021 was cancelled.

SUBMISSIONS:

6. The learned counsel for the petitioner submits that when the petitioner was considered and the provincialization order was issued on 05.02.2021, the teachers who were recommended for provincialization before the petitioner had retired and that the teacher, who was teaching the subject of Social Science, had also retired by then. The petitioner being the teacher of the Social Science in the said school was the only teacher for the said subject by then and he was as such, entitled for provincialization in view of the fact that three teachers from each school should be provincialized. He accordingly, states that the said was the reason for the 4th stipulations made in the impugned order, wherein it is stated that the Director of Elementary Education submitted proposal to the Government for creation of Tutor posts against the said school and the Government had sanctioned the post and provincialization orders were issued in respect of 3 (three) teachers, namely, Abdul Hamid Sikdar, Md Chand Mia and the petitioner, and it is stated that the services of Abdul Hamid Sikdar could not be provincialized, in view of the fact that he retired before issuance of any provincialization order. The learned counsel, as such, submits that he being the only teacher teaching Social Science, was recommended and the provincialization order was issued on 05.02.2021. He further submits that the impugned order is not a reasoned order and it was pursuant to a hearing conducted for payment of wages and his provincialization was cancelled in the process. He further submits that as per Rule 13 of 1917 Rules, the DSC must first scrutinize and prepare a list of the schools as well as teachers eligible for provincialization, and, thereafter, the same would be placed before the State Level Scrutiny Committee, who shall then forward to the concerned department of the State Government for consideration and for issuing the notification. He

submits that in the impugned order, it is stated that the matter was placed before the SLC and the Joint Committee and both the SLC and Joint Committee had recommended for provincialization of the services of the petitioner.

7. Mr P Saikia, learned Government Advocate had stated that there cannot be two teachers recommended for provincialization teaching the same subject and the petitioner being the junior one was not recommended by DSC and in his place, Mizanur Rahman, who was also teaching the same subject was recommended. He stated that when the issue of giving wages to the newly provincialized tutors were scrutinized, it was found that without the recommendation of the DSC, the services of the petitioner was provincialized, which is not as per the Rule. Mr Saikia further submits that if there was any grievance against the decision of the District Scrutiny Committee, the petitioner could have filed an appeal before the State Level Scrutiny Committee, however, the same is not done in the instant case. He further submits that the forwarding done by the DEEO by e-mail was also incorrect.

8. I have heard the learned counsel appearing for the parties and I have also gone through the record.

ANALYSIS AND FINDINGS:

9. It is noticed that the petitioner's service was provincialized on 5th of February, 2021 and it is also noticed that the petitioner's name was in the DISE data right from 2010-11 to 2017-18. It is not in dispute that the petitioner was a teacher in the subject of Social Science and he was appointed in the school after the resolution of the Managing Committee in the year 1992. It is provided that three requirements are needed to be fulfilled for provincialization of the service

of an employee-i) Students'-Pupils' ratio ii) the name should be in the DISE data and iii) the recognition of the school should be there before 01.01.2006. It is noticed that all the three conditions are fulfilled and by the NCAT Rules, the petitioner is also qualified for provincialization of his services. Further, as he had obtained the Diploma in Elementary Education in the year 2019. As far as the age is concerned, the petitioner fulfills the same. The only ground taken by the Government Advocate is that there cannot be provincialization of services of two teachers teaching the same subject. However, it is seen that the other teacher, who was teaching the same subject, namely, Mr Mizanur Rahman had retired on 30.04.2020, by doing a calculation from the date of his birth and the provincialization of the petitioner was done after that, i.e., on 5th of February, 2021. As such, the ground that the services of two teachers cannot be provincialized, does not hold good. Further, it is seen in the impugned order that the DEEO submitted the proposal for provincialization of services along with school and teacher data through e-mail against the school, where the petitioner was working and, there, the petitioner was at Serial No. 6. Thereafter, another proposal was mooted for creation of Tutor posts against the said school and the Government had sanctioned post and there, the name of the other teacher, who was teaching the subject of Social Science was not there, and the name of the petitioner was at Serial No. 3.

10. The exercise gone into by the authorities before issuing the order dated 5th of February, 2021, by which the petitioner's services were provincialized, was not forthcoming, neither the same has been reflected in the affidavit of the respondents. After 2 (two) years, when the issue of determining the wages to be paid to the provincialized teachers were raised and a meeting was held

because of that, it is stated that provincialization of the petitioner's service was done without the recommendation of DSC.

11. In the affidavit filed by the respondent No. 4, it is stated that in the month of June, 2021, after allowing the services of the petitioner to be provincialized, a meeting was held and it was seen that some tutors were not found in the DISE data as per provincialization Act of 2017 and that some teachers were found to be not recommended by the DSC, and in respect of some teachers, it was found that they were under the jurisdiction of the Hon'ble Court. However, the reasons are not shown specifically as to how the provincialization of the petitioner's service was allowed in the month of February, 2021, more so, in view of the fact that the SLC, the higher authority than the DLC had approved the question of provincializing the petitioner's service as per the records. Further, no action was taken after that and it was only during April, 2023, the issue was raised that too, in a meeting held for disbursing the first wages.

12. As per the Rules, the first authority to scrutinize the documents of the school as well as the teachers is the District Scrutiny Committee and then the same would be placed before the State Level Scrutiny Committee, and it is seen that the State Level Scrutiny Committee has approved and the fact projected by the respondents that District Level Scrutiny Committee had not recommended was much after the provincialization was ordered by the Director of Elementary Education, Assam.

13. In view of the same, the impugned order dated 6th of April, 2023, is hereby set aside and quashed and it is further directed that the authorities concerned should pay the wages to the petitioner, from 1st of January, 2021, the date on which the provincialization of

the petitioner's service was made effective vide order dated 5th of February, 2021, as it is provided in the provincialization order itself, if not found ineligible for other reasons. Further, the exercise to release the wages of the petitioner be done within a period of one month from the date of receipt of a certified copy of this order.

14. Petition is disposed of.

15. No order as to cost(s).

JUDGE

Comparing Assistant