

GAHC010072152024



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

Case No. : WP(C)/2009/2024

MUNINDRA NATH HAZARIKA AND 6 ORS
S/O- SHRI GANGADHAR HAZARIKA
R/O VILLAGE- GOSAIPATHAR NO.1
P.O AND P.S- BIHPURIA
DISTRICT- LAKHIMPUR, ASSAM
PIN-784161

2: RIJUMONI DUWARAH
W/O- KRISNA KNT. LAHAN
R/O- VILLAGE-MORIBOR DOLONI
P.O- HARIBOR NOHORANI
P.S- LALUK
DISTRICT- LAKHIMPUR
ASSAM
PIN NO.-784160

3: RUSENA BEGUM
W/O- NAJIB ALI
R/O- VILLAGE- PHENKHATI
P.O-LALUK
P.S- LALUK
DISTRICT-LAKHIMPUR
ASSAM
PIN NO.-784160

4: JUBEDA KHATUN
W/O- JAINALABEDIN
R/O-VILLAGE-ISLAMPUR BESAPATHY
P.O- DHARNAPUR
P.S- LALUK
DISTRICT- LAKHIMPUR
ASSAM

PIN NO.-784160

5: BANDANA GOGOI
W/O- AMIYA KUMAR PACHANI
R/O-VILLAGE-AHUCHAUL GAON
P.O- LAKHIMPUR
P.S- LAKHIMPUR
DISTRICT- LAKHIMPUR
ASSAM
PIN-787001

6: TILUTTAMA GOGOI
W/O- KUSHALCHAMUWA
R/O- VILLAGE- NAKARI WARD NO.2
P.O- NORTH LAKHIMPUR
DISTRICT- LAKHIMPUR
ASSAM
PIN- 787001

7: LAKHI DAS
W/O- PROBHATHAZARIKA
R/O-VILLAGE- KADAMKOCHARI
P.O- CHARAIMORIA
DISTRICT- LAKHIMPUR
PIN-78703

VERSUS

THE STATE OF ASSAM AND 10 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF ELEMENTARY EDUCATION, DISPUR,
GUWAHATI, 781006

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR GUWAHATI
781006.

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

4:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON

BELTOLA
PIN-781029.

5:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-781006

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
LAKHIMPUR
P.O AND P.S- NORTH LAKHIMPUR DISTRICT-NORTH LAKHIMPUR
ASSAM PIN-787001

7:THE DEPUTY INSPECTOR OF SCHOOLS
NORTH LAKHIMPUR
P.O AND P.S -NORTH LAKHIMPUR DISTRICT-LAKHIMPUR
PIN 787001

8:THE TREASURY OFFICER LAKHIMPUR
P.O AND P.S-LAKHIMPUR DISTRICT-LAKHIMPUR
ASSAM PIN-787001

9:THE BLOCK ELEMENTARY EDUCATION OFFICER
BIHPURIA
P.O AND P.S- BIHPURIA DISTRICT-LAKHIMPUR
ASSAM
PIN-784161

10:THE BLOCK ELEMENTARY EDUCATION OFFICER
LAKHIMPUR
P.O AND P.S- LAKHIMPUR DISTRICT-LAKHIMPUR
ASSAM
PIN-787001

11:THE TREASURY OFFICER BIHPURIA SUB-TREASURY
P.O AND P.S-BIHPURIA
DISTRICT-LAKHIMPUR
ASSAM
PIN-78416

Advocate for the Petitioner : MD. A HASSAN

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 29.05.2024

- 1.** Heard Mr. A. Hassan, learned counsel for the petitioners.
- 2.** Also heard Mr. B. Kaushik, learned standing counsel, Elementary Education Department, for respondent Nos. 1, 3, 6, 7, 9 & 10; Mr. A. Chalia, learned standing counsel, Finance Department, for respondent Nos. 2, 8 & 11; Mr. P. Chakraborty, learned standing counsel, Accountant General, for respondent No. 4 and Mr. B. Deori, learned Government Advocate, for respondent No. 5.
- 3.** The petitioner No. 1 was appointed temporarily as Stipendiary Teacher and posted at Gosaipather No.1 L.P. School by an order dated 30.01.1996. The petitioner No. 2 was appointed temporarily as Stipendiary Teacher and posted at Haripur L.P. School by an order dated 30.01.1996. The petitioner No. 3 was appointed temporarily as Stipendiary Teacher and posted at Uttar Besapati L.P. School by an order dated 27.01.1996. The petitioner No. 4 was appointed temporarily as Stipendiary Teacher and posted at No.1 Rownapur L.P. School by an order dated 30.01.1996. Similarly, the petitioner Nos. 5, 6 & 7 were also appointed temporarily as Stipendiary Teachers by different orders, all dated 30.01.1996 and posted at Madhabram Gogoi School L.P. School, No.51 Nakari L.P. School and Ahuchaul Gaon L.P. School respectively. Thereafter, the petitioners were deputed to undergo Junior Basic Training Course in the year, 2005, which the petitioners completed successfully. On completion of the Junior Basic Training Course, the petitioners were granted regular time scale of pay

and other allowances by different orders dated 08.10.2007, 29.11.2005, 03.08.2007, 19.03.2005, 18.03.2008, 27.02.2008 and 05.03.2008. The services of the petitioners were also confirmed against the posts, in which, they were serving. The petitioner No. 1 was confirmed w.e.f. 05.02.2001 and the service of the petitioner Nos. 2, 5, 6 & 7 were confirmed with effect from the respective date of their initial joining. The petitioner Nos. 1, 2, 3 & 4 were also allotted the GPF account number. However, with regard to the petitioner Nos. 5, 6 & 7, they were not allotted GPF account number on the ground that they are not entitled to subscribe the GPF as they started getting regular scale pay only after 01.02.2005. Instead the petitioner Nos. 5, 6 & 7 were allotted NPS account number in the year 2010.

