

GAHC010111222020



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

Case No. : WP(C)/3250/2020

CHUNINDRA NATH ROY
S/O LATE RABINDRANATH ROY,
RESIDENT OF VILLAGE KHERBARI PT-III, PO SAGOLIA, DIST DHUBRI
ASSAM 783335

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM EDUCATION ELEMENTARY DEPARTMENT
DISPUR, GUWAHATI 6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM KAHILIPARA
GUWAHATI 781019

3:THE DIRECTOR OF PENSION
HOUSEFED BELTOLA
GUWAHATI 781028

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DHUBRI DISTRICT ASSAM

5:THE DEPUTY INSPECTOR OF SCHOOLS

DHUBRI ASSAM

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
AGOMONI
DIST DHUBRI ASSA

Advocate for the Petitioner : MRS. K DEVI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

30/08/2023

Heard Mrs. K Devi, learned counsel for the petitioner and Mr. P N Sarma, learned Standing counsel, Department of School (Elementary) Education for the respondent Nos. 1, 2, 4, 5 & 6. Also heard Mr. B Deuri, learned Government Advocate, Assam for the respondent No. 3, Directorate of Pension.

2. Petitioner, Shri Chunindra Nath Roy, was serving as Assistant Teacher at Agyaram Kherbari Lower Primary School under Agomoni Education Block of District-Dhubri since 01.11.1979 during its venture stage. Later, the petitioner was made the Head Teacher of the said Agyaram Kherbari L.P. School.

3. Pursuant to the order of the State Government in the Elementary Education Department No. PMA-29/2013/Pt.-III/121 dated 22.11.2013, the Director of Elementary Education, Assam by order No. EE(Plan)/Provn/ Dhubri/Venture LP/62/Pt-II/2013/208 dated 19.12.2013 provincialised the service of the petitioner under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 amended in 2012 during its force w.e.f. 01.01.2013. Since provincialisation of his service, the petitioner continued to serve in said Agyaram Kherbari L.P. School.

4. It is stated that the Block Elementary Education Officer (BEEO), Agomoni by communication No. AEE/S-56/2018-19/250 dated 04.06.2020 informed the petitioner that as per his Class-X HSLC Examination pass certificate, he had attained 60 years of age on 03.04.2019 and accordingly, directed him to hand over charge of the said school immediately to the senior most Assistant Teacher of said Agyaram Kherbari L.P. School as 30.04.2019 was his last working day. However, the petitioner continued to serve as the Head Teacher of said Agyaram Kherbari L.P. School up to 30.04.2020 by drawing his monthly salary from 01.05.2019 to 30.04.2020.

5. As the petitioner had overdrawn an amount of Rs.4,15,148/- by overstaying in his service for a period of 1 (one) year from 01.05.2019 to 30.04.2020, the BEEO, Agomani directed the petitioner to

deposit the said excess overdrawn amount through Treasury Challan and to submit the original Challan of such deposit so as to process his retirement benefits.

6. Being aggrieved with the said communication of the BEEO, Agomani dated 04.06.2020 for recovery of said Rs.4,15,148/- of excess drawal due to overstay in service, the petitioner has preferred this writ petition praying amongst others for a direction to the respondent authorities in the Elementary Education Department to set aside and quash the said communication No. AEE/S-56/2018-19/252 dated 04.06.2020 of the BEEO, Agomani Education Block directing for recovery of amount of Rs.4,15,148/- as excess drawal due to overstay in service during the period from 01.05.2019 to 30.04.2020. Petitioner stated that though he retired from service, but till date he has not been paid any pensionary benefits.

7. Notice in this case was issued on 11.09.2020, but the respondents in the Elementary Education Department, more particularly, the Deputy Inspector of Schools, Dhubri as well as the Block Elementary Education Officer, Agomani, District-Dhubri and the Director of Elementary Education, Assam have not filed any affidavits in the matter.

