

**THE ASSAM ELEMENTARY EDUCATION
(PROVINCIALISATION) ACT, 1974
(Assam Act VI of 1973)**

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[Received the assent of the Governor on the 9th June, 1975]

**An Act to provide for the Provincialisation of the Elementary
Education in the State of Assam**

Preamble.

Whereas it is expedient to provincialise the service of the Teachers of Elementary schools including Pre-primary Schools and employees of the respective Boards;

And whereas it is expedient that the management and control of Elementary Education hitherto vested in the

authorities under the provisions of the Assam Elementary Education Act, 1963, be taken over by the State Government;

It is hereby enacted in the Twenty-fifth year of the Republic of India as follows:

COMMENTS

Preamble.

In the year 1947 the Assam Legislature passed an Act namely: the Assam Primary Education Act”, in order to provide for development of primary education in the State. This Act was repealed by the Assam Basic Education Act, 1954, which was enacted for the development, expansion, management and control of basic education and with a view to introduce gradually universal, free and compulsory basic education in the State. The Assam Basic Education Act, 1954, was repealed by the Assam Elementary Education Act, 1962, which was again repealed by 1968 Act, which provided for free compulsory education in Assam and for the management and control of elementary education. The 1968 Act has now again been repealed by virtue of S. 28 of the Gauhati Municipal Corporation Act, 1969, the Assam Municipal Act, 1956 and the Assam Panchayat Raj Act,

1972, which are repugnant to any of the provisions of this Act stand repealed.

The object of this Act is to provincialise the services of the employees of different categories of the State Board and Regional Boards for Elementary Education and bringing them the direct management and control of the State Government, and all assets and liabilities of the State Board and Regional Boards shall vest in the State Government.

Under this Act, the management and control of Elementary Education hitherto vested in the authorities under the provisions of the Assam Elementary Education Act, 1969, have been taken over by the State Government.

Under Art, 25 of the Constitution of India, the State Government are required to endeavour to provide for free and compulsory education for all children until they complete the age of 14 years, and in implementation thereof the repealed Act was enacted, and the present Act is basically in the same spirit.

The Supreme Court, in the case of *In re, Kerala Education Bill*, 1957 [AIR 1958 SC 956], following the decisions in the case of *State of Madras v. Smt. Champakam Darairajan* [AIR 1951 SC 226]; *Hanif Qureshi v. The State of Bihar* [AIR 1958 SC 731], held that the directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights.

CHAPTER I

1. Short title, extent and commencement.

(1) This Act may be called the Assam Elementary Education (Provincialisation) Act, 974

(2) It extends to the whole of Assam except the autonomous districts:

Provided that the Governor may, with the consent of the district council concerned, extend all or any of the provisions of this Act to all or any of the autonomous districts on such date as may be notified in this behalf.

(3) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

2. Definitions.

In this Act unless there is anything repugnant in the subject or context-

(a) “Area of compulsion” means an area specified for the purpose of making Elementary Education compulsory under S 14;

- (b) “Autonomous district” means the district under the Sixth Schedule to the Constitution of India;
- (c) “Child” means a person of either sex who has completed five years of age and has not exceeded fourteen years or of such age as the State Government may, from time to time, prescribe;
- (d) “District Council” means a District Council constituted under sub-paragraph (I) of Paragraph 2 of the Sixth Schedule to the Constitution of India;
- (e) “Elementary Education” means education of such class or standard, as may be prescribed;
- (f) “Elementary School” means a school where elementary education is imparted;
- (g) “Guardian” means the person to whom the duty of taking care of, bringing up or the custody of the child has been entrusted by the law or custom or by any lawful authority or who has in fact accepted or assumed such duty or has actual custody of such child or where such guardian cannot be readily ascertained of such person as the local authority shall decide;
- (h) “Local Authority” means the Gauhati Municipal Corporation, a Municipal Board as defined in the

Assam Municipal Act, 1956, a Town Committee established under the said Act and a Mahkuma Parishad and a Gaon Panchayat established under the Assam Panchayat Raj Act, 1972;

