

GAHC010143872024



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

Case No. : WP(C)/3626/2024

ANJALI GOGOI AND ANR
W/O- REBAT CHETIA,
R/O- VILLAGE-NAKARI, WARD NO-3,
P.O AND P.S- NORTH LAKHIMPUR, DIST- LAKHIMPUR, ASSAM, PIN-787001

2: RIJUMONI DUWARAH
W/O- KRISHNA KANTA LAHON
R/O- HARIBOR DOLONI
P.O- HARIBORNOHORANI
P.S- LALUK
DIST- LAKHIMPUR
ASSAM
PIN-78416

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF ELEMENTARY EDUCATION , DISPUR, GUWAHATI-06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE
DISPUR
GUWAHATI-06

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

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

BELTOLA
GUWAHATI-29

5:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-06

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
NOWBOICHA
LAKHIMPUR
ASSAM
PIN-784160

7:THE TREASURY OFFICER
LAKHIMPUR
DIST- LAKHIMPUR
ASSAM
PIN-787001

8:THE TREASURY OFFICER
NOWBOICHA
LAKHIMPUR
ASSAM
PIN-78416

Advocate for the Petitioner : MD. A HASSAN, MR. D RABHA

Advocate for the Respondent : SC, ELEM. EDU, MR B DEURI, GA, ASSAM,SC, FINANCE,SC,
AG (A AND E)

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

09.09.2024

O R D E R

Heard Mr. A. Hasan, learned counsel for the petitioner. Also heard Mr. A. Phukan, learned Standing Counsel, Secondary Education Department, Government of Assam, for respondent Nos.1, 3 and 6; Mr. P. Nayak, learned Standing Counsel, Finance Department, Government of Assam, for respondent Nos.2, 7 and 8; Ms. P.

Chakraborty, learned Standing Counsel, AG, for respondent No.4 and Mr. G. Pegu, learned Government Advocate, Assam for respondent No.5.

2. The petitioner Nos.1 and 2 were appointed temporarily to act as Stipendiary Teacher and posted at Nagar Bapuji LP School and the petitioner No.2 was posted at Haripur LP School respectively by different orders, both dated 30.01.1996, issued by the Deputy Inspector of Schools, North Lakhimpur. Thereafter, the petitioner No.1 was adjusted against the existing retired/expired vacancy by an order dated 02.04.2001 issued by the Deputy Inspector of Schools, North Lakhimpur. The service of the petitioner No.2 was regularised in the existing retired/expired vacancy by order dated 31.03.2001 issued by the Deputy Inspector of Schools, North Lakhimpur. The petitioners also underwent the Junior Basic Training Course and a certificate to that effect was issued to the petitioner No.1 on 09.10.2006 and to the petitioner No.2 on 07.06.2005. The petitioner No.1 was allowed to draw regular time scale of pay by order dated 05.03.2008 with effect from 31.08.2006 issued by the Deputy Inspector of Schools, North Lakhimpur. Similarly, the petitioner No.2 was allowed to draw regular time scale of pay with effect from 06.05.2005 by an order dated 29.11.2005 issued by the Deputy Inspector of Schools, North Lakhimpur. However, the petitioner No.1 was allotted NPS Account in the year 2012. As regards the petitioner No.2, he was allotted GPF Account Number by the office of the AG, Assam. However, the same was stopped in the year 2010 and in the year 2012, the petitioner No.2 was allotted the NPS Account Number. Therefore, being aggrieved, the petitioners are before this Court praying for a direction that their cases should come under the Assam Service (Pension) Rules, 1969.

3. Learned counsel for the petitioners submits that the issue involved in the present writ petition is with regard to grant of old pension under the Old Pension Scheme to the petitioners. It is also submitted that the issue involved is already

covered by judgment of this Court rendered in **Purnima Hore and another Vs. State of Assam**, reported in **2023 SCC Online Gau 1165**.

4. Ms. Musahary, learned Standing Counsel, Secondary Education Department, fairly submits that the case of the petitioners are covered by the case of **Purnima Hore** (supra).

5. 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 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.”

6. 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.

7. 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 after making necessary verification, 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.

8. 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).

9. 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.

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

JUDGE

Comparing Assistant