

GAHC010026962023



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

Case No. : WP(C)/1094/2023

MD ABDUL HASHIM BARBHUIYA
S/O LATE MOSHAHID ALI BARBHUIYA,
ASSISTANT TEACHER, GANGAPUR ME SCHOOL,
UNDER KATIGORAH EDUCATION BLOCK,
R/O- VILL AND PO KRISHNAPUR,
BHAIRABNAGAR, DIST.- CACHAR,
ASSAM, PIN- 788025.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE SECRETARY, TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION (ELEMENTARY EDUCATION),
DISPUR, GUWAHATI, ASSAM,
PIN- 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
ASSAM

PIN- 781019.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
CACHAR
SILCHAR
ASSAM
PIN- 788003.

4:THE DEPUTY INSPECTOR OF SCHOOLS
SILCHAR

CACHAR
ASSAM.

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
SALCHAPRA EDUCATION BLOCK
DIST. CACHAR
ASSAM.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
KATIGORAH EDUCATION BLOCK
DIST. CACHAR
ASSAM.

7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE
ASSAM
ASSAM CIVIL SECRETARIAT

DISPUR
GUWAHATI
ASSAM

PIN- 781006.

8:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR

GUWAHATI
ASSAM
PIN- 781006.

9:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
BELTOLA
GUWAHATI- 781029

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 09.01.2024

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. N. J. Khataniar, learned standing counsel, Elementary Education and Mr. R. Ahmed, learned standing counsel Accountant General.

2. This writ petition is filed by the petitioner, who is aggrieved by the fact that his pension has not been finalized and further the arrear salary for the period 15.01.2014 till 23.08.2015 and 25.08.2015 till 31.10.2021 has not been released.

3. The learned counsel for the petitioner submits that the petitioner was transferred by order dated 24.08.2015. After issuance of the transfer order, the petitioner approached this Court filing an earlier writ petition being WP(C) No. 526/2017 assailing the transfer order, which was eventually dismissed, by order dated 27.08.2018. It is submitted that when the petitioner proceeded to join in his place of posting, he was not allowed to join on the ground that the joining period indicated in the order had expired. He submitted several applications before the competent authority and on the basis thereof, a proposal was also forwarded to the competent authority for extension of joining time. Subsequently, the proposal for extension of time was rejected by order dated 31.10.2022 issued by the Department of School Education. This was followed by the subsequent order dated 12.12.2022 issued by the Director of Elementary Education in terms of the earlier order issued by the Department of School Education.

4. The learned counsel for the petitioner submits that although the petitioner filed necessary applications for extension of his joining time and a proposal thereof was also forwarded to the competent authority. However, since no intimation was received from the competent department, the petitioner was not permitted to join and in the meantime he superannuated on 31.10.2010.

5. Learned counsel for the petitioner submits that it is only pursuant to his superannuation that by order dated 31.10.2022 that the Department of School Education rejected the proposal for extension of joining time. As a consequence thereof, since his period of absence from duty was not regularized, his retiral benefits have not been finalized. The learned counsel for the petitioner submits that at present he is receiving provisional pension, but his other retirement and pensionary benefits have not been released including MSCPs on the ground that his period of service has not been regularized.

6. Learned standing counsel for the Education Department submits that the affidavit on behalf of the department has been filed and averments are made that the petitioner did not join in his place of posting and the period of joining time mentioned in the order of transfer having expired and there was no scope for the respondent authority to permit the petitioner to join without extension of the period of joining. Subsequent proposal for extension of joining time forwarded to the competent authority also came to be rejected and therefore, the pension papers could not be finalized.

7. Having heard the learned counsels for the parties and upon perusal of the pleadings on record it is seen that there is no dispute that the petitioner did not join within the time specified and consequently, he was not permitted to join. However, the proposal, which was put up before the department for extension of the joining time came to be rejected on 31.10.2022, which is one year after

the petitioner superannuated.

8. Under such circumstances, unless the period of absence is regularized in terms of the rules and procedure, the petitioner's claim for pensionary benefits cannot be settled. It is seen from the pleadings that there is no dispute that no departmental proceeding had ever been initiated against the petitioner on the ground that he had failed to join his place of posting in terms of the order of transfer. No show-cause notice or enquiry to the effect was initiated against the petitioner.

9. Under such circumstances, unless a proceeding is initiated and findings thereon are arrived at conclusively by the competent authority, the non-release of the arrear salary and the pensionary benefits cannot be withheld. There is no dispute that the petitioner is a Teacher, provincialized as per the provision of law, and therefore, he is entitled to the pensionary benefits as per law. However, because of the non-regularization of the period of absence, the pensionary benefits have not been released.

10. Under such circumstances, this Court deems it appropriate to remand the matter back to the Director, Elementary Education to enquire into the matter and pass appropriate orders to verify and enquire, and if no such disciplinary proceedings are pending and no orders post any such disciplinary proceedings have been passed by the department, the period of absence of the petitioner be regularized enabling the petitioner to receive his pensionary and retirement benefits. The Director will also make necessary verification into the claims of the petitioner for arrear salary. It is made clear that for the period the petitioner has worked, he will be entitled for the arrear salary, but for the period which the petitioner did not render service, his claim for arrear salary cannot be entertained on the principle of no work no pay.

11. In terms of the above, writ petition stands disposed of. The directions contained above shall be carried out by the Director, Elementary Education within a period of 60 (sixty) days from the date of receipt of a certified copy of this order.
12. Writ petition stands disposed of in terms of the above.
13. Interim orders, if any, stands vacated.

JUDGE

Comparing Assistant