

GAHC010133032021



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

**Case No: WP(C)/1345/2021**

SAHIDUR ISLAM  
S/O- MOKTEL HUSSAIN  
R/O- VILL- TAKIMARI  
P.O. PATAMARI  
DIST.- DHUBRI  
ASSAM  
PIN- 783324

VERSUS

THE STATE OF ASSAM AND 7 ORS  
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM  
EDUCATION DEPTT. (ELEMENTARY)  
DISPUR  
GHY-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION  
ASSAM  
KAHILIPARA  
GHY-19

3:THE DY. DIRECTOR OF ELEMENTARY EDUCATION  
ASSAM  
KAHILIPARA  
GHY-19

4:THE EXECUTIVE DIRECTOR  
SARBA SIKSHA ABHIYAN MISSION (SSA)  
ASSAM  
KAHILIPARA  
GHY-19

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)  
DHUBRI  
ASSAM

6:THE DISTRICT SCRUTINY COMMITTEE  
DHUBRI  
REP. BY ITS CHAIRMAN  
DIST.- DHUBRI  
ASSAM  
7:ABDUR RASHID SK  
S/O- LT. VASHA SK  
DISCHARGING AS THE HEAD MASTER  
WEST GASPARA GIRLS M.E.MADRASSA  
GAURIPUR  
DHUBRI  
P.O.- DHARMASHALA  
DIST.- DHUBRI  
ASSAM  
PIN- 783324  
8:ABUAL HUSSAIN SK  
S/O- LT. IDRIS ALI  
VILL- GASPARA  
P.O.- DHARMASHALA  
DIST.- DHUBRI  
ASSAM  
PIN- 783324  
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**BEFORE**

**HON'BLE MR. JUSTICE KALYAN RAI SURANA**

For the petitioner	: Mr. P.K. Deka, Advocate
For respondent nos.1 to 3 and 5	: Mr. Mr. P.K. Borah, Standing Counsel
For respondent no.4	: Mr. S. Borah, Standing Counsel
Date of hearing	: 09.12.2021
Date of judgment	: 27.01.2022

**JUDGMENT AND ORDER**

**(CAV)**

Heard Mr. P.K. Deka, learned counsel for the petitioner. Also heard Mr.

P.K. Borah, learned standing counsel for the Elementary Education Department, appearing for respondent nos. 1 to 3 and 5, Mr. S. Borah, learned standing counsel for respondent no. 4, Mr. P. Saikia, learned Government Advocate, representing respondent no. 6, as well as Mr. M.H. Ahmed, learned counsel for the private respondent nos. 7 and 8.

2) The case of the petitioner is that as per resolution no. 2 adopted in the meeting no. 38 dated 21.03.2008 by the Managing Committee, vide letter dated 21.03.2008 issued by the Headmaster & Secretary of the said school had appointed the petitioner as an H.S. Science Teacher of the West Gaspara Girls' M.E. Madrassa. It is projected that as the petitioner was mainly teaching Social Studies. Despite recommendation made by the District Scrutiny Committee for provincialisation of his service against Social Studies subject, the Director of Elementary Education, Assam, (respondent no. 2) had issued the impugned order, thereby provincialising the service of 3 (three) Assistant Teachers, including the respondent nos. 7 and 8. Hence, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned order dated 04.02.2021 (Annexure-7), issued by the respondent no.2, thereby provincialising the service of the respondent nos. 7 and 8 as an Assistant Teacher of the West Gaspara Girls' M.E. Madrassa, for a direction to provincialise the service of the petitioner as Social Science Teacher on the basis of recommendation made by the District Scrutiny Committee (Annexure-5).

3) The learned counsel for the petitioner has submitted that as per the provisions of Section 3(1) of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of the Educational Institutions) Act,

2017 read with Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009 the respondent authorities ought to have provincialised the service of one full-time Headmaster as well as 4 (four) Assistant Teachers as the school has enrollment of more than 105 students. Therefore, it has been submitted that while issuing a direction upon the respondent authorities for appointing the petitioner, a suitable direction may also be made to the respondent authorities to provincialise the services of one full-time Headmaster as well as 4 (four) Assistant Teachers.

4) Per contra, the learned counsel for the respondent nos. 7 and 8 has made his submission in support of the interlocutory application and it is submitted that the petitioner has not come with clean hands and has mislead this Court to project as if he was appointed as a Social Studies teacher, which was not correct and therefore, it is submitted that the petitioner was not entitled to any relief in this writ petition. However, the learned standing counsel for the Elementary Education Department has submitted that owing to discrepancy in DISE data for academic year 2009-10 and 2020-21, the matter may be remanded to the Director of Elementary Education, Assam (respondent no.2) for a fresh decision.

5) While issuing a notice of motion by order dated 01.03.2021, as an interim measure, the Court had provided that the provincialisation of respondent nos. 7 and 8 be not given effect until further orders. Aggrieved by the said *ad interim* order, the respondent nos. 7 and 8 have filed an interlocutory application under Article 226(3) of the Constitution of India for vacating the said interim order. The said application was registered as I.A.(C)

1555/2021. The petitioner has contested the said interlocutory application by filing affidavit-in-opposition as well as additional affidavit.

6) Having heard the learned counsel for all the appearing parties, perused the following, viz., (i) writ petition, (ii) interlocutory application filed jointly by the respondent nos. 7 and 8, (iii) affidavit-in-opposition by petitioner in interlocutory application, (iv) additional affidavit filed by the petitioner in the interlocutory application.