- (i) “Management” means and includes such powers and functions, in respect of the local authorities and of “District Council” as have been laid down in this Act;
- (j) “Notification” means a notification published in the official Gazette;
- (k) “Prescribed” means prescribed by rules under this Act;
- (l) “State Government” means the Government of Assam;
- (m) “Recognised School” means a school recognized or deemed to be recognized under this Act;
- (n) “State Board” for Elementary Education and “Regional Board” for Elementary Education means the Board constituted under the Assam Elementary Education Act, 1968;
- (o) “Existing teachers” means the teachers appointed or deemed to have been appointed by the Government and the State Board for Elementary Education under the Assam Elementary Education Act, 1968;

(p) “attendance authority” means any person appointed to be an attendance authority under S. 20.

COMMENTS

The definition of “area of compulsion” is similar to that provided in S.2 (a) of the repealed Act.

The definition of “Autonomous District” is similar to that provided in S.2 (c) of the repealed Act.

The definition of the word “Child” is similar to that provided in S. 2 (f) of the repealed Act.

The definition of the words “District Council” is similar to that provided in S. 2 (g) of the repealed Act.

The definition of the words “Elementary Education” is similar to that provided in S. 2 (h) of the repealed Act.

The definition of the words “Elementary School” is similar to that provided in S. 2 (i) of the repealed Act.

The definition of the words “Guardian” is similar to that provided in S. 2 (j) of the repealed Act.

The definition of the words “Local Authority” is similar to that provided in S. 2 (k) of the repealed Act.

The definition of the words “management” is similar to that provided in S. 2 (l) of the repealed Act.

The definition of the words “prescribed” is similar to that provided in S. 2 (n) of the repealed Act.

The “State Board” was constituted under Ss. 3 and 4 of the repealed Act.

The teachers were appointed or deemed to have been appointed under 1962 repealed Act and taken over by the State Board under S. 352 of 1968 repealed Act.

CHAPTER II

Immediately as this Act comes into force

- 3.** (1) All sums of money that may be in the Elementary Education Fund, created and maintained under S. 20 of the Assam Elementary Education Act, 1968, shall vest in the State Government.
- (2) All sums of money that may be in a Regional Board Fund created and maintained under S. 31 of the Assam Elementary Education Act, 1968 shall vest in the State Government.
- (3) All teachers of elementary school and pre-primary schools maintained by the Regional Boards of Elementary Education constituted under S. 18 of the Assam Elementary Education Act, 1968 shall be deemed to be the employees of the State Government.
- (4) All employees of the State Board of Elementary Education constituted under S. 18 of the Assam Elementary Education Act, 1968 shall be deemed to be the employees of the State Government, and shall be entitled to such emoluments as were admissible to them before the date of commencement of this Act till

such time as their emoluments are prescribed by rules under this Act.

(4-A) Services of all teachers and employees who rendered services under the following repealed Acts and whose services are taken over by the Government on Provincialisation on 5th September, 1975 under the prescribed Act shall be deemed to be services under the Government and shall qualify and count for pension and other retirement benefits-

(1) The Assam Basic Education Act, 1954 (XXVI of 1954).

(2) The Assam Elementary Education Act, 1962 (XXVI of 1954).

(3) The Assam Basic Education Act, 1968 (XXVI of 1969).

(4-B) For the purpose of sub-S. (4-A) above, services of such teachers and employees taken over on 5th September, 1975 shall be entitled to such scales of pay and allowances as admissible to teachers of corresponding rank in the Government institutions.

(5) (i) All teachers appointed by the Regional Boards of Elementary Education taken over by the Government under sub-S. (3) shall be entitled to such scales of pay

and allowances as admissible to teachers of corresponding rank in the Government institutions.

