

GAHC010220452022



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

Case No. : WP(C)/7205/2022

BIMAL KALITA
S/O. LT. DHIRENDRA NATH KALITA, VILL. MAJKUCHI, P.O. AMRANGA,
DIST. KAMRUP, ASSAM, PIN-781125.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
DEPTT. (ELEMENTARY), SACHIVALAYA, DISPUR, GUWAHATI-781006,
ASSAM.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE DIRECTOR OF PENSION

ASSAM HOUSEFED COMPLEX DISPUR
GUWAHATI-781006
ASSAM.

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
DEPTT. OF FINANCE
DISPUR
GUWAHATI-781006

Advocate for the Petitioner : MR T N SRINIVASAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 27.06.2023

Heard Mr. S.J. Sarmah, the learned counsel appearing on behalf of the Petitioner. Mr. P.N. Sarma, the learned counsel appears on behalf of the Respondent Nos. 1 and 2, Mr. S.R. Baruah, the learned Standing Counsel appears for the Respondent No. 3 and Mr. B. Gogoi, the learned Standing Counsel appears for the Respondent No. 4.

2. Taking into account the issue involved herein as to whether the Petitioner would be entitled to the benefits under the Assam Services (Pension) Rules, 1969 which is covered by the judgment of this Court in the case of **Purnima Hore Vs. State of Assam** reported in **2023 SCC Online Gau 1165**, the instant writ petition is taken up for disposal at the motion stage itself.

3. The claim of the Petitioner herein is that the Petitioner was initially appointed on 1/12/1993 and subsequent thereto there was an exercise carried out by the State Authorities and it was found that the appointment of the Petitioner was in excess of the post sanctioned. Accordingly, the Petitioner was brought into the services of the Government vide an order dated 11th of August, 2005. In the said order dated 11th of August, 2005, it was categorically mentioned that the Petitioner's services would be regulated under the New Pension Scheme which were being formulated in line with the New Defined Contributory Pension Scheme of the Government of India and would be notified in due course.

4. It is further relevant to take note of that on 6/10/2009, an Office Memorandum was issued by the Finance (Budget Department) whereby the New Defined Contributory Pension Scheme was notified. In terms with the said scheme, it was

made clear that the scheme would be applicable to all new entrants joining the Government services on regular basis against vacant sanctioned post on or after 1/2/2005. It is further relevant to take note of that vide an amendment made by the Assam Service (Pension) Amendment Rules, 2011 Rule 2A was inserted stipulating therein that the Assam Service (Pension) Rules, 1969 shall not apply to Government servants appointed on or after 1/2/2005 to the services and post in connection with the affairs of the State Government of Assam which are born on pensionable establishment, whether temporary or permanent and such employee shall be governed by the New Defined Contributory Pension Scheme, 2009. This Court had the occasion of dealing with a similar proceedings in the case of **Purnima Hore**(supra), wherein the issue pertaining as to whether the teachers like the Petitioner categorised as Excess Teacher would be governed under the New Pension Scheme or as per the Assam Service (Pension) Rules, 1969 was decided. In the said judgment at paragraph No. 111, this Court held that the teachers who were appointed in excess of the post during the period from 1/3/1991 to 30/11/1996 would be governed by the New Defined Contributory Pension Scheme and not under the Assam Service(Pension) Rules, 1969.

5. Before parting with the record, this Court finds it relevant to observe that the Petitioner herein shall be eligible for the benefit of retirement gratuity and death gratuity on the same terms and conditions as are applicable to employees covered by the Assam Service (Pension) Rules, 1969 in view of the Office Memorandum dated 1/2/2011.

6. With the above the instant writ petition stands dismissed subject to the observations made in paragraph No.5 hereinabove.

JUDGE

Comparing Assistant