

GAHC010130202017



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

Case No. : WP(C)/3180/2017

HAITUN BHUYAN @ HAYTON BHUYAN and ANR.
W/O- NIZAMUDDIN, R/O- VILL- JAWKATADIA, P.O- DEKACHANG, P.S-
BOKO, DIST- KAMRUP, ASSAM

2: NURJAMAN HAQUE @ NURZAMAN HAQUE
S/O- ABDUL JALIL SARKAR
R/O- VILL- SALOSUTI
P.O- MAHTOLI
P.S- BOKO
DIST- KAMRUP
ASSA

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT OF ASSAM,
EDUCATIONELEMENTARY DEPTT. DISPUR, GUWAHATI- 6

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KAMRUP
AMINGAON
DIST- KAMRUP
ASSAM

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
CHAMARIA EDUCATION BLOCK
CHAMARIA
DIST- KAMRUP
ASSAM

5:THE ACCOUNTANT GENERALAandE
ASSAM
BELTOLA
MAIDAMGAON
GUWAHATI- 2

Advocate for the Petitioner : MR.S ISLAM

Advocate for the Respondent : SC, AG

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 11.04.2023

Heard Mr. M. R. Choudhury, the learned counsel appearing on behalf of the petitioners and Mr. P. N. Sharma, the learned Standing counsel appearing on behalf of respondent Nos. 1, 2, 3 and 4. I have also heard Ms. Tinlung, the learned Standing counsel appearing on behalf of the Accountant General (A&E).

2. The case of the petitioners herein is that the Petitioner No.1 was appointed by the District Elementary Education Officer, Kamrup on 07.01.1994 and the Petitioner No.2 was also appointed by the District Elementary Education Officer, Kamrup on 26.11.1993. Thereupon, the petitioners joined their respective schools and got their salaries. Subsequent to 1995, the petitioners have not received their salaries.

3. Subsequent thereto, on the basis of a report being submitted under the Chairmanship of Mr. S. Manoharan, IAS which is commonly known as Manoharan Committee, it was found that the petitioners were appointed in excess of their sanctioned posts. The Government of Assam thereafter took a decision to regularize the services of those teachers who were appointed in

excess of the sanctioned post. The services of the petitioners herein were regularized vide an order dated 11.08.2005 against the vacant posts. Subsequent to the order dated 11.08.2005 issued by the Director of Elementary Education, the District Elementary Education Officer, Kamrup have issued orders dated 20.08.2005 and 02.09.2005 respectively in continuation to the order dated 11.08.2005.

4. The case of the petitioners herein is that the petitioners are entitled to pension in terms with the Assam Services (Pension) Rules, 1969 and the case would not be covered under the New Defined Contributory Pension Scheme, 2009 which came into effect from 01.02.2005. Mr. P. N. Sharma, the learned Standing counsel appearing on behalf of the Elementary Education Department has drawn the attention of this Court to the recent judgment in the case of ***Purnima Hore and another Vs. State of Assam in WP(C) No.6403/2021*** dated 31.03.2023 wherein this Court vide a detailed judgment has held that those teachers who fell within the category of excess teachers and whose services were regularized after 01.02.2005 would not be entitled to the benefit of the Old Pension Scheme covered by the provisions of Assam Services (Pension) Rules, 1969 as well as also would not be entitled to subscribe to the General Provident Fund. It was observed that those teachers would only be entitled to the New Defined Contributory Pension Scheme, 2009 which came into effect from 01.02.2005.

5. Taking into account the said judgment dated 31.03.2023 in the case of ***Purnima Hore (supra)*** which squarely covers the case of the petitioners herein, the instant petition stands disposed of by declaring that the petitioners herein would not be entitled to the pension in terms with the Assam Services (Pension)

Rules, 1969 as well as also shall not be entitled to subscribe to the fund in terms with the General Provident Fund (Assam Services Rules, 1937). The petitioners herein shall be governed by the New Pension Scheme applicable to the State Government employees of corresponding rank. Further to that, this Court directs that the petitioners herein would also be entitled to the benefit of retirement gratuity and death gratuity on the same terms and conditions as are applicable to the employees covered by the Rules of 1969 in view of the Office Memorandum dated 01.02.2021.

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

JUDGE

Comparing Assistant