

GAHC010085392024



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

Case No. : WP(C)/2270/2024

PURABI SAIKIA AND 8 ORS
W/O BHOIROB SAIKIA
R/O VILL- NO. 2 MORICHA PATHAR
P.O. MORICHA PATHAR
DIST. LAKHIMPUR, ASSAM
PIN-784161

2: SMTI. NIRMALA SONOWAL
W/O ROMEN DUWARA
R/O VILL- NO. 1 BAHUPATHER
P.O. DULIA PATHER

P.S. NARAYANPUR
DIST. LAKHIMPUR
ASSAM
PIN- -784164

3: SMTI. PRATIMA HAZARIKA
W/O THANESWAR SAIKIA
R/O VILL- SONAPUR
P.O. SONAPUR
DIST.LAKHIMPUR
ASSAM

PIN-784160

4: SMTI. DIPALI GOGOI
W/O ALOKJYOTI BARUAH
R/O VILL- WARD NO. 4 BIHPURIA
P.O. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN NO. 784161

5: SMTI. RUJENA BEGUM
W/O MD. NAJIB AHMED
R/O WARD NO. 1 BIHPURIA
P.O. AND P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-784161

6: SMTI. RANU DUTTA SAIKIA
W/O GOPAL SAIKIA
R/O WARD NO. 4 BIHPURIA
P.O. AND P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-784161

7: SMTI. MINA KUMARI BORA
D/O ANANDA BORA
R/O VILL- SANDHAKHUWA
PO. SANDHAKHUWA
DIST. LAKHIMPUR
ASSAM
PIN- 787054

8: SMTI. BICHITRA BHUYAN
W/O MADHAB BARUAH
R/O VILL- KHORA DHUNABARI
P.O. SANDAKHUWA
DIST. LAKHIMPUR
ASSAM
PIN- 787054

9: SMTI. CHITRA MAHANTA
W/O MUKUNDA NATH MAHANTA
R/O WARD NO. 4 BIHPURIA
P.O. AND P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-78416

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
DIST. NORTH LAKHIMPUR
ASSAM
PIN-787001

7:THE DEPUTY INSPECTOR OF SCHOOLS

NORTH LAKHIMPUR
P.O. AND P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR
PIN-787001

8:THE TREASURY OFFICER LAKHIMPUR
P.O. AND P.S. LAKHIMPUR

DIST. LAKHIMPUR
ASSAM
PIN-787001

9:THE BLOCK ELEMENTARY EDUCATION OFFICER

BIHPURIA P.O. AND P.S. BIHPURIA

DIST. LAKHIMPUR

ASSAM

PIN-784161

10:THE BLOCK ELEMENTARY EDUCATION OFFICER

LAKHIMPUR P.O. AND P.S. LAKHIMPUR

DIST. LAKHIMPUR

ASSAM

PIN-787001

11:THE TREASURY OFFICER BIHPURIA SUB-TREASURY

P.O. AND P.S. BIHPURIA

DIST. LAKHIMPUR

ASSAM

PIN-78416

Advocate for the Petitioner : MD. A HASSAN

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

01.05.2024

Heard Mr. A. Hassan learned counsel for the petitioners. Also heard G. Pegu, learned Standing Counsel, Elementary Education; Mr. D. Borah, learned Government Advocate; Mr. C. Boruah, learned Standing Counsel, Accountant General and Mr. R. Borpujari, learned Standing Counsel, Finance.

2. It is submitted that the issue involved in this matter is with regard to grant of pension under the Old Pension Scheme to the petitioners who were Fixed Pay Teachers at different L.P. Schools. As it is submitted at the bar that the issues involved are covered by Judgment of this Court in the case of Purnima Hore and Anr. Vs. State of Assam reported in 2023 SCC Online Gau 1165, the present writ petition is taken up for disposal at the motion stage.

