

GAHC010108122022



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

Case No. : WP(C)/3780/2022

BASUDEV DEURI
S/O LATE RANGALAO DEURI, VILL-BAHGARH DEURI GAON, P.O.-
BAHGARAH, P.S.-BIHPURIA, DIST-LAKHIMPUR, PIN-784164

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI-781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
LAKHIMPUR DISTRICT
PIN-787001

4:THE DEPUTY INSPECTOR OF SCHOOLS
LAKHIMPUR
ASSAM-787001

5:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
(EC-II)
GUWAHATI-781006

6:THE HEADMASTER
MORNOI DEURI GOVT. MV SCHOOL

DIST-LAKHIMPUR-784164

7:THE HEADMASTER
MORNOI DEURI GOVT. JUNIOR BASIC SCHOOL
DIST-LAKHIMPUR-78416

Advocate for the Petitioner : MR. A DEKA,

Advocate for the Respondent : SC, ELEM. EDU, SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 27.08.2024

- 1.** Heard Mr. A. Deka, learned counsel for the petitioner.
- 2.** Also heard Mr. P.N. Sarma, learned Standing counsel, Elementary Education Department, for respondent Nos. 1, 2, 3 & 4 and Mr. A. Chalia, learned Standing counsel, Finance Department, for respondent No. 5.
- 3.** The case of the petitioner is that he was initially appointed on 13.10.1987 as a Chowkidar (Grade-IV Employee) by the School Managing Committee of Mornoi Deuri Government Basic School, Bahgarah under Bihpuria Educational Block in Lakhimpur district. Thereafter, the petitioner was paid a fixed salary at the rate of Rs.900/- per month from the date of his appointment till September, 2016.
- 4.** The learned counsel for the petitioner submits that by O.M. dated 20.09.2004, the fixed pay was enhanced to Rs.1,800/- per month. Further, by another O.M., the fixed salary of the casual employees were enhanced from Rs.1,800/- per month to Rs.2,100/- per month. However, the petitioner continued to get the fixed pay of Rs.900/- per month in spite of the enhancement of the fixed pay. The learned counsel for the petitioner also

submits that subsequently, there has been a revision of fixed pay by enhancing to Rs.4,500/- in terms of the order passed this Court in Writ Appeal No. 45/2014, which was disposed of on 08.06.2017 **(Upen Das and others Vs. State of Assam and others)**.

5. However, as the petitioner was not given minimum scale of pay, he approached this Court by filing WP(C) No. 5615/2019, which was disposed of by Order dated 07.08.2019 and the operative part reads as under :

“7. In view of the above, the present petition is disposed of by directing the respondent authorities, more particularly the respondent Nos. 1 and 2 to verify the claim of the petitioner and if it is covered by the aforesaid order passed by this Court in W.A. No.45/2014, he may also be granted minimum pay scale of Grade-IV within a period of 3 (three) months from the date of receipt of a certified copy of this order along with a copy of W.A. No.45/2014 as well as Annexures to this petition to expedite the process.

8. As regards the claim for arrears, the same shall be granted in terms of the direction of this Court as mentioned above.”

6. Thereafter, the Director of Elementary Education, Assam passed an Order dated 28th February, 2022 and the relevant portion reads as under:

“Decision : Momol Deuri Govt. Junior Basic School is a Govt. School established by the Govt. The appointing authority of Teaching and Non-teaching Staff in Govt. School is the Director of Elementary Education, Assam. The School Managing Committee of Govt. School is not the competent Authority to appoint any teaching and non-teaching staff. Hence, the so called appointment letter of Sri Basudev Deuri is not valid. The claim of the petitioner Sri Basudev Deuri is hereby rejected.

This is issued in compliance of the Hon’ble High Court order dtd. 07.08.2019 passed in WP(C) No. 5615/2019 of Basudev Deuri Vs. State of Assam and others.”

7. The learned counsel for the petitioner submits that a perusal of the Order

dated 28th February, 2022 clearly indicates that the case of the petitioner was not considered in terms of the directions passed by this Court in the case of **Upen Das and others (supra)** and therefore, reconsideration of the case of the petitioner is required. He also submits that the petitioner retired in the year 2022 and the petitioner is not praying for regularisation of his service but only for grant of minimum scale of pay as well as arrear pay in terms of the direction passed by this Court in the case of **Upen Das and others (supra)**.

8. Mr. P.N. Sarma, learned Standing counsel, Elementary Education Department, submits that the petitioner was appointed by the School Managing Committee as an honorarium casual employee at Mornoi Deuri Government Basic School, Bahgarah under Bihpuria Educational Block in Lakhimpur district in the year 1987. The appointing authority of the Teaching and Non-Teaching Staff in Government School is the Director of Elementary Education, Assam and the Managing Committee is not the competent authority to make any appointment to any type of posts in Government School. Further, as the petitioner was appointed by the School Managing Committee, his appointment is illegal and in contravention of the Rules and Procedure issued from time to time by the Government of Assam. Therefore, the question of regularisation of the service of the petitioner does not arise and the Government has already rejected the claim of the petitioner for regularisation of his service by the Order dated 28.02.2022.

9. A consideration of the Order dated 28.02.2022 clearly indicates that the case of the petitioner was not considered in terms of the directions passed by the Hon'ble Division Bench of this Court in the case of **Upen Das and others (supra)**. Further, the petitioner is not praying for regularisation of his service

but only for grant of minimum scale of pay in terms of the directions passed by the Hon'ble Division Bench of this Court in the case of **Upen Das and others (supra)**. There is no discussion of the case of the petitioner with regard to his eligibility for the minimum scale of pay in terms of the directions passed by this Court in WP(C) No. 5615/2019 on 07.08.2019 in the Order dated 28.02.2022.

10. This Court has also perused the Communication dated 23.07.2004 written by the Deputy Inspector of Schools, North Lakhimpur and addressed to the Director of Elementary Education, Assam, wherein a request for sanction for payment of casual employees was made as per list, who had been working in different Government Junior Basic Schools since 1983 and had been receiving payment (fixed pay) upto March, 2003 at the rate of Rs.900/- per month. The statement showing arrear salary to casual employees working in Junior Basic Schools under Deputy Inspector of Schools, North Lakhimpur during the Financial Year 2005-2006 requiring an amount of Rs.10,800/- to each of the casual employees (annexed as Annexure-7 to the writ petition) has also been perused by this Court. In the said list, the name of the petitioner appears at Serial No. 3. Learned counsel for the petitioner submits that the arrear salary amounting Rs.10,800/-, as reflected in the statement of the Deputy Inspector of Schools, North Lakhimpur, has been received by the petitioner.

11. In view of the observations made hereinabove, the Order dated 28.02.2022 is set aside and quashed and the matter is remanded back to the Director of Elementary Education, Assam to have a re-verification of all the documents of the petitioner and thereafter, pass an appropriate order in accordance with law with regard to the eligibility of the petitioner for being granted minimum scale of pay along with arrears if the petitioner is found

entitled to the same. The said consideration shall be made in terms of the directions passed by the Hon'ble Division Bench of this Court in the case of **Upen Das and others (supra)**.

12. Let such exercise be done within a period 3 (three) months from the date of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant