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

**Case No. : WP(C)/6411/2014**

SMTI GITA RABHA  
W/O- SRI ABANI KALITA, VILL. and P.O.- MUKALMUA, DIST.- NALBARI,  
PIN- 781126.

VERSUS

THE STATE OF ASSAM AND 5 ORS  
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,  
EDUCATION, HIGHER DEPTT., DISPUR, GHY- 6.

2:DY. SECY. TO THE GOVT. OF ASSAM  
EDUCATION DEPTT.  
DISPUR  
GHY- 6.

3:THE DIRECTOR  
HIGHER EDUCATION  
KAHILIPARA  
GHY- 19  
KAMRUP M  
ASSAM.

4:GOVERNING BODY OF THE BARKHETRI COLLEGE  
MUKALMUA  
P.O.- MUKALMUA  
DIST.- NALBARI  
PIN- 781126  
ASSAM.

5:PRINCIPAL  
BARKHETRI COLLEGE

MUKALMUA  
P.O.- MUKALMUA  
DIST.- NALBARI  
PIN- 781126.

6:MRIDUL HOQUE CHOUDHURY  
ASSTT. PROFESSOR  
BARKHETRI COLLEGE  
MUKALMUA  
NALBARI  
PIN- 781126  
ASSAM

**B E F O R E**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

**JUDGMENT & ORDER**

Advocates for the petitioners : Shri R.C. Saikia, Sr. Advocate  
Ms. K. Saikia, Advocate

Advocates for the respondents : Shri K. Gogoi, SC, Higher Education Deptt.  
Shri S. Muktar (R. No.6)

**Date(s) of hearing : 10.06.2025 and 12.06.2025**

**Date of judgment : 26.06.2025**

The instant petition has been filed under Article 226 of the Constitution of India with a claim for provincialisation of the services of the petitioner under the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011.

2. As per the facts projected, the petitioner is an M.A. and was appointed in the Barkhetri College (herein after College) as Lecturer in Hindi on 08.12.1997. At that time, the said College was in the venture stage. Prior to the said appointment, the Government had granted concurrence to TDC Part-I which includes the Hindi subject vide communication dated 20.01.1995 and to TDC Part-II which includes Hindi vide communication dated 12.09.1997. It is projected that such concurrence has been continuing. While the petitioner was serving, the Guwahati University had issued a communication dated 16.12.2009 to the Government for granting concurrence to the Barkhetri College and in the said communication, the aspect of Elective Hindi subject was included. Subsequently, vide communication dated 10.08.2012, the Guwahati University had moved the Government for granting concurrence to the College in respect of Hindi (Major) in TDC 1<sup>st</sup> year. In between vide communication dated 19.12.2011, the Principal of the College had issued a communication to the Director of Higher Education giving the particulars of the employees with a recommendation for provincialization. The said communication was issued in terms of the Act of 2011 and in the enclosure, the name of the petitioner was against Sl. No. 16. On 07.04.2014, the Director of Higher Education had issued a communication by which so far as the petitioner is concerned, her seniority was directed to be counted from 11.12.1997 and in the enclosed details in a tabular form, the petitioner is at Sl. No. 14. It may be mentioned that in the said table, one Ashok Das in the subject of Hindi is against Sl.No. 11.

3. The Director of Higher Education issued a communication dated 30.08.2014 and it is the case of the petitioner that in the enclosure containing names of incumbents, many of them did not have NET/SLET /M.Phil/Ph.D and

yet they were given the benefit of regularization. It is projected that there are sufficient numbers of students and for no discernible reasons, the claim of the petitioner has been rejected whereas in other Colleges, more than two appointments have been made in Hindi subject.

4. I have heard Shri R.C. Saikia, learned Senior Counsel assisted by Ms. K. Saikia, Ms. R. Bharali and Ms. M.M. Das learned counsel for the petitioner. I have also heard Shri K. Gogoi, learned Standing Counsel, Higher Education Department and Shri S. Muktar, learned counsel for the respondent no. 6.

5. Shri Saikia, the learned Senior Counsel has submitted that there was no legal impediment in provincializing the services of the petitioner and a case of discrimination has also been tried to be projected. It is submitted that so far as other Colleges are concerned, more than one Hindi teacher have been given the benefit of provincialisation leaving out the petitioner who has been serving since the year 1997 without any break.