3. The petitioners No. 1 to 8 were appointed as a Fixed Pay Teachers in different Schools by order dated 08.03.2001 and petitioner No. 9 was appointed as Fixed Pay Teachers at Adi Elengi Satra L.P. School by order dated 13.03.2001 issued by the Deputy Inspector of Schools, North Lakhimpur, namely, respondent No. 7 therein. The petitioners were initially granted a stipend of Rs. 1800/- per month with effect from the date of their joining. In the said appointment orders, the petitioners No. 1 to 5 as required, were deputed to undergo the Basic Training Examination for the year 2005-2006 and petitioners No. 6 to 9 were deputed to under the Basic Training Examination for the year 2006-2007. The petitioners thereafter completed the 6th Months Primary Teachers Training Course Final Examination. It is stated that on 01.03.2008 by separate orders issued by the Deputy Inspector of Schools, the services of the petitioners No. 1 to 5 as

Stipendiary Teachers were normalized with effect from 31.08.2006; by order dated 05.03.2008, the services of the petitioner No. 6 was normalized w.e.f 20.09.2007 and vide order dated 18.03.2008 issued by the respondent No. 7, the services of the petitioners No. 7 to 9 were normalized w.e.f 20.09.2007. It is submitted that the petitioners have been allowed to draw regular scale of pay of Rs. 3130/- to Rs. 6000/- and other Govt. admissible allowances with effect from the said date. It is submitted that the petitioners thereafter were receiving the regular scale of pay along with all revision and pay fixation as payable. It is submitted that the Office of the Accountant General also allotted GPF accounts to the petitioners and also issued the balance sheet. However, the said GPF Accounts were closed in the year 2010 on the ground that they are not entitled to subscribe GPF as they are getting the regular time scale of pay after 01.02.2005. Thereafter, the petitioners were allotted the NPS accounts in the year 2011 and since then the contribution of the petitioners towards NPS have been deducted from their monthly salary.

4. This Court in the case of Purnima Hore(supra) held that the teachers who come within the fold of Stipendiary Teachers are entitled to the benefit under the Rules of 1969 and they are not covered under the New Defined Contributory Pension Scheme, 2009. It was also held that those teachers would also be entitled to subscribe to the GPF and would also be entitled to all other pensionary benefits to which a Govt. servant of corresponding rank is entitled to. This Court further finds it relevant to refer to paragraph 123(x) whereby a direction was issued to the respondent authorities to grant the benefit of pension in terms with the Rules of 1969 as well as allow such persons to subscribe to the fund in terms with the General Provident Fund (Assam Service) Rules,1937 after completing necessary verification in that regard. Sub-Paragraph

(x) of 123 of the judgment in the case of Purnima Hore(supra) is reproduced herein under :

“123(x) This Court further is of the opinion that the persons similarly situated to that 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 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.”

5. Taking into account the above, this Court also finds that the said judgment would be squarely applicable in the case of the petitioner, however subject to verification to be undertaken by the respondent No. 1.

6. Accordingly, this Court disposes off the writ petition thereby directing the respondent authorities to verify the documents as regards the appointment of the petitioners as Stipendiary Teachers and thereupon after making necessary verifications, if it is found that the petitioners falls within the ambit of the Stipendiary Teacher and were not granted the benefit of the pension under the Rules of 1969 although the regular scale of pay were given to them, the petitioners should be granted the benefits of the pension in terms with the Rules of 1969 and if not otherwise in contravention of the service and other Rules governing the Service conditions of the petitioners. The same may be done within a period of 120 days (One Hundred Twenty days) from the date of receipt of a certified copy of this order alongwith the necessary documents evidencing that the petitioners are Fixed Pay Teachers are submitted to the

respondent No. 1.

7. While granting the benefits to the petitioner, if so entitled under the Rules of 1969, the amounts which have been paid by the Government in terms of NDCPS, 2009 be deducted while granting the benefits. Accordingly, the respondent authorities while granting the benefits of Old Pension Scheme to the petitioners if found to be entitled shall deduct the said amount so paid by the Government in terms with the NDCPS, 2009.

8. With the aforesaid observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant