

High Court Form No.(J)3.
HEADING OF JUDGMENT IN THE APPEAL.

District : Lakhimpur.

**IN THE COURT OF DISTRICT JUDGE, LAKHIMPUR,
AT NORTH LAKHIMPUR.**

PRESENT : Smt S.P. Khaund, (M.A. Economics, L.L.B.),
District Judge,
Lakhimpur, North Lakhimpur.

Title Suit (Education) No.30/2017.

the 5th day of March, 2021.

Smt Padum Borah.

... Petitioner.

-versus-

1. The State of Assam represented by the
Commissioner and Secretary to the Govt. of Assam,
Education (Secondary) Department, Dispur, Guwahati.
2. The Director of Secondary Education, Assam,
Kahilipara, Guwahati, Kamrup (M), Assam.
3. The Inspector of Schools, Lakhimpur District
Circle, Lakhimpur, Assam.
4. The Headmaster, Phulbari Girls' High School,
Lakhimpur, Assam.
5. The District Scrutiny Committee for Secondary
Education of Lakhimpur district, represented by
its Member Secretary i.e., the Inspector of Schools,
Lakhimpur District Circle, Lakhimpur.
6. The Deputy Commissioner, Lakhimpur, Assam. ... Respondents.

This case is coming on for final hearing on 04.12.2020 in presence of :
Mr. Jatin Bora, the learned advocate for the Petitioner.
Mr. S.I. Hazarika, the learned Govt. Pleader for the Respondents.

and having stood for consideration to this day this
Tribunal has delivered the following JUDGMENT.

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**IN THE COURT OF DISTRICT JUDGE, LAKHIMPUR,
AT NORTH LAKHIMPUR.**

Present: Smt S.P. Khaund, (M.A. Economics, L.L.B.),
District Judge,
Lakhimpur, North Lakhimpur.

Title Suit (Education) No.30/2017.

Petitioner : Smt Padum Borah.

Respondents : The State of Assam represented by the
Commissioner and Secretary to the Govt. of
Assam, Education (Secondary) Department,
Dispur, Guwahati, and five others.

Date of argument : 04.12.2020.

Date of judgment : 05.03.2021.

J U D G M E N T

1) This case is initiated by an Application u/s 19(2) of the Assam Education (Provincialisation of Services of Teachers and Re organisation of Educational Institutions) Act, 2017 (hereinafter the Act) praying for a direction to the Respondent authorities to provincialise the service of the Petitioner as Asstt. Teacher (Arts) of Phulbari Girls's High School, Lakhimpur, with effect from the date of provincialisation of the schools i.e., from 01.01.2013.

2) Smt Padum Borah is the Petitioner. The State of Assam, the Director of Secondary Education, Assam, the Inspector of Schools - Lakhimpur district, Headmaster of Phulbari Girls' High School,

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the Scruinty Committee for Secondary Education of Lakhimpur district - represented by the Member- Secretary, and the Deputy Commissioner - Lakhimpur district, are arrayed as Respondent No.1 to Respondent No.6 (hereinafter referred to as the Respondent Nos.1 to 6).

3) The Petitioner's case, in brief, is that she graduated in the year, 1988 from Madhabdev College and she is eligible for the post of Asstt. Teacher (Arts). She applied for the post of Asstt. Teacher (Arts) at Phulbari Girls' High School, and after proper selection procedure, the school managing committee appointed her as Asstt. Teacher vide Appointment letter dtd. 03.09.1995, issued by the Secretary of Phulbari Girls' High School, Lakhimpur, (hereinafter the School). The Petitioner joined as Asstt. Teacher on 08.09.1995 and she has been diligently and sincerely discharging her duties since then. It is submitted that the Inspector of Schools vide order memo. No.GIA/ HSNL / 59/ 87/ 495 - 88 dtd. 04.01.1996 approved the Resolution of the Managing Committee of their school and appointed the Petitioner as an Asstt. Teacher. The Phulbari Girls' High School was recognised by the order dtd. 30.06.1994 w.e.f. 01.01.1993. It is further submitted that the school wise incumbency list under Lakhimpur district was published, and the signatories were the Dy. Secretary of the Govt. of Assam, Education (Secondary) Department, wherein the name of the school was shown at Sl. No.27. The services of three Asstt. Teachers were required to be provincialised as the school is a High School. Thereafter, the Headmaster of their school submitted the particulars of the teaching and non-teaching staff of the school to the concerned authority for provincialisation of the school and as per the provisions of the Assam Venture Educational Institutions

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(Provincialisation of services) Act, 2011, as amended, the Petitioner's name was shown at Sl. No.4 as 3rd Asstt. Teacher (Arts) in the particulars submitted by the Headmaster. Her date of joining was shown as 08.09.1995 and her qualification was B.A.

