

GAHC010020572022



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

Case No. : WP(C)/822/2022

JAJNESWAR NATH
S/O- LATE GATHIRAM NATH, R/O- VILL.- KHADOICHUK, P.O. AND P.S.
JAMUGURUHAT, DIST. SONITPUR, ASSAM, PIN- 784180.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI-6.

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

4:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

5:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
CENTRAL BLOCK
6TH FLOOR

BELTOLA ROAD
GUWAHATI-06.

6:THE DEPUTY INSPECTOR OF SCHOOLS
TEZPUR
SONITPUR
ASSAM
PIN- 784001.

7:THE BLOCK ELEMENTARY EDUCATION OFFICER
NADUAR
JAMUGURIHAT
DIST. SONITPUR
ASSAM
PIN- 784182.

8:THE TREASURY OFFICER
SONITPUR TREASURY
DIST. SONITPUR
ASSAM
PIN- 784182

Advocate for the Petitioner : MR. K R PATGIRI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : **10.04.2023**

Heard Mr. K. R. Patgiri, the learned counsel appearing on behalf of the petitioner and Mr. S. R. Baruah, the learned Standing counsel appearing on behalf of the Director of Pension. I have also heard Mr. N. J. Khataniar, the learned Standing counsel appearing on behalf of the Elementary Education Department and Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the Finance Department.

2. The case of the petitioner herein is that the petitioner was initially

appointed as a Stipendiary teacher on 07.12.1999. The said appointment was made against the post created by the D.E.E., Assam, Memo No.EPG.567/91/105 dated 16.11.1991. Thereupon, the petitioner passed his Junior Basic Training on 12.08.2002 and he received the regular scale of pay thereafter. The petitioner retired from service on 31.05.2010. As per the petitioner, the petitioner has completed 10 years 5 months 24 days qualifying service for which the petitioner would be entitled to the pension as well as other pensionary benefits. The petitioner being deprived of his pension and pensionary benefits has instituted the instant writ petition.

3. This Court vide an order dated 20.04.2022 had issued notice making it returnable by 4 (four) weeks. It appears on record that the respondent No.5 i.e. the Director of Pension have filed an affidavit-in-opposition on 25.08.2022. In paragraph No.7 of the said affidavit-in-opposition, the fact that the petitioner was appointed as a stipendiary teacher on 07.12.1999 is admitted. It is also admitted that the petitioner was allowed to draw the regular scale of pay w.e.f. 12.08.2002 and that the petitioner retired from service after attaining the age of superannuation on 31.05.2010. However, the stand of the Director of Pension is that as on 31.05.2010, the petitioner only had qualifying service of 7 years 7 months 19 days only and as such in terms with the provisions of Rules 108 and 110 of the Assam Service (Pension) Rules, 1969, the petitioner was only entitled to service gratuity amounting to Rs.47,742/- which was paid to the petitioner.

4. The issue therefore arises in the instant case as to whether the petitioner's qualifying service was 10 years 5 months 24 days or was it 7 years 7 months 19 days. This Court is of the opinion that the issue can be adjudicated on a bare perusal of Rule 2(iv) of the Assam Elementary Education (Provincialization)

Services and Conduct Rules, 1981 which defines the “period of service” to mean the period of continuous service against the sanctioned post.

5. In the instant case, it would be seen that the petitioner was appointed on 07.12.1999 by the Deputy Inspector of Schools against the sanctioned post created vide D.E.E. Assam Memo No.EPG.567/91/105 dated 16.11.1991. Therefore, the period of service of the petitioner has to be counted from 07.12.1999. Consequently, if the period of service of the petitioner is counted from 07.12.1999 till the date of retirement on 31.05.2010, the total qualifying service of the petitioner would be 10 years 5 months 24 days.

6. A perusal of Rule 108(b) of the Assam Service (Pension) Rules, 1969 would show that a Government servant would be entitled to pension after rendering service of not less than 10 years.

7. In that view of the matter, the instant writ petition stands disposed of with a direction to the respondent authorities to decide the entitlement of the pension of the petitioner by taking into account that the petitioner’s qualifying service is 10 years 5 months 24 days and thereupon grant such benefits to which the petitioner is entitled to under the Assam Service (Pension) Rules, 1969 as well as other pensionary benefits to which a Government servant of corresponding rank would be entitled to. The said exercise should be done within a period of 4 (four) months from the date a certified copy of the instant order is served upon the Director of Pension.

8. Before parting with the records, this Court further makes it clear that while re-computing and fixing the pension of the petitioner including disbursing the pensionary benefits, the amount so paid to the petitioner on account gratuity of

Rs.47,742/- shall be duly deducted.

9. With above, the instant petition stands disposed of.

JUDGE

Comparing Assistant