

GAHC010138682021



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

Case No. : WP(C)/4439/2021

DIPANDITA CHUTIA
W/O- PUTUL GOGOI, R/O- VILL- SARUPAM JHANJI GAON, P.O. BETANIPAM,
P.S. SILAPATHAR, DIST.- DHEMAJI, ASSAM, PIN- 787059, ASSTT. TEACHER
OF SARUPAM GYANDEEP M.E.SCHOOL, P.O. BETANIPAM, DIST.- DHEMAJI,
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GHY-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19
DIST.- KAMRUP (M)
ASSAM

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHEMAJI
DIST.- DHEMAJI
ASSAM
PIN- 787057

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
DHEMAJI BLOCK
DIST.- DHEMAJI
ASSAM
PIN- 787057

5:THE DY. INSPECTOR OF SCHOOLS
DHEMAJI
DIST.- DHEMAJI

ASSAM
PIN- 787057

6:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-6

7:THE DY. COMMISSIONER
DHEMAJI
DIST.- DHEMAJI
ASSAM
PIN- 78705

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

31-07-2023

Heard Mr. N. Borah, learned counsel for the petitioner and Mr. P. N. Sarma, learned Standing Counsel, Department of School (Elementary) Education for the respondent Nos. 1 to 5. Also heard Mr. A. Chaliha, learned Standing Counsel, Finance Department for the respondent No.6 as well as Mr. S. R. Baruah, learned Government Advocate, Assam for the respondent No.7.

2. Petitioner a Graduate in Arts with Diploma in Elementary Education on being appointed by the Managing Committee of Sarupam Gyandeeep M.E. School of Sarupam Janjhy Village, Batonipam of Dhemaji Education Block, District-Dhemaji joined her service as an Assistant Teacher in Assamese in the said Upper Primary School on 08.08.1994 during its venture stage.

3. Pursuant to the Government Order No. EPD-16-Provn-UP (Act,2017)/2021/1687 dated 05.02.2021 and as per the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017, the Director of

Elementary Education, Assam vide order under Memo No. EPD-16-Provn-UP(Act,2017)/2021/1687 dated 05.02.2021 provincialised the service of the petitioner as Tutor w.e.f., 01.01.2021 in fixed salary of Rs.10,800/- per month as per the terms and conditions specified in the said order of her appointment dated 05.02.2021 and posted her in the Base School, namely, Mazgaon Asomiya Lower Primary School under Dhemaji Education Block of District-Dhemaji.

4. Though she joined her service in the said Base School, i.e., Mazgaon Asomiya Lower Primary School, petitioner after her provincialisation of service as Tutor vide order dated 05.02.2021 issued by the Director of Elementary Education, Assam but she has not been paid her salary w.e.f. 01.04.2021 as well as current salary.

5. Hence, the petitioner has filed this writ petition on 02.09.2021 for claiming her arrear as well as current salary.

6. Petitioner stated that pursuant to the orders of the Court passed earlier on 17.09.2021 and 23.03.2022, the respondent authorities in the Elementary Education Department released her current fixed salary w.e.f., 01.01.2022 but she has not been paid her arrear salary from 01.04.2021 to 31.12.2021.

7. A three Judges Bench of the Hon'ble Supreme Court in the case of *R. Vishwanatha Pillai VS State of Kerala* reported in (2004) 2 SCC 105 have held that the right to salary and/or pension after retirement from service flows from a valid and legal appointment.

8. It is also seen that the petitioner has filed this writ petition on 02.09.2021 claiming her arrear salary for the period from 01.04.2021 to 31.12.2021, which is much within the period of three years prior to filing of the present writ petition in terms of the judgment of this Court passed in the case of *Harendra Chandra Nath and others vs. State of Tripura and other* reported in 2013 (2) GLT 1094 as well as the judgment of the Hon'ble Apex Court in the case of *Union of India and others Vs. Tarsem Singh* reported in (2008) 8 SCC 648.

9. Considering the above, this writ petition is disposed of at the motion stage itself directing the petitioner to file a fresh representation before the Director of Elementary Education, Assam stating her grievances regarding non receipt of her fixed arrear salary of Rs. 10,800/- per month for the period from 01.04.2021 to 31.12.2021 after joining as a Tutor

in the Base School, Mazgaon Asomiya Lower Primary School under Dhemaji Education Block of District-Dhemaji in terms of the order of provincialisation of her service vide order dated 05.02.2021 issued by the Director of Elementary Education, Assam, noted above.

10. Such representation shall be filed by the petitioner along with a certified copy of this order and a copy of this writ petition including the annexures appended thereto before the Director of Elementary Education, Assam **on or before 19.08.2023** obtaining necessary acknowledgement from the Director of Elementary Education, Assam in that regard.

11. In the event of filing such representation by the petitioner within time so specified and as directed above, the Director of Elementary Education, Assam, after necessary verification of the records shall pass a reasoned order regarding payment of any such arrear fixed salary as entitled by the petitioner, in accordance with law.

12. Such order shall be passed by the Director of Elementary Education, Assam within a period of 90 (ninety) days from the date of receipt of such representation from the petitioner, within the time so specified and as directed above.

13. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant