

GAHC010165272024



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

Case No. : WP(C)/4363/2024

AKLIMA KHATUN
D/O- LATE ABDUR RAZZAQUE,
R/O- VILLAGE BATABARI,
P.O- TENGAGURI,
P.S- LAHARIGHAT, DIST- MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM, EDUCATION DEPARTMENT (ELEMENTARY), DISPUR,
GUWAHATI-6

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

3:THE SECRETARY
FINANCE (BUDGET DEPARTMENT)TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-6

4:THE ACCOUNTANT GENERAL
ASSAM
BELTOLA
GUWAHATI-29

5:THE PRINCIPAL
BASIC TRAINING CENTRE
RAHA

NAGAON

6:THE DEPUTY INSPECTOR OF SCHOOLS
NAGAON
ASSA

Advocate for the Petitioner : MR B P BORAH, MISS. J GOGOI,MR P J DUTTA,MR J. B. CHOUDHURY,MR. U S BORA

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

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 09.09.2024

Heard Mr. B.P. Borah, learned counsel for the petitioner.

2. Also heard Ms. S. Chutia, learned standing counsel, Elementary Education Department, for respondent Nos. 1, 2 & 6; Mr. A. Chalia, learned standing counsel, Finance Department, for respondent No. 3 and Ms. M. Barman, learned counsel appearing on behalf of Mr. S.K. Medhi, learned standing counsel, Accountant General, for respondent No. 4.

3. Learned counsel for the petitioner submits that the issue involved in this writ petition is with regard to grant of Old Pension Scheme to the petitioner who was a Stipendary Teacher at Pub Chota Rupahi L.P. School. It is also submitted that the case of the petitioner is covered by the judgment of this Court passed in the case of ***Purnima Hore and Another Vs. State of Assam***, reported in ***2023 SCC Online Gau. 1165***. Accordingly, this writ petition is taken up for disposal.

4. The petitioner was initially appointed as an Assistant Teacher on

08.05.1994 in Pub Chota Rupahi L.P. School. Thereafter, the service of the petitioner was adjusted against existing retired/expired vacancies with immediate effect by an Order dated 06.08.2003 issued by the Director of Elementary Education, Assam. The petitioner, thereafter, completed the Basic Teachers Training Course on 28.02.2005. Accordingly, by an Order, dated 05.07.2005, issued by the Director of Elementary Education, Assam, the petitioner was allowed to draw time scale of pay w.e.f. 06.05.2005. The learned counsel for the petitioner submits that thereafter, the petitioner continued to receive regular scale of pay along with all revision and pay fixation as payable from time to time. The petitioner is presently serving at Kenduguri Adarsha L.P. School under Juria Elementary Education Block, Nagaon. While the petitioner was serving as such, he was issued a Card indicating that the petitioner falls under the National Pension System and accordingly, the contributory provisions fund was deducted from the salary of the petitioner. Therefore, being aggrieved, the petitioner is before this Court claiming that the petitioner should come under the Assam Service (Pension Rules), 1969 (Rules of 1969, in short) and not under the New Defined Contributory Pension Scheme, 2009.

5. 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."

6. 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.

7. Accordingly, this Court disposes of the writ petition thereby directing the respondent authorities to verify the documents as regards the appointment of the petitioner as Stipendiary Teacher which has to be prior to 05.03.2004 and thereupon after making necessary verifications, if it is found that the petitioner falls within the ambit of the Stipendiary Teacher and was not granted the benefit of the pension under the Rules of 1969 although the regular scale of pay was given to him after 05.03.2004, the petitioner 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 petitioner. The same may be done within a period of 4 (four) months from the date of receipt of a certified copy of this order along with the necessary documents evidencing that the petitioner is Stipendiary Teacher who was appointed prior to 05.03.2004 are submitted to the respondent No. 1.

8. 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.

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

JUDGE

Comparing Assistant