

GAHC010204692019



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

Case : WP(C)/3330/2018

ALAKA RANI PAUL
W/O- MANINDRA PAUL
R/O- LAKHISAHAR (WARD NO.8)
P.O. LAKHISAHAR
P.S. HAILAKANDI
DIST- HAILAKANDI
ASSAM
PIN-788152

VERSUS

THE STATE OF ASSAM AND 2 ORS.
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM
HEALTH DEPTT.
DISPUR
GHY-6

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GHY-36

3:THE SUPERINTENDENT
S.K.ROY CIVIL HOSPITAL
HAILAKANDI
P.O. AND P.S. AND DIST- HAILAKANDI
ASSAM
PIN-788152

Advocate for : MS. S SEAL
Advocate for : SC
HEALTH appearing for THE STATE OF ASSAM AND 2 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 01-02-2023

Heard Ms. S. Kanungoe, learned counsel for the petitioner. Also heard Mr. D.P. Borah, learned standing counsel, Health Department, Assam appearing for the respondents.

The writ petitioner herein was appointed as Health Worker in the S.K. Roy Civil Hospital in the month of April, 2002 and since then, she is rendering her services in the said post against fix pay. Earlier, there was an attempt to fill up the post held by the petitioner by appointing other candidates and accordingly, the authorities had issued advertisement notice dated 14-12-2017 which was challenged by the petitioner by filing the instant writ petition.

After hearing the submission of the learned counsel for the parties this Court had passed an interim order dated 25-05-2018, inter alia, providing that the petitioner's services as Health Worker in the S.K. Roy Civil Hospital, Hailakandi would not be disturbed till the returnable date. The order dated 25-05-2018 was evidently passed by the learned Single Judge by taking note of the fact that since the petitioner had rendered over 10 years of continuous service as Health Worker, she was entitled to interim protection as per the ratio laid down by this Court in the case of ***State of Assam Vs. Upen Das & Ors.*** reported in ***2020 (5) GLT 605***. Consequent to the order dated 25-05-2018, the petitioner has been allowed to continue in service in the post of Health Worker, although

it has been alleged that from time to time there has been intra-departmental shifting of the petitioner. However, the petitioner is still drawing a fixed pay.

Mr. D.P. Borah, learned departmental counsel submits that since the petitioner was appointed by the Hospital Management Society on contractual basis and not by the State of Assam, hence, her case would not come within the ambit of the decision rendered by the Division Bench in the case of ***Upen Das (Supra)***. Mr. Borah has, however, not denied that in view of the decision of this Court rendered in the case of ***Jadumoni Nath & Ors. Vs. The State of Assam & Ors. (W.P.(C) No. 7711/2016)*** even those candidates who were appointed by the Hospital Management Society would now be entitled to consideration of their cases for payment of minimum pay scale.

Ms. Kanungoe submits that her client would be satisfied if she is allowed to continue in the present post and paid the minimum pay scale.

In the case of ***Jadumoni Nath (Supra)***, a similar issue came up for consideration before this Court. After considering various decisions rendered on the issue the learned Single Judge had disposed of the writ petition being W.P.(C) No. 7711/2016 by the judgment and order dated 10-11-2022. The operative part of the judgment is reproduced here-in-below for ready reference:

“23. As it appears, most of the petitioners have been engaged by the Hospital Management Society and not by the State Government, and only 5 out of the 29 writ petitioners are being given fixed wages. Accordingly, this Court is of the view that the concerned Hospital Management Committee/State respondents will have to consider the giving of minimum scale of pay to the petitioners, provided they are still working in the two Hospitals and are entitled to the same. Consequently, the petitioners are given the liberty to submit individual representations to the Superintendent of the two Hospitals, with regard to their

claim for payment of the minimum scale of pay. The concerned Superintendent, being the Member Secretary of the concerned Hospital Management Committee, shall thereafter place the same before the appointing authority, who shall thereafter consider the case of the petitioners, with regard to payment of the minimum scale of pay and make due payment, if they are entitled to the same. The petitioners should submit their individual representations within three weeks from today. Thereafter, the decision/s on the petitioners' representations should be made within a further period of 3 (three) months from the date of receipt of a certified copy of this order and the petitioners' representations."

Since there is no wrangle at the bar that in view of the decision rendered in the case of **Jadumoni (Supra)**, the petitioner would be entitled for payment of minimum pay scale and considering the fact that the petitioner has admittedly being working as Health Worker in the S.K. Roy Civil Hospital, Hailakandi since April, 2002 till date, neither the question of dispensation of her services nor denial of benefit of minimum scale of pay would arise in this case.

In view of the above, this writ petition is hereby disposed of by making the interim order dated 25-05-2018 as absolute with a further direction that the case of the petitioner shall be considered for grant of minimum pay scale in the light of the judgment rendered in the case of **Jadumoni (Supra)** and appropriate order be passed in that regard within a period of 03 (three) months from the date of receipt of a certified copy of this order.

Writ petition stands disposed of accordingly.

JUDGE

GS

Comparing Assistant