- (ii) All ministerial and Grade IV staff appointed by the State Board of Elementary for Regional Boards' offices shall be entitled to such scales of pay and allowances as admissible to employees of corresponding rank in a district office under the State Government:
- (iii) All ministerial staff appointed by the State Board of the Elementary Education for the office of the Secretary, State Board, taken over by the Government under sub-S (4) shall be entitled to such scales of pay and allowances as admissible to staff of corresponding rank in the offices of the Heads of Departments under the State Government:

Provided that the teachers and the staff so taken over shall be governed by the same set of service Rules and Rules of Conduct and Discipline as are applicable to Government employees of the corresponding ranks.

- (6)** All properties of the State Board and the Regional Boards including the properties held by the various authorities constituted under the provisions of the Assam Elementary Education Act, 1968 shall vest in State Government.
- (7)** Notwithstanding anything contained in this Act the responsibility of proper administration and supervision of

elementary education and arrangements of inspection and of proper training of teachers shall lie with the State Government. The State Government shall also determine the curriculum and duration, standard and syllabus of the course of instruction to be imparted in an elementary school.

COMMENTS

Sections 3 to 17 of the Assam Elementary Education Act, 1968, deal with the constitution of the State Board, and also powers and functions of the State Board.

As provided under this section, all money-funds, created and maintained under the provisions of the 1968 Act, are now vested under this Act in the State Government, all the properties held by various authorities under the provisions of 1968 Act, now vest in the State Government, all the teachers will now be entitled to the scale as admissible to the persons of corresponding rank in the Government institution, and all other staffs shall be entitled to the scale as admissible to the persons of the corresponding rank under the State Government.

Sub-section (4-A) and (4-B) were inserted by Assam Act No. VI of 1987.

Under this section the State Government shall be responsible for proper administration and supervision of elementary education and all other powers earlier vested in the State Board.

Section 14 of the 1962 repealed Act which could not however find a place in the 1968 Act contained the provisions for the constitution of the office of the Assistant Secretary and also the powers and duties of an Assistant Secretary. That section read as follows:

“14. (1) Subject to the provisions of S. 26, the Deputy Inspectors of Schools, by virtue of office, shall be the Assistant Secretaries of the State Board.

(2) The Headquarters and jurisdiction of the Assistant Secretaries shall be the same as those of the Deputy Inspectors.

(3) The Assistant Secretary shall exercise powers and perform duties as follows in his own jurisdiction-

(i) to operate the fund placed at his disposal by the State Board:

(ii) to appoint his office staff and manage his office property;

(iii) to appoint teachers in recognized schools on the advice of a Committee constituted by the State Board under S. 16 and transfer them as necessary and also grant such leave, other than casual leave, to them as may be admissible;

- (iv) to make payment of contingent expenditure to schools and salaries to the teachers and other employees of the State Board, if any, in the area concerned by himself or through the Block Development Officer or through such other officer as may be specified by the Government for this purpose;
- (v) to make payment to the local authorities for proper maintenance of schools in the manner prescribed;
- (vi) to make such other payments including scholarships as may be prescribed;
- (vii) to maintain proper accounts of the fund placed at his disposal;
- (viii) to carry out such other duties as may be entrusted to him by the Secretary, State Board for the purpose of carrying out the provisions of the Act.”

But such powers (few of them) were exercised by the Secretary under R. 7 of the 1968 repealed Act. The Supreme Court in the case of *State of Assam v. Kripanath* and others [AIR 1967 SC 459], was concerned with S. 14 (3) (iii) of the old Act and held as follows:

“Now as we read S. 14 (3) (iii) of the Act, it is obvious that the power of appointment is only vested in the Assistant Secretary, though that power has to be exercised on the advice of the committee constituted under S.16 of the Act. Even assuming that the recommendation of the Committee is necessary before appointment is made by the Assistant Secretary, the fact still remained that it is not the Committee which appoints, and the appointment is made only by the Assistant Secretary. Even if the word “advice” in this provision is equaled with the word “recommendation” it is still clear that the Committee only recommends and it is Assistant Secretary cannot make the appointment without the advice or recommendation of the Committee. It may be that the Assistant Secretary cannot make the appointment without the advice or recommendation of the Committee. Even so, in law the appointing authority is only that Assistant Secretary, though this power is to be exercised on the advice or recommendation or advice of the Committee. The appointing authority would still be the Assistant Secretary and no one else, and there is no reason why, if he is the appointing authority, he cannot dismiss those appointed by him with the aid of S.18 of the 1915 Act. We cannot, therefore, agree with the view of the High Court.” [AIR 1956 Assam 10].

4. The Director of Public Instructions shall be the Administrative Officer of an elementary education and shall exercise such powers and perform such duties as may be required for the carrying out the purposes of this Act. He shall also perform other duties and exercise such other powers as may be prescribed by the Government.

CHAPTER III

Local authorities' power of management of Elementary Schools

5. As soon as this Act comes into force, Government may, if and when necessary vest the management of elementary school/schools, subject to such conditions as may be prescribed, in the local authorities of the area concerned:

Provided that nothing in this section shall preclude the right of minorities whether based on religion or language or any private body for managing their own schools.

COMMENTS

This section is similar to S. 26 of the Elementary Education Act, 1968.

6. In the areas where the Assam Panchayat Raj Act, 1972, is in operation, the Block Development Officer, such other officer, as may be specified by State Government in this behalf, with the help of such officers of Education Department, as may be attached to him, shall act as a coordinating agency to see that the provisions of this Act are observed in the schools.

COMMENTS

For similar provisions see S. 27 of the 1968 Act

- 7.** The State Government may on the advice of the Director of Public Instruction or otherwise, rescind in part or in whole any resolution, order or decision of a local authority and may also prohibit the doing of any act in pursuance of such resolution, order or decision whenever in the opinion of the State Government, such resolution, order, decision or act is in excess or abuse of the powers, conferred by the local authority by this Act, or by any rules framed thereunder.

COMMENTS

For similar provisions see S. 29 of the 1968 Act.

CHAPTER IV

Fund for District Councils

- 8.** (1) The State Government shall prescribe by rules the principles for assisting the District Council in the management and maintenance of elementary schools and place amounts at the disposal of the District Council in accordance with these rules from time to time.

- (2) In autonomous districts the amount so received shall be deposited in the fund of the District Council under a separate head “Elementary Education” and the amount so received shall be applied for the purposes enumerated in S. 9.

COMMENTS

The provisions of sub-S. (2) herein are similar to sub-S. (2) of S. 30 of the 1968 Act.

- 9.** Subject to the provisions of this Act, the District council Fund shall also be appointed for the following purposes, namely:

- (i) payment of any stipend or scholarship to students in accordance with rules and orders of the Education Department;
- (ii) payment of such sums of money as may be found necessary for construction, extension, improvement and maintenance of school buildings and for provisions for mid-day meal, play-ground, furniture and equipment;
- (iii) payment of legal expenses and other expenses which may be found necessary.

COMMENTS

The provisions of this section are similar to sub-Cls. (iii), (iv) and (vii) of S. 32 of the 1968 Act.

CHAPTER V

Powers of State Government to settle disputes

- 10.** Any dispute arising out in respect of transfer and ownership of any property or any matter pertaining to any provisions shall be referred to by the aggrieved party to the State Government whose decision in this behalf shall be final and binding on all concerned.

COMMENTS

For similar provisions see S. 36 of the 1968 Act.

CHAPTER VI

Recognition of Elementary Schools and their affairs

- 11.** Subject to S. 12 all elementary schools recognized under S. 37 of the Assam Elementary Education Act, 1968 shall be deemed to be recognized elementary schools by the State Government.

COMMENTS

Under S, 12 all elementary schools, as specified and detailed therein were recognized as elementary schools and such schools subject to the provisions of S. 12 of this Act, shall be deemed to be recognized elementary schools under the State Government.

- 12.** The terms and conditions of recognition and grants-in-aid to new elementary schools shall be as laid down by the State Government from time to time:

Provided that on the recommendation of the Deputy Inspector of Schools concerned, the State Government may accord necessary recognition to such elementary schools as may fulfil the required conditions. All existing teachers and other employees of the schools or those to be appointed to the elementary schools recognized under this Act except in the case of autonomous districts shall be deemed to have been appointed by the State Government in their corresponding ranks.