8. Since the petitioner was the Head Teacher of said Agyaram Kherbari L.P. School, the Court by order dated 23.08.2023 directed the Deputy Inspector of Schools, Dhubri as well as the Block Elementary Education Officer, Agomani to apprise the Court as to whether the petitioner was the concerned Drawing and Disbursing Officer (DDO) of said Agyaram Kherbari L.P. School during his service tenure and if not, to name the concerned DDO for payment of salaries and other financial matters with regard to Agyaram Kherbari L.P. School.

9. During the deliberation of the matter, the Director of Elementary Education, Assam by its communication dated 29.08.2023 through Mr. P N Sarma, learned Standing counsel, Department of School (Elementary) Education apprised the Court that the Block Elementary Education Officer, Agomani is the concerned DDO of said Agyaram Kherbari L.P. School and that while serving as the Head Teacher of said Agyaram Kherbari L.P. School, the petitioner was not the DDO of the said L.P. School.

10. From the communication No. AEE/S-56/2018-19/250 dated 04.06.2020 of the BEEO, Agomani, it can be seen that only on 04.06.2020, the said BEEO, informed the petitioner to hand over the charge of said L.P. School to its Senior most Assistant Teacher as he had retired from service way back on 30.04.2019 itself.

11. The respondent authorities in the Elementary Education Department failed to place anything before the Court that prior to 30.04.2019, the petitioner was duly informed about the date of his retirement from service.

12. It is to be noted herein that the petitioner rendered his service from 01.05.2019 to 30.04.2020 as the Head Teacher of said Agyaram Kherbari L.P. School. Said letter of the BEEO, Agomani dated 04.06.2020, Annexure-3 to this writ petition, noted above, itself indicates that the petitioner was serving as the Head Teacher of said Lower Primary School on the date when the BEEO, Agomani issued the said impugned communication dated 04.06.2020 to the petitioner.

13. It is not the case of the respondents in the Elementary Education Department that during the period from 01.05.2019 to 30.04.2020, the petitioner as the Head Teacher of said Agyaram Kherbari L.P. School did not render his service on it rendering education to the students of the said L.P. School and that service from the petitioner during the said period was not extracted by the respondent authorities.

14. After hearing the learned counsels for the parties and considering the entire aspect of the matter, it is directed that the respondent authorities in the Elementary Education Department, including the Director of Elementary Education, Assam respondent No. 2, the District Elementary Education Officer, Dhubri respondent No. 4, the Deputy Inspector of Schools, Dhubri respondent No. 5 and the Block Elementary Education Officer, Agomani respondent No. 6 shall not recover the said amount of Rs.4,15,148/- from the petitioner because of his overstay in service from 01.05.2019 to 30.04.2020 as during the said period, the petitioner had rendered service as the Head Teacher of said Agyaram Kherbari L.P. School, noted above and that his service was also extracted by the respondents in the Elementary Education Department.

15. However, it is made clear that the Deputy Inspector of Schools, Dhubri and/or the District Elementary Education Officer, Dhubri shall submit the pension proposal of the petitioner to the Directorate of Pension, Assam considering the Last Pay Drawn Certificate of the petitioner as on 30.04.2019, the actual date on which the petitioner should have retired from service on attaining the age of superannuation at 60 years as per his HSLC Examination Class-X pass Certificate, without deducting any amount towards his overstay in service during the period from 01.05.2019 to 30.04.2020.

16. In the meanwhile, if the petitioner has not been paid the provisional pension, provisional

death-cum-retirement gratuity and the leave encashment benefit etc. the same shall be processed and shall be paid to the petitioner by the respondent authorities as per his due entitlement, in accordance with law, at the earliest, depositing such amount in the Bank Account of the petitioner to be furnished by him.

17. The impugned communication No. AEE/S-56/2018-19/252 dated 04.06.2020 issued by the Block Elementary Education Officer, Agomani is accordingly set aside and quashed.

18. With the above observation and direction, this writ petition stands allowed to the extent above.

19. The communication of the Director of Elementary Education, Assam dated 29.08.2023 placed before the Court by Mr. P N Sarma, learned Standing counsel, Department of School (Elementary) Education be kept as a part of the record.

JUDGE

Comparing Assistant