

GAHC010189672021



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

Case No. : WP(C)/6041/2021

JOGEN MALLA @ JOGEN MALLAH
S/O LATE JAGANATH MALLAH, R/O BADULATI, P.S.-NARAYANPUR, DIST-
LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT,
SACHIVALAYA, DISPUR, ASSAM-781006

2:THE DIRECTOR OF PENSION
HOUSEFED COMPLEX
LAST GATE
DISPUR
GUWAHATI
ASSAM-781006

3:THE FINANCE AND ACCOUNTS OFFICER
DIRECTORATE OF PENSION
HOUSEFED COMPLEX
DISPUR
GUWAHATI-781006

4:THE DEPUTY INSPECTOR OF SCHOOL
NORTH LAKHIMPUR
ASSAM-787001

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
NARAYANPUR
NORTH LAKHIMPUR
ASSAM-784164

6:THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-78102

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 10.04.2023

Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. S. R. Baruah, learned standing counsel for the respondent Nos. 2 & 3; Mr. N. J. Khataniar, learned counsel for the respondent Nos. 1, 4 & 5 and Mr. R. Dhar, learned counsel for the respondent No. 6.

2. The case of the petitioner herein is that the petitioner was appointed on 27.01.1996 as a Stipendary Teacher against the retired vacancy of one- Akan Neog of Barhampur L.P. School and posted at Meramukh L.P. School. Subsequent thereto, the petitioner passed the Junior Basic Training Examination on 21.01.2006 and thereupon was allowed to draw the regular scale of pay w.e.f 05.10.2005. The petitioner retired on 28.02.2014 while working as the Assistant Teacher in Chamaguri L. P. School. However, pursuant to his retirement, the petitioner has not received his pension as well as pensionary benefits for which the instant writ petition has been filed.

3. This Court vide order dated 17.11.2021 had issued notice making it returnable by six weeks. This Court further vide the said order also directed for payment of provisional pension to the petitioner.

4. No affidavit has been filed by the respondent authorities till date. However, Mr. Khataniar, learned counsel appearing on behalf of the Elementary Education Department have placed on record a communication issued by the Additional Director, Elementary Education to the Secretary to the Government of Assam, Elementary Education Department wherein it has been mentioned that on account of the petitioner getting his regular scale of pay after 01.02.2005, the petitioner had been brought within the ambit of New Defined Contribution Pension Scheme, 2009. However, as the question as to whether the petitioner would be entitled to the Assam Service (Pension) Rules, 1969 or the New Defined Contribution Pension Scheme, 2009 was yet to be ascertained, the pension as well as the pensionary benefits of the petitioner could not be finalized.

5. Mr. Borthakur, learned counsel appearing for the petitioner have drawn the attention of this Court to the Judgment rendered in the case of *Purnima Hore and Anr. –Vs- The State of Assam* dated 31.03.2023 passed in WP(C) No. 6403 of 2021 and others writ petitions wherein this Court after taking into the provisions of Assam Elementary Education (Provincialisation) Act, 1974, Rule- 3 and Rule- 4 of the Assam Elementary Education (Provincialisation) Rules, 1977 as well as the provisions of Assam Elementary Education (Provincialisation) Service and Conduct Rules, 1981 had observed that those Stipendary Teachers who were appointed prior to 01.02.2005 by the Deputy Inspector of Schools irrespective of when they have received their Regular Scale of Pay would be entitled to the pension in terms with the Assam Service (Pension) Rules, 1969.

6. In the said Judgment, this Court further held that the Stipendary Teachers appointed prior to 01.02.2005 would be entitled to the benefit under the Assam Service (Pension) Rules, 1969 and they are not covered under the

New Defined Contribution Pension Scheme, 2009. It was also observed that those Stipendary Teachers would also be entitled to the subscribe to the GPF and would also be entitled to the pensionary benefits to which a Government Servant corresponding the rank is entitled to.

7. Taking into account the said aspect of the matter, this Court, therefore, disposes of the instant writ petition by declaring that the petitioner herein would be entitled to the pension in terms with the Assam Service (Pension) Rules, 1969 and would also be entitled to subscribe to the GPF in terms with General Provident Fund (Assam Services) Rules, 1937. The petitioner further would be also entitled to all other pensionary benefits to which a Government servant of corresponding rank would be entitled to.

8. In view of the said declaration, this Court further directs the respondent authorities, more particularly, the Director of Elementary Education as well as the Director of Pension to take appropriate steps to grant the petitioner the pension as well as the pensionary benefits in terms with the above declaration which shall be done within a period of 4(four) months from the date a certified of instant order is served upon the Director of Elementary Education as well as the Director of Pension.

9. Before parting, this Court further would like to observe that in the meantime as NPS account has been opened whereby there has been certain contributions being made on behalf of the State as per the provisions of New Defined Contribution Pension Scheme, 2009, the said amount shall be deducted while computing the pension of the petitioner.

10. With the above observation, the instant writ petition disposed of.

11. The instruction so produced by Mr. Khataniar, learned counsel appearing

on behalf of the Elementary Education Department is kept on record and marked with the letter "X".

JUDGE

Comparing Assistant