CHAPTER VII

Compulsory Education

- 13.** No fee shall be levied in respect of any child for attending a recognized elementary school.

COMMENTS

This section is similar to S. 41 (1) of the 1968 Act.

- 14.** The State Government may, by notification, declare that elementary education shall be compulsory up to certain age to be prescribed in any area or areas of the State as specified in the notification.

COMMENTS

This section is similar to S. 42 of the 1968 Act.

- 15.** In an area of compulsion the guardian of every child resident in such area shall, subject to the provision of S. 16 be bound

to cause the child to attend a recognized elementary school in such area.

COMMENTS

For similar provisions *see* S. 43 of the Act.

- 16.** A guardian may be exempted from causing a child to attend a recognised elementary school if-
- (i) the child receiving education otherwise than a recognised elementary school to the satisfaction of the attendance authority;
 - (ii) the child has already completed the standard of elementary education prescribed;
 - (iii) there is no recognised elementary school within the distance of one mile from the residence of the child or even if there is one when it is not reasonably or conveniently accessible from such residence.
 - (iv) The child is prevented from attending school by sickness, infirmity or any other mental or physical defect accepted as sufficient ground by the attendance authority; or

- (v) There is any other compelling circumstances which, in the opinion of the attendance authority prevents the child from attending a recognised elementary school.

COMMENTS

For similar provisions see S, 44 of the 1968 Act.

- 17.** (1) If the attendance authority is satisfied that a child due to economic or other circumstances connected with the family to which the child, belongs, is unable to attend an approved school in that manner required by or under this Act, it may permit the child to attend any institution imparting part-time elementary education.
- (2) A child receiving education under sub-S. (1) shall be deemed to have been fulfilled the requirements of S. 16 of this Act.

COMMENTS

For similar provisions see S. 45 of the 1968 Act.

- 18.** The manner in which a list of children in any area of compulsion shall be caused to be prepared, the manner of notifying the guardians, the period of duration of compulsory attendance of children in schools, shall be prescribed.

COMMENTS

For similar provisions see S. 46 of the 1968 Act.

- 19.** In an area of compulsion, it shall be the duty of every local authority to enlist the co-operation of every guardian ensuring the attendance of every children in schools.

COMMENTS

For similar provisions see 47 of the 1968 Act.

- 20.** (1) The State Government may appoint the attendance authority for the purpose of enforcing attendance in schools.
- (2) The attendance authorities shall have such powers, functions and duties as may be prescribed.
- (3) An attendance order on the guardian of a child shall be passed at such time and in such manner as may be prescribed.

COMMENTS

The provisions of this section are similar to S. 48 of the 1968 Act.

- 21.** No guardian or person shall utilize the time or the services of the child in connection with employment of such a child, whether on remuneration or otherwise, in such a manner or at such time of the day as to interfere with regular attendance of the child in a school as required under this Act.

COMMENTS

For similar provisions see S, 49 of the 1968 Act.

- 22.** Any guardian who contravenes the provisions of S. 15 or any guardian or person who contravenes the provisions of S. 21 shall be punishable with fine not exceeding two rupees and in case of a continued contravention with an additional fine not exceeding fifty paise for every day during which such contravention continues.

COMMENTS

For similar provisions see S. 50 of the 1968 Act.

- 23.** The Courts competent to try offences under this Act shall be the following:
- (a) in areas where the Panchayati Adalat has been established under S. 83 of the Assam Panchayat Raj Act, 1972- such Adalat within whose jurisdiction the offence is committed;
 - (b) in other areas- the Court of a Magistrate having jurisdiction.

CHAPTER VIII

Miscellaneous

- 24.** No Court shall take cognizance of an offence under this Act except on a complaint of an attendance authority.

COMMENTS

For similar provisions see S 52 of the 1968 Act.

