

GAHC010077942021



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

Case No. : WP(C)/2888/2021

BANKIM DAS
S/O LATE PRIYA BHUSAN DAS ,
RESIDENT OF MEGHA ENCLAVE, JAYMATI NAGAR, PANDU, GUWAHATI,
KAMRUP (M) ASSAM, 781012

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT, 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 DISTRICT ELEMENTARY EDUCATION OFFICER

KAMRUP (M) CHATRIBARI
GUWAHATI
ASSAM 781008

5:THE DEPUTY INSPECTOR OF SCHOOLS

GUWAHATI

KAMRUP M ASSAM 78100

Advocate for the Petitioner : MRS P RAI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

09.04.2024

Heard Mr. S. Choudhury, learned counsel for the petitioner. Also heard Mr. D. Upamanyu, learned Standing Counsel, Higher Education and Ms. Tinlung, learned counsel appears on behalf of Mr. R.K. Talukdar, learned Standing Counsel, Accountant General.

2. The petitioner is before this Court praying for a direction to release the arrear salary amounting to Rs. 1,29,181/- (Rupees One Lakh Twenty Nine Thousand One Hundred Eighty One Only) for the period 01.06.2003 to 31.03.2005. A further prayer is made for release of arrear salary with effect from July, 1995 to 10.12.2002. The petitioner is also prayed for re-fixation of his seniority taking into account his initial date of joining which is 18.01.1994 as an Assistant Teacher.

3. The writ petitioner claims to have been appointed as an Assistant Teacher in Bani Bidyapith Middle English School, Pandu, Guwahati on purely temporary basis by order dated 13.01.1994 by the DEEO, Kamrup. However, the petitioner was unable to collect his joining letter. After rendering his service as an Assistant Teacher, his salary was paid till June, 1995. Thereafter, despite his regular and continuous service, the authorities did not release his salary till December, 2002 for the reasons best known. The State of Assam had taken a

Cabinet decision to regularize 3511 Nos. of LP/Sr. Basic/Jr. Basic/ME/MEM/HS School teachers who were appointed irregularly during the period of 01.03.1991 to 30.11.1996 and onwards. In terms of a circular published on 10.08.2000 pursuant to the Cabinet decision taken, the competent authority regularized the services of the writ petitioner w.e.f. 01.08.2000. However, inspite of his services being regularized and inspite of rendering regular service, his salary has not been released by the Treasury Office in view of a communication issued by the DEEO, Kamrup that budget and retention of the post of the concerned teachers are not available in the Office of the DEEO. As such inspite of petitioner being regularized, his salary has not been released.

4. It is pertinent to mention here that the petitioner does not dispute the position on facts that his case was considered by the Cabinet for regularization as a part of 3511 Nos. of LP/Sr. Basic/Jr. Basic/ME/MEM/HS School teachers who were irregularly appointed during the period of 01.03.1991 and 30.11.1996 and onwards. Some of these teachers approached this Court claiming various benefits including arrear salary and seniority etc. This writ petition came to be allowed against which the State preferred an appeal which was registered as W.A. No.131/2018 (Usha Rani Goswami). By Judgment and Order dated 24.05.2023, the writ appeal came to be allowed and disposed of. The Division Bench interfered with the Judgment of the learned Single Judge as well as the orders passed under the review and the same were reversed and set aside. The Division Bench held that the respondents in the writ appeal namely the petitioners before the learned Single Judge could not have been permitted to claim the arrear salary as they were irregularly appointed teachers. The relevant paragraphs of the writ appeal are extracted below:

“19. Here in the instant case, it is seen that the present respondents/writ

petitioners were irregularly appointed against non-existent posts and accordingly, their services were regularized vide order dated 05.03.2001 w.e.f. 01.08.2000, and their past services were considered for pensionary benefits. Apart from that, they were given regular time pay scale as per the existing Rules and were also adjusted in the vacant posts as per the notification.

20. *It is a fact that, as per the said notification, the present respondents/writ petitioners had undertaken not to claim any arrear salary as their initial appointment was regularized on 05.03.2001 w.e.f. 01.08.2000. Their services were regularized, in terms of the cabinet decision taken on 21.02.2000. Instead of removal for appointment against the nonexistent post without any advertisement and no selection process the Government was magnanimous in taking decision to hold their appointment as irregular and regularized them, of course with undertaking from them for no back wages. The writ petitioners/present respondents instead of being content with regularization and adjustment against the vacant posts, come up with a highly belated claim for back wages towards past services, which they gave after having been irregularly appointed on posts which were not in existence.*

21. *In WP(C)172/2017, along with batch of other 9 cases, the issue raised was for getting pension under old Rules, after regularization of service. The petitioners in those cases were appointed on various posts but appointment after 1st day of February' 2005, was relevant. They were not allowed the pensionary benefits under the old Rules, 1969, and the learned Single Bench of this Court asked the Department to give the pensionary benefits under provisions of the Assam Services (Pension) Rules, 1969, to persons similarly situated, considering the past service prior to regularization. In number of subsequent cases this Court held the regularization of service to be prospective, and the period of services rendered from initial appointment would be counted for pensionary benefits only. Earlier also similar issue was there before this Court in WP(C)597/2002, and against the order dated 13.05.2004, the State preferred W.A. 145/2009, which was decided against the State on 24.03.2010 and SLP(Civil)19351-19360/2010 of*

the State before Supreme Court was dismissed on 02.08.2010. In that case, the past service was counted for the purpose of pension only.

22. *In the instant writ appeal, the present respondents/writ petitioners were not only regularized but also were adjusted in posts lying vacant in various schools and were also given the regular time pay scale along with the pensionary benefits, as applicable and being so, their regularization of service had a prospective effect of gaining entry into the cadre and getting regular scale of pay.*

23. *In view of the above observations, we find that the learned Single Judge ought not to have allowed the claim of the respondents for arrear salary. There are sufficient and justifiable grounds to interfere in the Judgment & Order dated 10.03.2011, passed in WP(C)No.5286/2004 as well as order dated 16.05.2017 passed in Review Petition No.81/16, and accordingly, the same are reversed and set aside."*

5. In the facts of the present case, the petitioner being a part of the 3511 Nos. of irregular appointed teachers, the claims made by the writ petitioner also stands squarely covered by the Judgment of the Division Bench rendered in Usha Rani Goswami (W.A. No. 131/2018).

6. In the meantime, however, the first prayer made in the writ petition namely, release an amount of Rs. 1,29,181/- (Rupees One Lakh Twenty Nine Thousand One Hundred Eighty One Only) as arrear salary for the period 01.06.2003 to 31.03.2005 has been granted by the department.

Considering the fact that the Division Bench in Usha Rani (Supra) has held authoritatively held that irregular teachers cannot be granted arrear salary for the period prior to their regularization, the prayer of the writ petitioner for claim of arrear salary w.e.f July, 1995 to 10.12.2002 stands rejected.

7. In so far as his prayer for re-fixation of seniority, the Department authorities will examine the same and in the event it is found that the petitioner

has been regularized as claimed w.e.f 01.08.2000 as per the order dated 05.03.2001 issued by the Department, his seniority should re-fixed and counted w.e.f 01.08.2000.

8. In terms of the above, the writ petition stands disposed of. No order as to costs.

JUDGE

Comparing Assistant