

GAHC010019902021



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

Case No. : WP(C)/758/2021

SAMSHUL HUDA AKAND
S/O. LT. IMAM UDDIN AKAND, R/O. VILL. BORBHETI, P.O. BORBHETI, DIST.
NAGAON, ASSAM, PIN-782123.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPTT., DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE DIRECTOR OF PUBLIC INSTRUCTION (PENSION) ASSAM

KAHILIPARA
GUWAHATI-781019.

4:THE DIRECTOR OF PENSION ASSAM

HOUSEFED COMPLEX
GUWAHATI.

5:THE FINANCE AND ACCOUNT OFFICER (FAO)
IN THE OFFICE OF DIRECTOR OF PUBLIC INSTRUCTION (PENSION)
ASSAM
KAHILIPARA
GUWAHATI-781019.

6:THE INSPECTOR OF SCHOOLS

MDC
MORIGAON
DIST. MORIGAON
ASSAM
PIN-78

7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

8:THE TREASURY OFFICER
MORIGAON
DIST. MORIGAON
ASSAM

Advocate for the Petitioner : MR. B RAHMAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

16.08.2023

Heard Mr. B Rahman, learned counsel for the petitioner and Mr. N J Khataniar, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1, 2 & 6. Also heard Ms. D Das Barman, learned Government Advocate, Assam for the respondent Nos. 3, 4 & 5 as well as Mr. A Chaliha, learned Standing counsel, Finance Department, Assam for the respondent Nos. 7 & 8.

2. The petitioner was an Office Assistant in Sahariagaon Senior Madrassa (hereinafter referred to as the said Madrassa) in the district of Morigaon since 01.01.1975 and his service was approved by the Madrassa Board on 18.12.1978.

3. The post of Office Assistant in said Sr. Madrassa was sanctioned by the Director of Public Instruction on 06.04.1979 and the petitioner got his Scale of Pay with Grade Pay of Rs. 5,600/- since 01.02.1979.

- 4.** Pursuant to a letter of the Director of Secondary Education, Assam dated 28.03.1992; the Inspector of Schools, Morigaon District Circle, Morigaon vide his order dated 01.10.2018 converted the post of Junior Assistant held by the petitioner to the post of Senior Assistant as per the principle of 2:3 ratio with Grade Pay of Rs. 8,000/-.
- 5.** The petitioner retired from service on 31.12.2018 and submitted all the relevant papers and documents for his pension before the Superintendent of said Madrassa.
- 6.** Later, the Inspector of Schools, Morigaon by a Corrigendum dated 04.02.2019 re-fixed the Grade Pay of the petitioner as an UDA at Rs. 7,400/- in modification of his earlier order dated 01.10.2018, noted above.
- 7.** Though his pension papers were submitted before the Directorate of Pension for issuance of the Final Pension Pay Order, but the respondent authorities in the Directorate of Pension, Assam returned his said final pension proposal.
- 8.** Being aggrieved, the petitioner has preferred this writ petition for a direction to the respondents in the Secondary Education Department of the State as well as the Directorate of Pension, Assam for non-issuance of Final Pension Pay Order to him with the Scale of Pay of Senior Assistant at the Grade Pay of Rs. 7,400/-.
- 9.** It is an admitted position that it was the Inspector of Schools, Morigaon District Circle Morigaon who by order dated 01.10.2018 promoted the petitioner from Junior Assistant/LDA to the post of Senior Assistant/UDA converting his post to Senior Assistant/UDA as per the principle of 2:3 ratio with the up-gradation in the Scale of Pay of Rs. 14,000/- – Rs. 49,000/- with Grade Pay of Rs. 8,000/- P.M. as admissible under the Rules with immediate effect as per the Government Orders under No. ABP-59/2000/54 dated 23.06.2006 and No. BW-13/2002/Pt/76 dated 19.03.2004 and a communication of the Director of Secondary Education, Assam under No. EST/ASSO/3/86/248 dated 28.03.1992.
- 10.** From the Speaking Order of the Director of Secondary Education (DSE), Assam dated 05.07.2023 placed before the Court by Mr. N J Khataniar, learned Standing counsel, Department of School Education, Assam it is seen that a hearing took place in the office chamber of DSE, Assam on 07.06.2023, wherein the petitioner as well as the Inspector of Schools, Morigaon participated.

11. The DSE, Assam found that it is only the Appointing Authority who is competent to promote an employee working in the erstwhile Madrassa, now converted into secondary schools. It was the Director of Secondary Education, Assam who was the competent authority to promote an employee of Madrassa Institutions in terms of the Government Notification No. AR.49/2005/15 dated 01.07.2017 and not the Inspector of Schools.

12. As already noted above, it was the Inspector of Schools, Morigaon District Circle, Morigaon who on 01.10.2018 upgraded the petitioner from Junior Assistant to Senior Assistant in the said Madrassa in the Scale of Pay of Rs. 14,000/-- Rs. 49,000/- with Grade Pay of Rs. 8,000/- P.M. and subsequently, by Corrigendum dated 04.02.2019 re-fixed the Grade Pay of the petitioner at Rs. 7,400/- from Rs. 8,000/-.

13. Considering the above, the order of the Inspector of Schools, Morigaon District Circle, Morigaon under Memo No. MDC/MISC/PROMOTION/LDA/02/308 dated 01.10.2018 promoting/upgrading the petitioner from Junior Assistant/LDA to Senior Assistant/UDA and posting him at Sahariagaon Senior Madrassa, Morigaon is found to be issued without any jurisdiction and authority.

14. It is also seen that the Director of Secondary Education, Assam has already directed the Inspector of Schools, Morigaon District Circle, Morigaon to re-submit a fresh pension proposal of the petitioner before the Directorate of Pension, Assam for finalization of his pension.

15. In view of the above, the Inspector of Schools, Morigaon District Circle, Morigaon shall forthwith submit a fresh Pension Proposal of the petitioner as Junior Assistant of Sahariagaon Senior Madrassa, Morigaon now a Secondary School before the Directorate of Pension, Assam, if not submitted earlier.

16. In the event of submitting such fresh pension proposal by the Inspector of Schools, Morigaon District Circle, Morigaon for issuance of Final Pension Pay Order of the petitioner, the authority concerned in the Directorate of Pension, Assam shall do the needful and shall issue the Final Pension Pay Order at the earliest, considering the fact that the petitioner has retired from service way back on 31.12.2018.

17. The petitioner shall submit a representation before the Inspector of Schools, Morigaon

District Circle, Morigaon as well as the Directorate of Pension, Assam forthwith, along with a certified copy of this order.

18. With the above observation and direction, this writ petition stands disposed of.

19. Copy of the Speaking order of the Director of Secondary Education, Assam dated 05.07.2023 placed before the Court by Mr. N J Khataniar, learned Standing counsel, Department of School Education be kept as part of the record.

JUDGE

Comparing Assistant