4) It is submitted that the Respondent authorities scrutinised the particulars of the teaching and non-teaching staff of the school for provincialisation of services. The Petitioner was confident that her service as an Asstt. Teacher would be provincialised as she was the third senior most teacher in the school, but to her astonishment, her name was shown in the list of employees not eligible for provincialisation, and at Sl. No.13, in the Remarks column "No documents" was mentioned.

5) It is contended that the remark "No documents" was very vague and the Respondent authorities failed to clarify what they meant by "No documents". The school authority was responsible to submit all the particulars of the teaching and non-teaching staff of the school for provincialisation of their services. All the records of the teaching and non-teaching staff were available in the school.

6) The Petitioner has claimed that the Headmaster of Phulbari Girls' High School, Kamalpur, Lakhimpur, submitted all the required particulars of the Petitioner along with the other teaching and non-teaching staff of their school for provincialisation of their services. Moreover, the Respondent authorities did not provide any liberty to the Petitioner as well as to the school authority to furnish the documents, which were required for provincialisation of her services. So, the Petitioner went to the office of the Respondent authorities on various

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occasions to find out, which documents were to be furnished, but, the Respondent authorities failed to disclose the documents, which were alleged not to have been submitted. However, the Respondent authorities assured the Petitioner that they would call for her documents from the school after scrutiny. To her dismay, the Director of the Secondary Education, Assam, vide order memo. No.PC/ Sec/ 209/ 2014/ 19- A dtd. 22.09.2014, provincialised services of the teaching and non-teaching staff of Phulbari Girls' High School w.e.f. 01.01.2013, and one post of Asstt. Teacher (Arts) of the school was shown as vacant. It is submitted that the Petitioner was working in the aforementioned vacant post since the date of her joining. Though the services of other teaching and non-teaching staff of the school was provincialised vide order dtd. 22.09.2014, the Petitioner's service was not provincialised. The aforementioned order dtd. 22.09.2014 was passed in pursuance of the Govt. letter No.ASE.810/ 2013/ 575 dtd. 13.08.2014, whereby 452 teaching and non-teaching staff posts have been created for Lakhimpur district under the provisions of the Act.

7) At present, the Petitioner is still discharging her duties as an Asstt. Teacher since the date of her joining. The Headmaster of the school had issued a working certificate certifying that the Petitioner has been working in the school since 1995. The Petitioner was impelled to move the Hon'ble High Court vide Writ Petition (c) No.2630 / 2016 praying for a direction to the Respondents to provincialise her service as an Asstt. Teacher from 01.01.2013. The Writ Petition was disposed of observing that this Tribunal can adjudicate the dispute relating to the teaching and non-teaching staff of non-Govt. Educational institutions as well as dispute concerning disciplinary action and

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claim for provincialisation in respect of teaching and non-teaching staff of Venture Educational Institutions within the jurisdiction of this Tribunal. The Petitioner was granted liberty by the Govt. to approach the Educational Tribunal vide order dtd. 08.08.2016 for redressal of her grievances within 30 days. It is submitted that while the Petitioner was about to file the application before this Tribunal, the Hon'ble Gauhati High Court vide Judgment & Order dtd. 23.09.2016 passed in W.P.(C) No.3190/2012 was pleased to declare the Act amended in 2012 as unconstitutional, and was pleased to strike down the same. The Petitioner was in a stage of uncertainty when the "Assam Educational (Provincialisation of Services of Teachers and Reorganisation of Educational Institutions) Act, 2017 came into force w.e.f. 05.05.2017, except the provisions u/s 4 and 8 of the Act. So, there was a delay in filing this petition.

8) The Respondent authorities already initiated the process of provincialisation of services of the schools and asked the Headmaster of their school to submit the particulars of the teaching and non-teaching staff. The Petitioner has submitted that their school has been provincialised vide order dtd. 22.09.2014 w.e.f. 01.01.2013, and the post, which she has been occupying as an Asstt. Teacher, is being kept as vacant. The Petitioner has learnt that the Respondent authorities were initiating process to fill up the vacant post by way of direct recruitment. If the vacant post is filled up by direct recruitment, the Petitioner will be deprived of her legitimate right. She has been sincerely discharging her duties and she has prayed for a direction to the Respondent authorities to keep the said post of Asstt. Teacher vacant till provincialisation of her services as Asstt. Teacher (Arts).