6. The learned Senior Counsel has drawn the attention of this Court to an order dated 25.05.2016 passed by this Court in WP(C)/4644/2014 (***Kamal Sajati & Ors vs. State of Assam***) in which there was a direction for provincialisation. It is submitted that when the said judgment was passed, the Act in question was already cancelled and therefore, the stand taken by the Government that the Act of 2011 is no longer existing would not be sustainable. He further submits that for the Beltola College, orders of provincialization was made on 26.05.2014 in which many candidates without having NET/SLET were given the benefit. He has also cited the example of G.L. Choudhury College at Barpeta Road wherein the Director of Higher Education had issued an order dated 20.01.2014 wherein many such candidates were given such benefits.

Instances of Dhubri Girls' College and Rukasen College in the district of Karbi Anglong have also been cited.

7. It is submitted that the petitioner has been serving for the last 25 years and not provincializing her service would amount to exploitation. He has informed this Court that vide an order dated 05.02.2021, the petitioner has been appointed as Tutor in Hindi at a meager salary of Rs.27,000/- (Rupees Twenty Seven Thousand) per month whereas her counterparts whose services have been provincialized are getting much more salary. He has highlighted that so far as the Rukasen College in the district of Karbi Anglong is concerned, it is on the same date when the benefit of provincialization was given to persons without NET/SLET.

8. In support of his submission, the learned Senior Counsel has relied upon a decision of this Court dated 06.05.2024 passed in WP(C)/7265/2021 (***Arati Rani Mazumdar vs. State of Assam***).

9. *Per contra*, Shri K. Gogoi, learned Standing Counsel, Higher Education Department has submitted that the Act of 2011 has been struck down vide a judgment of the Hon'ble Division Bench of this Court on 23.09.2016 in WP(C)/3190/2012 and therefore, as on date there is no question of giving any benefit out of the said Act. He has submitted at the outset that so far as the case of ***Kamal Sajati*** (supra) is concerned, the judgment is dated 25.05.2016 which is prior to the striking down of the Act on 23.09.2016. In other words, he submits that at the time of delivery of the judgment in the case of ***Kamal Sajati*** (supra), the Act of 2011 was still existing. The learned Standing Counsel has also drawn the attention of this Court to the note which has been appended to the Act of 2011 which reads as follows:

*“The Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (Assam Act No. XVII of 2011) as amended vide the Assam Venture Educational Institutions (Provincialisation of Services) (Amendment) Act, 2012 and the Assam Venture Educational Institutions (Provincialisation of Services) Amendment) Act, 2013, which have been struck down by the Hon'ble Gauhati High Court vide order dated 23.09.2016 in WP(C) No. 3190/2012, and all rules, orders, notifications issued thereunder, shall stand repealed, by the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017, the Governor of Assam is pleased to notify that except the provisions under Section 4 and 8, the remaining provisions of the Act are deemed to have come into force with effect from 5th May, 2017.”*

10. Regarding the concurrence, the learned Standing Counsel has submitted that the typed copies of the concurrence orders which have been annexed to the writ petition are not correctly done and are different from the original. It is submitted that the expression “MIL” has been left out in the typed copies.

11. The learned Standing Counsel has also drawn the attention of this Court to the Act wherein a Schedule has been given and for each MIL subject, there is one Lecturer. It is submitted that the petitioner was in second position and admittedly in the table enclosed by the petitioner herself, there is one senior above her, namely, one Shri Ashok Das.

12. The learned Standing Counsel has given the present position that as of 11.06.2025, the subject of Hindi as a MIL has been given concurrence for TDC Part-I and Part -II and there is no other concurrence for Hindi (Major) or Elective Hindi.

13. So far as the service of the petitioner is concerned, it is submitted that admittedly the petitioner does not have the NET/SLET qualification and

therefore, under the new Act of 2017, she has been regularized as Tutor. It is reiterated that the petitioner cannot be given the benefit of a repealed Act of 2011. He has also produced before this Court a recent certificate dated 11.06.2025 issued by the Principal of the College wherein it has been reiterated that concurrence by the Competent Authority has been given only to the TDC courses and not for Elective Hindi and Hindi (Major). It is submitted that the permission is given by the concerned University whereas the concurrence is given by the Government and there is a huge difference between the aforesaid two aspects. He has reiterated that till the year 2011, the proposal to include Elective Hindi was still pending and was never finalized.

14. He has also drawn the attention of this Court to the definition of Venture Degree College appearing in Section 2 (o) of the Act which reads as follows.

*“2. (o) "Venture Degree College" means a Degree College imparting education beyond Higher Secondary stage established by the people of the locality prior to 1.1.2006 and which has also received affiliation from the concerned University and concurrence from the State Government on or before 1.1.2006 and not provincialised under any Act enacted by the State legislature so far.”*

15. He has submitted that concurrence has to be prior to 01.01.2006 to meet the requirement and in this case, even the statute which has been repealed does not permit such provincialisation.

