

GAHC010048802017



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

Case No. : WP(C)/6871/2017

SUDHA PAUL
W/O. SRI DILIP KAR, R/O. VILL. LALKURA PT.I. P.O. CHOIBARI, DIST.
KOKRAJHAR, ASSAM.

VERSUS

THE STATE OF ASSAM and 6 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, PENSION and
PERSONAL DEPTT., DISPUR, GHY.-06.

2:THE DIRECTOR

ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY.-19.

3:THE DY. INSPECTOR OF SCHOOLS

KOKRAJHAR
ASSAM.

4:THE ASSTT. DIRECTOR OF AUDIT

LOCAL FUND
ASSAM
GUWAHATI CIRCLE
GHY.-06.

5:THE ACCOUNTANT GENERAL AandE

ASSAM

MAIDAMGAON
BELTOLA
GHY.-19.

6:DIRECTOR
SOCIAL WELFARE DEPARTMENT
GOVT. OF ASSAM
UZAN BAZAR
GUWAHATI
PIN 781001

7:DIRECTOR OF ELEMENTARY EDUCATION DEPARTMENT
BODOLAND TERRITORIAL COUNCIL
KOKRAJHA

Advocate for the Petitioner : MR. A KUNDU

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 09.05.2023

Heard Mr. A. Dasgupta, the learned Senior Counsel assisted by Ms. B. Das, the learned counsel for the petitioner. Mr. S.S. Roy, the learned counsel appears on behalf of the respondent No. 1 and 6, Mr. P.N. Sarma, the learned counsel appears on behalf of the respondent No. 2, Mr. S. Bora, the learned counsel appears on behalf of the respondent No. 3, Mr. R. Borpujari, the learned counsel appears for the respondent No. 5 and Mr. A. Hassan, the learned counsel appears on behalf of the respondent No. 5.

2. Upon hearing the matter at length and taking into account that the service of the petitioner was not regularized during her entire career, although the petitioner was rendering her service in 775 No. Fakiragram Primary School since 10/8/1975, this Court had on 2/5/2023 directed the counsel representing the

Social Welfare Department to apprise this Court as to whether the Government of Assam has any pension scheme for aged person, who is not getting the benefit of service pension given by the Government of Assam.

3. Today when the matter was taken up, Mr. S.S. Roy, the learned counsel appearing on behalf of the Social Welfare Department submitted that to cater to the need of those persons, who are not getting the benefit of service pension given by the Government of Assam or any other State entity, the Government of Assam had formulated a pension scheme known as the "Swahid Kushal Konwar Sarajanin Briddha Pension Achoni". This Court put a pointed query upon the learned counsel appearing for the Social Welfare Department as to which authority grants the same and to whom the application is required to be made. The learned counsel appearing for the Social Welfare Department submitted that it will be the concerned Deputy Commissioner to whom the said application has to be made. It is further submitted for the purpose of the instant case, it is the Deputy Commissioner, Kokrajhar who shall be the authority to whom the application form has to be submitted.

4. Taking into account that passing of an effective writ, the presence of the Deputy Commissioner, Kokrajhar would be necessary, this Court in the interest of justice impleads the Deputy Commissioner, Kokrajhar as the respondent No. 7 to the instant proceedings.

5. The registry shall make necessary changes in the records on the basis of the instant order.

6. Mr. S. S. Roy, the learned counsel appearing for the Social Welfare Department accepts notice on behalf of the newly impleaded respondent No. 7.

7. In the backdrop of the above, let this Court take into account the facts of

the instant case. The petitioner herein was appointed as an honorary teacher of 775 No. Fakiragram Primary School on 10/8/1975 after the provincialisation of the said school on 1/1/1967. The petitioner filed a writ petition being W.P.(C) No. 596/1995 after rendering around 20 years of service claiming regularization. This Court vide an order dated 16/12/1995 disposed of the writ petition directing the concerned respondents to make an enquiry and pass necessary speaking order within 4 months. Thereupon as the respondent authorities did not take any action, the petitioner initiated a contempt proceedings which was registered and numbered as COP (C) No. 663/1996. However, this Court vide an order dated 7/5/1997 closed the contempt proceedings taking note of the fact that as the petitioner was appointed after provincialisation of the school in question, no benefit as regards her appointment could be given to the petitioner. However, while closing the contempt proceedings a rider was given that the authority may consider the misery of the petitioner inasmuch as the petitioner has put in service for more than 21 years.

8. It further appears from the records that the petitioner thereupon preferred a Writ Appeal against the order dated 7/5/1997 in COP (C) No. 663/1996. The said Writ Appeal was registered and numbered as W.A. No. 157/2003. The Division Bench of this Court vide an order dated 6/11/2006 disposed of the said Writ Appeal directing the respondents to give preference to the petitioner in terms with the Office Memo dated 21/1/2004 in the form of relaxation of age only as and when the question arises for filling up the vacancies through regular selection.

9. However, it is relevant to mention that nothing happened and the petitioner in the meantime, crossed her age of superannuation. It is under such circumstances, the petitioner has again approached this court by filing a Writ

Petition thereby directing the respondents to grant the petitioner an old age pension for her service to the cause of the children's education as contained in Article 41 and Article 39(a) of the Constitution of India.

10. As stated herein above, there is a pension scheme in the name and style of "Swahid Kushal Konwar Sarajanin Briddha Pension Achoni". It further appears that there are certain requirements to be fulfilled for the purpose of being eligible for the said pension. Upon hearing the learned counsels for the parties and taking into account the facts involved, this Court is of the opinion the petitioner fits within the eligibility criteria in respect to the said pension scheme. However, for getting the benefit of the said pension scheme, it is required that the petitioner has to file application in a particular format before the respondent No. 7. The learned counsel appearing on behalf of the petitioner submits that the petitioner shall do the needful in that regard.

11. Accordingly, this Court therefore disposes of the writ petition thereby giving the liberty to the petitioner to submit the application in respect to "Swahid Kushal Konwar Sarajanin Briddha Pension Achoni" before the respondent No. 7 who shall after making the required verification and taking the necessary particulars from the petitioner, shall process the application so that the petitioner gets the said pension in terms with the said scheme within a period of 8 weeks from the date of application so submitted by the petitioner alongwith a certified copy of this order.

12. With the above, the instant petition stands disposed off.

JUDGE

Comparing Assistant