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9) The Respondent Nos.1,2,3,5 and 6 have jointly filed Written Statement (W.S. in short) contending inter alia that there is no cause of action. The claim of the Petitioner does not fall within the purview of Section 19(2) of the Act. The Managing Committee approved the temporary appointment of the Petitioner's candidature vide memo. No.GIA/ HSNL / 59/ 87/ 495 -99 dtd. 04.01.1996, as the Petitioner was found eligible for the post.

10) The Inspector of the schools scrutinised the particulars of the teaching and non-teaching staff of the school, but as no documents were found, the Petitioner's name was listed in non-provincialised list and this list was published in their official website. The Respondent authorities have denied that the Petitioner approached them after her name was shown as not listed due to "No documents" and they failed to clarify her what documents were required for provincialisation of the Petitioner's service. It is also submitted that ten posts of the school were afforded provincialisation benefits as per the Resolution of the District Scrutiny Committee for Secondary Education of Assam vide memo. No.PC/ Sec/ 209/ 2014/ 19 -A dtd. 22.09.2014 in pursuance of the Govt. letter No.ASE-810/ 2013/ 575 dtd. 13.08.2014, but as the Petitioner's name was also listed in the non-provincialisation list, one post out of the 10 posts of the school remained vacant. It is also contended that the Petition was filed beyond the period of limitation as directed by the Hon'ble Gauhati High Court in W.P.(c) No.2630/ 2016 dtd. 08.08.2016. It is submitted that the Respondents have not violated the fundamental rights of the Petitioner.

11) The Respondent No.4 is the Headmaster of the school. He filed W.S. contending inter alia that the suit is not maintainable and there is no cause of action. The Respondent No.4 has

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admitted that the Petitioner is a Bachelor of Arts from a recognised University and is eligible and qualified for the post of Asstt. Teacher, and so she was appointed as an Asstt. Teacher of the school by the Managing Committee on 03.09.1995. Since 08.09.1995, the Petitioner has been serving as an Asstt. Teacher in their school, on the basis of the order and memo. No.GIA/HSNL/ 59/ 87 / 495 -99 dtd. 04.01.1996, the Inspector of schools approved the temporary appointment adopted by the Managing Committee of their school and the Petitioner's name was also approved in the process. It is admitted by the Respondent No.4 that their school was recognised on 30.06.1994 w.e.f. 01.01.1993. It is also admitted that an incumbency list was published by the Dy. Secretary to the Govt. of Assam, Education (Secondary) Department for provincialisation of the Venture schools in which their school was also placed at Sl. No.27 having 2 class High Schools. As per the list of provincialisation, their school required three Asstt. Teachers. It is submitted by the Respondent No.4 that when the Act of 2011 came into force, the list of teaching and non-teaching staff of their school was required. As per requirement, a list was prepared and submitted for provincialisation of the services. Accordingly, a list was submitted and the Petitioner's name was at Sl. No.4 along with her particulars available in the records of their school.

12) The Respondent No.4 has submitted that all the particulars and information required for provincialisation of the posts of the teaching and non-teaching staff including the Petitioner's particulars were available with them in their school. It is also submitted that then the Respondent No.5 i.e., the District Scrutiny Committee scrutinised the particulars of the teaching and non-teaching staff and published a list of non-eligible staff in

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their official website, and the Petitioner's name was not included with remarks as "No documents". It is admitted by the Respondent No.4 that the District Scrutiny Committee for Secondary Education of Lakhimpur district i.e., Respondent No.5 did not disclose nor call for the documentary particulars or any information from them (Respondent No.4) to provide liberty for provincialisation of the Petitioner's post. It is admitted by the Respondent No.4 that one post of Asstt. Teacher (Arts) is still vacant in their school and the Petitioner has been working against that vacant post from her date of joining i.e., since 08.09.1995 till date.

13) To substantiate her stance, the Petitioner adduced her evidence as PW.1 and exhibited various documents. The Respondents cross-examined the Petitioner, but did not adduce any evidence.

14) On the backdrop of the rival contentions, the following issues were framed :

ISSUES :

1. Whether there is cause of action?
2. Whether the suit is maintainable?
3. Whether the Petitioner is entitled to provincialisation of her service as an Asstt. Teacher (Arts) of Phulbari Girls' High School, Lakhimpur, under the provisions of Law?
4. Whether the Respondent authorities are responsible for not provincialising the services of the Petitioner at the time of provincialising the other teaching staff of Phulbari Girls' High School?
5. To what other relief / reliefs, the parties are entitled to?