16. The learned Standing Counsel has placed reliance upon an order dated 13.11.2019 passed by the Hon'ble Division Bench in WA 283/2019 in the case of **Purnabati Brahma vs. The State of Assam and Ors.** He has pressed into service the observations made in paragraph 9 which reads 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.".*

17. He has also relied upon a judgment dated 13.02.2024 passed by the Hon'ble Division Bench in WA 285/2018, (***Kalpana Baruah vs. The State of Assam and Ors.***) wherein the principles laid down in ***Purnabati Brahma*** (supra) has been endorsed.

18. On the aspect of constitutionality of an Act, the learned Standing Counsel has relied upon the judgment of ***State of Manipur and Ors. vs. Surjakumar Okram and Ors.*** and paragraph 23 has been pressed into service which reads as follows.

*“23. The principles that can be deduced from the law laid down by this Court, as referred to above, are:*

*I. A statute which is made by a competent legislature is valid till it is declared unconstitutional by a court of law.*

*II. After declaration of a statute as unconstitutional by a court of law, it is non est for all purposes.*

*III. In declaration of the law, the doctrine of prospective overruling can be applied by this Court to save past transactions under earlier decisions superseded or statutes held unconstitutional.*

*IV. Relief can be moulded by this Court in exercise of its power Under Article 142 of the Constitution, notwithstanding the declaration of a statute as unconstitutional.*

*Therefore, it is clear that there is no question of repeal of a statute which has been declared as unconstitutional by a Court. The very declaration by a Court that a statute is unconstitutional obliterates the statute entirely as though it had never been passed. The consequences of declaration of unconstitutionality of a statute have to be dealt with only by the Court."*

19. He has also relied upon the case of ***Prahlad Konch vs. The State of Assam*** reported in **(2017) 3 GLJ 111** wherein the Hon'ble Division Bench has laid down that NET / SLET is mandatory for appointment to the post of Lecturer and M.Phil alone will not do.

20. As regards the submission on the aspect of discrimination, the learned Standing Counsel has submitted that Article 14 is a positive right and there is no concept of negative equality. In this regard, he has relied upon the case of ***R. Muthukumar and Ors. vs. Chairman and Managing Director TANGEDCO and Ors.*** reported in **2022 SCC Online SC 151**

21. As regards the instances of the other Colleges cited by the petitioner, the learned Standing Counsel has submitted that the petitioner has not given any

details on the aspect of concurrence of the respective Department. He submits that unless such details are available or put on record, the petitioner cannot maintain the said aspect of challenge. He has also submitted that as per the new Act, if a candidate obtains the NET /SLET within a period of 5 years, he or she will get the UGG scale. He has also submitted that though the period is of 5 years, there are instances where the period has been relaxed and the petitioner can avail of this benefit. He has submitted that under the new Act of 2017, Tutor has been defined under Section 2 (u) and it is under this Act that the benefit has been given to the petitioner presently. He has also submitted that even the Act of 2017 was the subject matter of challenge which was however dismissed by the Hon'ble Division Bench. He has fairly submitted that while dismissing the said challenge, the Hon'ble Division Bench has recommended to explore as to how there can be increase in the pay of Tutors in which the petitioner's case would also be covered.

22. As regards the appointment of persons without NET/SLET, the learned Standing Counsel has submitted that it indeed appears that some aberrations had taken place earlier but those are being presently actively reviewed. He has reiterated in any case that there is no concept of negative equality under Article 14 of the Constitution of India. He has drawn the attention of this Court to Section 24 of the new Act wherein it has been laid down that review is permitted.

23. The learned Standing Counsel accordingly submits that the instant writ petition is without any merits and is liable to be dismissed.

24. Endorsing the submission of the learned Standing Counsel, Shri Muktar, the learned counsel for the respondent No. 6 has submitted that his client has

been unnecessarily arrayed as a party. He has submitted that the subject of his client is Mathematics whereas the subject of the petitioner is Hindi and there is no connection at all. He has submitted that in any case there are 17 other juniors below the respondent No. 6 and none have been made parties and it is the respondent No. 6 who has been unnecessarily harassed. He has also informed that the services of the respondent No. 6 has been provincialized on 21.07.2016 and the order of provincialisation is not the subject matter of any challenge.

25. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

26. The present claim has to be understood to be based on the following broad grounds:

- (i) Discrimination.
- (ii) Wrongful denial in spite of the petitioner being eligible.
- (iii) Benefits given as per Court's order.