7) It would be relevant to quote the relevant extract of the approval order dated 28.04.2008 (Annexure-3 of writ petition) issued by the District Elementary Education Officer, Dhubri (DEEO for short) (respondent no. 5), by which approval was granted for appointment made by the Managing Committee to 7 (seven) Teaching and non-Teaching staff, which is as under:-

Sl.	Name of School & name of Teaching and non-Teaching staff	Designation	Qualification	MC resolution no. & date	Dt. of appointment	Dt. of joining
1	Abdul Rashid Sk. (respondent no. 7)	Head Master	B.A.	2/ 25-11-97	26-11-97	27-11-97
2	Abual Hussain Sk. (respondent no. 8)	Asst. Teacher	B.A.	2/ 21-12-98	23-12-98	26-12-98
3	Sahidur Islam (petitioner)	Asst. Teacher	HSSLC (Sci)	1/ 21-03-08	21-03-08	24-03-08

...	...	...	...	...	...	...

8) Thus, from the above, it is seen that the petitioner was appointed in service by the Managing Committee as Science Teacher [HSSLC (Science) passed] and accordingly, approval was granted by the DEEO to the appointment of the petitioner made as Science Teacher. Notwithstanding that in the writ petition, the petitioner had asserted that he was teaching Social Studies, but in paragraph-7 of his affidavit-in-opposition filed in the interlocutory application, the petitioner has candidly admitted that he was appointed as Assistant Teacher (Science), and approved as such. Thus, on the date the petitioner had joined his service as Asst. Teacher (Science), the respondent no. 7 was the Headmaster of the School.

9) For reasons not disclosed by the State respondent nos. 1 to 5, the District Scrutiny Committee (DSC for short) had recommended the names of the respondent nos. 7 and 8 for provincialisation as "Language Teacher", and that the name of the petitioner was recommended for provincialisation as "Social Studies Teacher". As per Annexure-9 to the interlocutory application, it is seen that the DSC had recommended the name of one Abdul Hoque, Assistant Teacher for provincialisation as "Maths & Science Teacher". The service of the respondent nos. 7 and 8 was provincialised vide notification dated 04.02.2021. By the same notification, the service of the said Abdul Hoque was also provincialised as Asst. Teacher, which is not under challenge.

10) It is also seen that as per District Information System for

Education (DISE for short) data for the year 2009-10, the name of petitioner is shown as "Mathematics Teacher" and that the names of the respondent nos. 7 and 8 are shown as "Language Teachers". However, in DISE data for academic year 2020-21, the name of petitioner is shown as "appointed for subject- Social Studies" and main subject taught is "Language"; whereas the name of respondent no. 7 is shown as Head Master, "appointed for subject- Social Studies" and main subject taught is "English"; and that the name of the respondent no. 8 is shown as "appointed for Subject- All subjects" and main subject taught is "Social Studies".

11) Therefore, in view of the herein before referred (i) appointment orders of the petitioner and that of the respondent nos. 7 and 8; (ii) order of approval dated 28.04.2008 issued by the DEEO, Dhubri; (iii) DISE data for academic year 2009-10; DISE data for academic year 2020-21, the Court is of the considered opinion that the issue relating to the claim of provincialisation of the service of (a) Sahidur Islam (petitioner), (ii) Abdur Rashid Sk (respondent no. 7), and (iii) Abual Hussain Sk (respondent no.8) be remanded to the Director of Elementary Education, Assam (respondent no.2) for a fresh examination and determination by considering all the relevant materials including the documents herein before mentioned. It is also desirable that while deciding the matter, the respondent no. 2 would also examine the qualification of the petitioner and the respondent nos. 7 and 8 as well as the records of the District Scrutiny Committee, Dhubri (DSC) to find out on what basis their recommendation had been made. Subject to Covid-19 protocol in force from time to time, an endeavour shall be made by the respondent no.2 to examine, determine and dispose of the claim of the petitioner for provincialisation of his

service in vis-à-vis the respondent nos. 7 and 8 within a period of 2 (two) months from the date of service with a certified copy of this order before the office of the respondent no.2.

12) The Director of Elementary Education, Assam (respondent no.2) shall also be at liberty to consider the enrollment of students in West Gaspara Girls' M.E. Madrassa, Dist. Dhubri and to take a call if services of more number of Teaching staff can be provincialised in accordance with the provisions of Section 3(1)(xi) of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of the Educational Institutions) Act, 2017 read with Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009.

13) Liberty is granted to the petitioner and the respondent nos. 7 and 8 to forward to the respondent no.2 any document(s) they intend to rely upon. The same shall be done within a period of 10 (ten) days. The petitioner and the respondent nos. 7 and 8 are not granted liberty to submit any write-up, summary or any argumentative petitions, which if still filed, may be discarded. As the matter would be decided on the basis of documents, no opportunity of personal hearing is required. If any of the parties are still aggrieved, the aggrieved party shall be at liberty to file statutory appeal as provided for.

14) Considering the factual matrix that although the petitioner was appointed as HSSLC (Science) passed Assistant Teacher, but the DSC found the petitioner to be teaching "Social Studies" subject and that the respondent nos. 7 and 8 were both found by the DSC to be teaching 'Language' subject.



Therefore, the interim order dated 01.03.2021 passed in this writ petition would stand extended till the fresh determination is made by the respondent no.2. However, it is clarified that while determining the matter, the respondent no.2 shall not be influenced by this order, thereby extending the interim order as aforesaid.

15) The writ petition stands allowed to the extent as indicated above. The parties are left to bear their own cost.

**JUDGE**

**Comparing Assistant**