

GAHC010100842023



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

Case No. : WP(C)/2766/2023

KRISHNA HAZARIKA AND 11 ORS
S/O- BHOLA NATH HAZARIKA,
ASSISTANT TEACHER,
BACHAGAON GIRLS LP SCHOOL,
R/O- VILL. BORAGAON,
P.O.- PANIGAON, DIST.- LAKHIMPUR,
ASSAM, PIN- 787052.

2: ATUL MEDHI
S/O- KALAI MEDHI

ASSISTANT TEACHER OF 304 NO. BISHNUPUR LP SCHOOL

R/O- VILL. PHULBARI BLOCK NO.2

P.O.- DOOLAHAT
DIST.- LAKHIMPUR
ASSAM

PIN- 787031.

3: MINARAM BORAH
S/O- TULARAM BORAH

ASSISTANT TEACHER

AMTOLA MAJGAON LP SCHOOL

R/O GOPALPUR AMTOLA

PO- AMTOLA
DIST.- LAKHIMPUR

ASSAM

PIN- 787052.

4: DILIP MEDHI
S/O- GOPAL MEDHI

ASSISTANT TEACHER

NA-ALI TELIA PATHAR LP SCHOOL

R/O- NA-ALI KHABOLI
MIRI N.C.

MIRIGAON
DIST.- LAKHIMPUR

ASSAM
PIN- 787052.

5: KESHAB DAS
S/O- GOPAL DAS

ASSISTANT TEACHER

NA-ALI TALIAPATHAR LP SCHOOL

R/O NA ALI
KOIBATRA GAON

PANIGAON
DIST.- LAKHIMPUR

ASSAM
PIN- 787052.

6: RATNA BAHADUR CHETRY
S/O- SHER BAHADUR CHETRY

ASSISTANT TEACHER

PUB-AMTOLA LP SCHOOL
KUHIAR BARI

LAKHIMPUR
ASSAM
PIN- 787052.

7: CHANDRA DOLEY
D/O- JIBAN PATIR

ASSISTANT TEACHER

KARBUNG GAON LP SCHOOL

R/O KB ROAD
BORDUBI CHANONG GAON

KUHIARBARI
PANI GAON

DIST.- LAKHIMPUR
ASSAM
PIN- 787052.

8: DHANESH PADUM
S/O- BAKATA PADUM

ASSISTANT TEACHER

PATHARICHUK LP SCHOOL

R/O- DUGHARIA
KAMBONG DAMBUKIAL N.C. PANIGAON

DIST.- LAKHIMPUR
ASSAM
PIN- 787052.

9: MEGHNATH PARAJULI
S/O- PADMA PRASAD PARAJULI

ASSISTANT TEACHER

RAMPUR RAJGARH LP SCHOOL

R/O- DIJOO CHAPARI

DIST.- LAKHIMPUR
ASSAM
PIN- 787031.

10: PRASANTA BORAH
S/O- TANKESWAR BORAH

ASSISTANT TEACHER

NO. 1 SOLMORIA LP SCHOOL

R/O NH-15 BORGOYA GENDHALI

AOHOMONI MIRI
DIST.- LAKHIMPUR

ASSAM
PIN- 787052.

11: NIRANJAN PEGU
S/O- SARU PEGU

ASSISTANT TEACHER

NA-DHALA LP SCHOOL

R/O- RAJABURA
DAFALAKATA N.C. DISTRICT- LAKHIMPUR

ASSAM
PIN- 787052.

12: LILA KANTA DUTTA
S/O- GANGADHAR DUTTA

ASSISTANT TEACHER

BHARALUWA LP SCHOOL

R/O KARI GAON
DISTRICT- LAKHIMPUR

ASSAM
PIN- 787031

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
DEPARTMENT OF SCHOOL (ELEMENTARY),
DISPUR, GUWAHATI-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
NORTH LAKHIMPUR
ASSAM.

4:THE DEPUTY INSPECTOR OF SCHOOLS
NORTH LAKHIMPUR
DIST.- LAKHIMPUR
ASSAM.

5:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE
ASSAM CIVIL SECRETARIAT

DISPUR
GUWAHATI
ASSAM

PIN- 781006.

6:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR

GUWAHATI
ASSAM

PIN- 781006

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 22.05.2023

Heard Mr. B.Purkayastha, the learned counsel appearing for the petitioners.
Mr. R. Borpujari, the learned Standing Counsel appears on behalf of the Finance
Department, Mr. B.Talukdar, the learned Standing Counsel appears for the

Elementary Education Department and Mrs. S. Barua, the learned counsel appears for the Director of Pension.

2. In view of the fact that the issue involved in the instant writ petition is covered by a judgment of this Court in the case of **Purnima Hore and Anr. Vs. The State of Assam** reported in **2023 SCC Online Gau 1165**, the instant writ petition is taken up for disposal at the motion stage itself.

3. The petitioners herein claims to be Stipendiary Teachers who have been denied the benefit of the Old Pension Scheme under the Assam Service(Pension) Rules, 1969 (for short 'the Rules of 1969') on the ground that their regular scale of pay was given to them after 1/2/2005.

4. This Court in the case of **Purnima Hore(supra)** held that the teachers who come within the fold of Stipendiary Teachers are entitled to the benefit under the Rules of 1969 and they are not covered under the New Defined Contributory Pension Scheme, 2009. It was also held that those teachers would also be entitled to subscribe to the GPF and would also be entitled to all other pensionary benefits to which a Govt. servant of corresponding rank is entitled to. This Court further finds it relevant to refer to paragraph 123(x) whereby a direction was issued to the respondent authorities to grant the benefit of pension in terms with the Rules of 1969 as well as allow such persons to subscribe to the fund in terms with the General Provident Fund (Assam Service) Rules,1937 after completing necessary verification in that regard. Sub-Paragraph (x) of 123 of the judgment in the case of **Purnima Hore(supra)** is reproduced herein under :

“123(x) This Court further is of the opinion that the persons similarly situated to that of the writ petitioners coming within the category of Stipendiary Teachers, but who have not been able to approach this Court on account of various reasons need

not be deprived of the benefits of pension in terms with the Rules of 1969 as well as to subscribe to the fund in terms with General Provident Fund (Assam Service) Rules, 1937. This Court, therefore, directs the respondent authorities to grant the benefits of pension in terms with the Rules of 1969 as well as to allow such persons to subscribe to the fund in terms with the General Provident Fund (Assam Service) Rules, 1937 after completing the necessary verification in that regard. The same may be done within a period of 6 (six) months from the date of the instant judgment."

5. Taking into account the above, this Court also finds that the said judgment would be squarely applicable in the case of the petitioners, however subject to verifications.

6. Accordingly, this Court disposes off the writ petition thereby directing the respondent authorities to verify the documents as regards the appointment of the petitioners as Stipendiary Teachers which has to be prior to 1/2/2005 and thereupon after making necessary verification and if it is found that the petitioners fall within the ambit of the Stipendiary Teachers and not granted the benefit of the pension under the Rules of 1969 on the ground that regular scale of pay was given to them after 1/2/2005, the petitioners should be granted the benefits of the pension in terms with the Rules of 1969 as well as also permit the petitioners to subscribe to the fund in terms with the General Provident Fund (Assam Service) Rules, 1937. The same may be done within a period of 4(four) months from the date a certified copy of the instant order alongwith the necessary documents evidencing that the petitioners are Stipendiary Teachers who were appointed prior to 1/2/2005 are submitted to the respondent No. 1.

7. Before parting, this Court also finds it relevant to take note of the submission of Mr. R. Borpujari, the learned Standing Counsel appearing on behalf of the Finance Department that while granting the benefits to the

petitioners, if so entitled under the Rules of 1969, the amounts which have been paid by the Government in terms with the NDCPS, 2009 be deducted while granting the benefits. Accordingly, the respondent authorities while granting the benefits of the Old Pension Scheme to the petitioners upon being found entitled shall deduct the said amount so paid by the Government in terms with the NDCPS, 2009.

9. With the above, the instant writ petition stands disposed off.

JUDGE

Comparing Assistant