4. Learned counsel for the petitioners submits that the issue involved in the present case is with regard to the grant of pension under the Old Pension Scheme to the petitioners. It is submitted that the issue involved is already covered by the judgment of this Court in the case of **Purnima Hore and another Vs. State of Assam**, reported in **2023 SCC Online Gau. 1165**.

5. Mr. B. Kaushik, learned Standing counsel, Elementary Education Department fairly submits that the case of the petitioners is covered by the case of **Purnima Hore (supra)**.

6. In the case of **Purnima Hore (supra)**, this Court passed the following directions :

“118. In the backdrop of the above, this Court, therefore, disposes of the instant batch of writ petitions with the following observations and directions:-

(i) The writ petitioners who come within the fold of Stipendiary Teachers are entitled to

the benefits under the Rules of 1969 and they are not covered under the NDCPS, 2009. The said petitioners are also entitled to subscribe to the GPF. The said petitioners would also be entitled to all other pensionary benefits to which a Government servant of corresponding rank is entitled to.

(ii) The writ petitioners who come within the fold of Dropped Teachers are not entitled to pension in terms with the Rules of 1969 as well as also shall not be entitled to join the fund in terms with the General Provident Fund (Assam Service) Rules, 1937, but they shall be governed by the New Pension Scheme applicable to the State Government employees of the corresponding rank.

(iii) The teachers coming within the fold of Teachers Appointed under the Operation Black Board, and more particularly, those teachers who were appointed pursuant to the creation of 7066 posts on 08.03.2021, would not be entitled to pension in terms with Rules of 1969 as well as also shall not be entitled to join the fund in terms with the General Provident Fund (Assam Service) Rules, 1937. They shall be governed by the New Pension Scheme applicable to State Government employees of corresponding rank.

(iv) The writ petitioners who come within the fold of Excess Teachers would not be entitled to the pension in terms with the Rules of 1969 as well as also shall not be entitled to subscribe to the fund in terms with the General Provident Fund (Assam Service) Rules, 1937, but they shall be governed by the New Pension Scheme applicable to the State Government employees of the corresponding rank.

(v) The writ petitioners who come within the category of Teachers appointed on Ad-hoc Grant Basis would not be entitled to pension in terms with the Rules of 1969, but shall be governed by the New Pension Scheme applicable to the State Government employees of the corresponding rank. They would also not be entitled to join the fund in terms with the General Provident Fund (Assam Service) Rules, 1937.

(vi) The Teachers who have been brought within the fold of the State Sector Employees by regularization of their services by the Dima Hasao Autonomous District Council on or after 01.02.2005 would not get the benefit in terms with the Rules of 1969, but they shall be governed by the New Pension Scheme applicable to the State

Government employees of the corresponding rank.

(vii) The teachers coming within the category of Dropped Teachers, Operation Black Board, Excess, Ad-hoc Grant as well as Dima Hasao as mentioned in Sub-Paragraph Nos.(ii), (iii), (iv) (v) & (vi) herein above as they come within the ambit of the New Defined Contribution Pension Scheme, 2009 shall be eligible for 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. (viii) The communication dated 23.02.2010 issued by the Director, Finance (Budget) Department to the Deputy Accountant General (P&A) is set aside and quashed.

(ix) It is observed that the instant judgment will come into effect prospectively. The State Government shall not be entitled to claim refund of any pension or pensionary benefits already granted to an employee on the basis of the directions passed by the various orders of this Court earlier. This direction has been given specifically for the fact that the State Government had allowed such orders so passed by the Coordinate Bench as well as the Division Bench of this Court to attain finality and have granted benefit to them. These persons shall continue to be entitled to the pension under the Rules of 1969 as per the directions of this Court earlier. The above directions is based upon the judgment of the Supreme Court in the case of Umadevi (3) (supra) wherein the Supreme Court at paragraph No.53 had categorically observed that those regularizations, if any, already made but not subjudiced need not be reopened based on the observations made in the said judgment.

(x) This Court further is of the opinion that the persons similarly situated to that of the writ petitioners coming within the category of Stipendiary Teachers, but who have not been able to approach this Court on account of various reasons, need not be deprived of the benefits of pension in terms with the Rules of 1969 as well as to subscribe to the fund in terms with the General Provident Fund (Assam Service) Rules, 1937. This Court, therefore, directs the respondent authorities to grant the benefits of pension in terms with the Rules of 1969 as well as to allow such persons to subscribe to the fund in terms with the General Provident Fund (Assam Service) Rules, 1937 after completing the necessary verification in that regard. The same may be done within a

period of 6 (six) months from the date of the instant judgment.”

7. This Court after considering the facts in the present case, is also of the considered opinion that the judgment passed in the case of **Purnima Hore (supra)** covers the case of the petitioners in hand.

8. Accordingly, this writ petition is disposed of directing the respondent-authorities to verify the documents as regards the appointment of the petitioners as Stipendiary Teachers and thereupon, after making necessary verification and if it is found that the petitioners fall within the ambit of the Stipendiary Teacher and were not granted the benefit of the pension under Assam Services (Pension Rules), 1969, although, the regular scale of pay was given to them, the petitioners shall be granted the benefits of pension in terms of the Rules of 1969.

9. The respondents are, therefore, directed to consider the case of the petitioners in terms of the directions passed in the case of **Purnima Hore (supra)**.

10. After verification and after the relevant documents are submitted to the Office of the Accountant General, the Office of the Accountant General shall also allot the GPF accounts to the petitioners.

11. With the above observations and directions, the writ petition is disposed of.

JUDGE

Comparing Assistant