- 25.** The attendance authority shall be deemed to be a public servant within the meaning of S. 21 of the Indian Penal Code.

COMMENTS

For similar provisions see S. 54 of the 1968 Act.

- 26.** No suit, prosecution or other legal proceedings for anything done in good faith under this Act shall be without the previous sanction of the State Government in this behalf.

COMMENTS

For similar provisions *see* S. 54 of the 1968 Act.

- 27.** (1) The State Government may, after previous publication in the official Gazette, make rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing provisions such rules may provide for all or any of the following matters, namely:
- (i) terms and conditions of service of teachers of elementary schools including conduct and discipline of teachers:
 - (ii) manner of making payment of scholarship;
 - (iii) conditions under which management of elementary school shall vest in the local authority;
 - (iv) form of register of children to be maintained by a local authority;

- (v) conditions under which administration of elementary education had to be carried out in autonomous districts;
- (vi) conditions for placing of funds with different authorities constituted under this Act;
- (vii) manner of disbursing funds by a local authority or by any other authority constituted under this Act;
- (viii) terms and conditions of services of the employees under the State Board and the Regional Boards;
- (ix) conditions of taking over of elementary schools managed by the State Boards for Elementary Education by the Government;
- (x) conditions of payment of other liabilities of a Regional Board or the State Board;
- (xi) manner of keeping accounts by a District Council or by any other authority;
- (xii) conditions of taking over of assets of the State Board or a Regional Board;

- (xiii) manner, procedure and authorities of taking disciplinary action;
 - (xiv) fixing the limit of the age of a child;
 - (xv) manner of preparation of details as required under S. 18;
 - (xvi) fixing of powers, duties and responsibilities of the various officers including attendance authorities;
 - (xvii) fixation of time and manner of serving attendance orders of guardians
- (3) Every rule made under this section shall be laid, as soon as may be after it is made, before the Assam Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the sessions immediately following, the Assam Legislative Assembly agree that the rule should not be made the rule shall thereafter have effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

COMMENTS

For similar provisions see S. 55 of the 1968 Act.

Sub-clauses (i), (iv), (x), (xi), (xii), (xiii), (xiv), (xv), (xviii), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv) and (xxv) of S. 55 of the 1968 Act, have been incorporated in this section.

- 28.** (1) The Assam Elementary Education, 1968 is hereby repealed.
- (2) Any of the provisions of the Gauhati Municipal Corporation Act, 1969, the Assam Municipal Act, 1956 and the Assam Panchayat Raj Act, 1972 which are repugnant to any of the provisions of the Act shall stand repealed.

COMMENTS

The relevant section of the Assam Elementary Education Act, 1968 as referred to in this section are reproduced herein below:

- (A) Section 20 of the repealed act as referred to in S. 3 (1) of this Act :

“20. Elementary Education Fund. (1) A fund hereinafter called the Elementary Education Fund shall be created and maintained by the State Board.

(2) The following shall form part of and be paid into the Elementary Education Fund:

(i) all same of money that may be in the Elementary Education Fund, constituted under S. 17 of the Assam Elementary Education Act, 1962, on the date on which this Act comes into force;

(ii) such grants as may be made by the State Government to the State Board for the purpose of elementary education;

(iii) income derived from any endowment or property owned or managed by the State Board for the purposes of this Act; and

(iv) money that may be received by the State Board by way of subscription donation, etc., either directly or through Regional Board.”

(B) Section 31 of the repealed Act as referred to in s. 3 (2) of the Act:

“31. (1) A fund hereinafter called the Regional Board Fund shall be created and maintained by each Regional Board and the following shall form part of the said fund, namely:

- (i) grants of allotments, as the case may be, made by the State Board for the purposes of elementary education;
 - (ii) fees and fines realised under the provision of this Act;
 - (iii) all other sums of money that may be realized by the authority concerned by or under this Act.
- (2) The Secretary of the Regional Board shall deposit the amount received under sub-S (1) in a Government treasury or State Bank of India or Post Office Savings Bank and apply the same in the manner prescribed.
-