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DECISION THEREON AND THE REASONS FOR THE DECISION

ISSUE NO.1

Whether there is cause of action?

15) The Petitioner's evidence as PW.1 reiterates her pleadings. There is indeed a cause of action. Her evidence and pleadings reveal that she has been deprived and prejudiced of being appointed as a provincialised Asstt. Teacher despite the fact that she was continuously serving as an Asstt. Teacher since 08.09.1995.

16) Ext.1 is her Registration Certificate. PW.1 has proved her Degree pass certificate as Ext.2. Ext.3 is the appointment letter issued by the Respondent No.4. Ext.4 is the Joining Report of PW.1. Ext.5 is the copy of the order passed by the Inspector of schools through which PW.1's provincialisation as Asstt. Teacher (Arts) was approved by the Resolution of the Managing Committee and order was passed on 04.01.1996 by the Inspector of schools. Ext.10 is the working certificate issued by the Respondent No.4. The Respondents have not disputed the certificates exhibited by PW.1. The Respondents have also not disputed that the PW.1's name was not selected for provincialisation of service. Thus, cause of action accrues since the Petitioner felt that she was deprived of her constitutional right to employment.

ISSUE NO.2

Whether the suit is maintainable?

17) The Respondent Nos.1,2,3,4,5 and 6 have submitted that this suit is not maintainable u/s 19(2) of the Act.

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Section 19(2) of the Act reads as, “To adjudicate disputes for redressal of grievances relating to the teaching staff of the Non-Government Educational Institution as well as disputes concerning disciplinary action, genuineness of establishment of school and claim for provincialisation in respect of teaching staff of Venture Educational Institution, there shall be an Educational Tribunal for each district within their respective Territorial Jurisdiction. The District and Sessions Judges and the Additional District and Sessions Judges of each District are designated as Educational Tribunal.”

18) The evidence and pleadings of PW.1 depicts that she joined as an Asstt. Teacher before provincialisation of the school. The Director of Secondary Education, Assam, vide memo. No.PC/ Sec/ 209/ 2014/ 19- A dtd. 22.09.2014, provincialised teaching and non-teaching staff of the school w.e.f. 01.01.2013, but the post against which PW.1 was serving as an Asstt. Teacher was shown as vacant. Her services were not provincialised. It has already been held that there is cause of action.

19) As per section 19(1) :- no suit, prosecution or other proceeding shall lie for anything in good faith done under this Act, except with the previous sanction of the State Government. The question of sanction does not arise in this case because, admittedly the Petitioner moved the Hon’ble High Court vide Writ Petition (C) No.2630/ 2016 praying for a direction to the Respondents to provincialise her services as an Asstt. Teacher. The Writ Petition was disposed of observing that this Tribunal can adjudicate the dispute relating to teaching and non-teaching staff of the Government. The Petitioner was granted liberty to

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approach the Educational Tribunal vide Order dtd. 08.08.2016 for redressal of her grievances within 30 days. This fact has not been disputed by the Respondents. The argument that the Petitioner skipped the provision of appeal or the argument that this suit is not maintainable, has no leg to stand. There is cause of action and this suit is indeed maintainable. It is also held that the Respondents waived objection against the delay in filing this Petition. The W.S. filed by the Respondents regarding the delay in filing the Petition was not substantiated. At the time of filing of the petition, the Petitioner was in dilemma because, the earlier Act of 2012 was struck down as unconstitutional and the present Act of 2017 came into force. It is held that this suit is maintainable. This issue is decided in the affirmative.

ISSUE NOS.3 AND 4

Whether the Petitioner is entitled to provincialisation of her service as an Asstt. Teacher (Arts) of Phulbari Girls' High School, Lakhimpur, under the provisions of Law?

Whether the Respondent authorities are responsible for not provincialising the services of the Petitioner at the time of provincialising the other teaching staff of Phulbari Girls' High School?

20) Both the issues are inter-related. So, both these issues are decided conjointly. It is an admitted fact that the Petitioner was already afforded temporary appointment as Asstt. Teacher. The evidence and pleadings of the PW.2 clearly depicts that she passed Bachelor of Arts examination (2 years course) in the year, 1988. Ext.2 is her Pass Certificate. She has been cross-examined in extenso. Her qualification has not been disputed by

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the Respondents through her cross-examination. However, she denied that she did not submit the relevant documents for provincialisation of her service. The Respondent No.4 has already admitted through his W.S that the relevant documents, which were required for scrutiny for provincialisation, were submitted to the authority.