27. Since all the three grounds are interconnected, the same would be taken up together.

28. As per the facts projected, the College in question was in the venture stage when the petitioner was appointed as a Lecturer on 08.12.1997. At that time, the Government concurrence was given to the TDC Part -I and Part -II which included Hindi. There is nothing on record however to show that further concurrence has been given for Elective Hindi and Hindi (Major). So far as the orders of concurrence are concerned, it appears that while presenting the typed copy, the expression "MIL" has been left out. Even giving benefit of doubt to the

petitioner that such error has been done inadvertently, a bare look with the photocopy annexed would show that the concurrence was given only to MIL. In any case, there is no doubt that so far as Elective Hindi and Hindi (Major) is concerned, there is no concurrence and as per the Act of 2011 which was holding the field at that time, only one post of Hindi was to be provincialized.

29. In the communication issued by the Principal to the DHC on 19.12.2011 in pursuance to the Act of 2011, the particulars of all the teachers were forwarded which included the name of the petitioner against SL. No. 16. It is not in dispute that the seniority of the petitioner has to be counted from 11.12.1997. In the said table however, it is seen that so far as the subject "Hindi" is concerned, one Shri Ashok Das is senior to the petitioner and was placed against Sl. No. 11. As noted above, under the Act, only one teacher is eligible for provincialisation of service.

30. So far as the submission made that persons not having NET/SLET/M.Phil/ Ph.D were given the benefit of regularization, this Court is of the opinion that even if some benefits are given to any candidate in aberration of law, the same cannot go as a mandamus from the Court. In the case of **Prahlad Konch** (supra), a Division Bench of this Court has laid down that NET/SLET is mandatory and M.Phil alone will not do. This Court also finds force in the submission made by the learned Standing Counsel that so far as the other Colleges are concerned, there are no details given as to how many posts in the subject of Hindi were given concurrence.

31. With regard to the case of **Kamal Sajati** (supra), the learned Standing Counsel is correct in contending that the judgment is dated 25.05.2016 whereas the Act of 2011 was struck down on 23.09.2016 in WP(C)/3190/2012.

Therefore, at the time when the judgment in ***Kamal Sajati*** (supra) was passed, the Act of 2011 was an existing Act and therefore, the said facts are distinguishable from the case in hand.

32. As regards the present position, it appears that the petitioner has been regularized as a Tutor as per the Act of 2017 and as pointed out by the learned Standing Counsel, the Act itself provides for facilitating such person to obtain NET/SLET within a particular time which can also be extended. This Court has also to consider the mandate of law as laid down by the Hon'ble Division Bench in the case of ***Purnabati Brahma*** (supra), the relevant observation of which has already been extracted above. The said principles have been reiterated by the Division Bench in a later judgment of ***Kalpana Baruah*** (supra).

33. As regards the respondent No. 6, this Court is of the opinion that the respondent No. 6 has been unnecessarily made a party as both the subject as well as the position in the seniority list are not relevant at all.

34. The reliance of the petitioner in the case of ***Arati Rani Mazumdar*** (supra) is misplaced. The said case on the aspect of regularization of service of dropped teachers is based on the earlier judgment passed by this Court in the case of ***Jiban Ch. Deka and Ors. vs. State of Assam*** reported in **2008 (3) GLT 229**. The facts of the said case which pertains to the services in L.P. and U.P. Schools are wholly distinguishable from the facts of the present case.

35. Though the petitioner has tried to project that there are good number of students for which such provincialisation would be justified, this Court is of the opinion that provincialisation has to be preceded by the existence of a vacancy which has to be done by following the due process of law. Admittedly, in the

instant case, the concurrence is only for the Hindi subject in TDC Part-I and Part-II and there is no further concurrence for any other post in the subject of Hindi. Though the petitioner is presently rendering her services as Tutor under the 2017 Act, the Act itself providing for an avenue to get the UGC scale, wherein the incumbent is given time to obtain NET/SLET, this Court is of the opinion that the doors of the petitioners have not been finally closed.

36. With regard to the aspect of discrimination, it is trite law that the rights under Article 14 is a positive right and there is no concept of negative equality. In this connection, the reliance on the case of **R. Muthukumar** (supra) by the Department appears to be appropriate. The following observations made by the Hon'ble Supreme Court may be referred in this regard.

*“28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In Basawaraj v. Special Land Acquisition Officer, this court ruled that:*

*"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, If some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."*

37. In view of the aforesaid discussions, this Court is of the opinion that no relief can be granted to the petitioner and accordingly the writ petition is dismissed.

38. No order as to cost.

**JUDGE**

**Comparing Assistant**