21) I would like to reiterate that the Petitioner graduated in Arts and this has not been disputed, as per Section 4(ii)(iii) of the Act. Moreover, her Pass Certificate and registration number is submitted as documentary evidence. There appears to be no reason why will PW.1 refrain from submitting the required documents for provincialisation. Before depriving the PW.1 from her Constitutional right to employment, it was the Respondents duty to call for the required documents or provide a scope for submission of the required documents.

Section 4(ii)(iii) reads as, *“The teachers or tutors must have rendered at least six years continuous service as on 01.01.2017 from the date of joining in the concerned Venture Education Institution, which must be on 31.12.2010 or prior to that date”*.

22) It is not disputed that the Petitioner has been serving as Asstt. Teacher since 08.09.1995 and till date.

23) As per Section 3(11) of the Act, in case of Venture upper primary section, there shall be minimum 3 teachers or tutors and at least one teacher each for – (a) Science and Maths, (b) Social Science and (c) Languages.

24) In the Petitioner’s school, there were three posts of Asstt. Teachers. Service of the teachers holding two posts of Asstt.

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Teacher has already been provincialised by the Respondents. One post of Asstt. Teacher is lying vacant. The Petitioner is discharging her duties as Asstt. Teacher against this vacant post. When the Petitioner has qualification and when the other two posts were provincialised, what prevented the Respondents from provincialising the service of the Petitioner as an Asstt. Teacher, who dedicated her entire life in discharging her duties as an Asstt. Teacher of the aforementioned school. Moreover, the Petitioner's case was not contradicted or controverted. No evidence was adduced by the Respondent. The cross-examination of PW.1, PW.2 and PW.3 by the Respondents could not rebut the evidence.

25) I would like to rely on the decision of Hon'ble the Supreme Court in Vidyadhar -vs- Manik Rao and another, AIR 1999 SC 1441, wherein it has been held that “ **where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is incorrect.**” It is held that Petitioner is entitled to provincialisation of her services as Asstt. Teacher of the school. The Respondent authorities are responsible for not provincialising the Petitioner's service along with the other incumbents of their school.

ISSUE NO.5.

To what other relief / reliefs, the parties are entitled ?

26) At the time of filing this Petition, the post of Asstt. Teacher of the school was lying vacant. The Respondents have not disputed that one sanctioned post of Asstt. Teacher (Arts) is lying vacant in

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the school. The Petitioner is entitled to be appointed as an Asstt. Teacher due to her ceaseless contribution to the Institution. This decides Issue No.5.

ORDER

27) The Respondents are directed to provincialise the services of the Petitioner, Smt Padum Borah as the Asstt. Teacher (Arts) of Phulbari Girls' High School, Lakhimpur, from the date of the provincialisation of the school vide order dtd. 22.09.2014, by following proper procedure required for provincialisation of services against the sanctioned post, which is lying vacant, and the same post against which the Petitioner is discharging her duties as an Asstt. Teacher since 04.01.1996.

28) This Title Suit (Education) stands disposed of, accordingly.

Judgment is signed, sealed and delivered in the open Court on the 5th day of March, 2021.

(S.P. Khaund)
District Judge,
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
District Judge,
Lakhimpur, North Lakhimpur.

Transcribed and typed by :
Sri Satyabrata Kshattri, Stenographer.

A P P E N D I X

Title Suit (Education) No.30/2017.

LIST OF WITNES FOR THE PETITIONER :

1. PW.1 - Smt Padum Borah.

LIST OF EXHIBITS FOR THE PETITIONER :

Ext.1 - P.U. Pass Certificate.

Ext.2 - B.A. Pass Certificate.

Ext.3 - Appointment Letter dtd. 03.09.1995.

Ext.4 - Joining Letter dtd. 08.09.1995.

Ext.5 - Order dtd. 04.01.1996 issued by the Inspector of Schools,
Lakhimpur District Circle.

Ext.6 - School-wise incumbency list.

Ext.9 - Order dtd. 22.09.2014 issued by the Director of
Secondary Education, Assam.

Ext.10- Working Certificate issued by the Headmaster of
Phulbari Girls' High School.

Ext.11- Certified copy of the Order dtd. 08.08.2016 passed by the
Hon'ble High Court in WP (C)No.2630/2016.

LIST OF WITNESSES FOR THE RESPONDENT :

Nil.

LIST OF EXHIBITS FOR THE RESPONDENT :

Nil.

(S.P. Khaund)
District Judge,
Lakhimpur, North Lakhimpur.

Transcribed and typed by :

Sri Satyabrata Kshatry, Stenographer.