



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 4961/2023

1. Shri Jugal Kishor Choudhury,
S/o Late Uttam Choudhury,
Resident of Village-Katahguri,
PO-Bhurbandha, Dist.-Morigaon,
Assam, Pin-782104.
2. Shri Paramananda Goswami,
S/o Late Adhan Ch. Mahanta,
Vill-Naokota, PO-Daloichuba,
Dist.-Morigaon, Assam, Pin-782105.
3. Smt. Ritamoni Hazarika,
W/o Biswajit Nath,
Vill-Sidhabari, PO-Ahatguri,
Dist.-Morigaon, Pin-782412.
4. Smt. Lila Rani Shyam,
D/o Late Birendra Kr. Shyam,
Vill & PO-Nellie, Dist.-Morigaon,
Assam, Pin-782413.
5. Shri Niren Chandra Das,
S/o Late Dhiren Das,
Vill-Bhalukaguri, PO-Dharamtul,
Dist.-Morigaon, Assam, Pin-782412.
6. Smt. Manika Roy Choudhury,
W/o Shri Ranadhir Chakraborty,
Vill & PO-Nellie, Jagiroad, Dist.-Morigaon,
Assam, Pin-782413.
7. Shri Jyoti Prasad Mahanta,
S/o Late Bhabendra Nath Mahanta,

- Vill-Amulapatty, Ward No.4, PO-Morigaon,
Dist.-Morigaon, Assam, Pin-782105.
8. Smt. Manjula Brahma,
W/o Shri Motilal Bordoloi,
Vill & PO-Morigaon, Dist.-Morigaon,
Assam, Pin-782105.
 9. Shri Motilal Bordoloi,
S/o Late Phuleswar Bordoloi,
Vill & PO-Dighalbori, Dist.-Morigaon,
Assam, Pin-782105.
 10. Shri Atul Chandra Sarmah,
S/o Late Amrit Sarmah,
Vill-Kahibari, PO-Kumuraguri, Dist.-Morigaon,
Assam, Pin-782105.
 11. Smt. Sangita Sharma,
D/o Shri Bhimlal Sarma,
Vill & PO-Amlighat (Jagiroad),
Dist.-Morigaon, Assam, Pin-782412.
 12. Smt. Annapurna Deka,
D/o Late Khudi Ram Deka,
Vill-Nizarapar, PO-Jagiroad,
Dist.-Morigaon, Assam, Pin-782410.
 13. Smt. Ratna Bordoloi,
Vill-Lattabori, Ward No.4, PO-Morigaon,
Dist.-Morigaon, Pin-782105.
 14. Shri Diganta Sarma,
S/o Late Baneswar Sarma,
Vill-Jagi, PO-Jogi, Morigaon,
Assam, Pin-782411.
 15. Shri Ranjan Kumar Kakati,
S/o Late Chandra Mohan Kakati,
Vill-Bangthaigaon, PO-Hatimukh,
Dist.-Morigaon, Assam, Pin-782411.
 16. Shri Golap Baruah,
S/o Late Dina Nath Baruah,
Vill-Doomdomia, PO-Balisatra,

Dist.-Nagaon, Assam, Pin-782122.

.....Petitioners.

-Versus-

1. The State of Assam,
Represented by the Secretary to the
Government of Assam, Department of School Education,
Dispur, Guwahati-6.
2. The Director of Secondary Education, Assam,
Kahilipara, Kamrup(M), Guwahati-781019.
3. The Commissioner & Secretary to the Govt. of Assam,
Finance Department, Dispur, Guwahati-781006.
4. The Inspector of Schools,
Morigaon District Circle, Morigaon,
Assam, Pin-782105.

.....Respondents.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

For the Petitioners : Mr. B.D. Das, Sr. Adv.
Mr. J. Lotha. Advocates.

For the Respondents : Mr. N.J. Khataniar, SC, SEC EDU,
Mr. R. Borpujari, SC, Finance.
.....Advocates.

Dates of Hearing : 17.09.2024, 01.10.2024 & 03.10.2024

Date of Judgment : **25th November, 2024**

JUDGMENT AND ORDER

Heard Mr. B.D. Das, learned Senior counsel assisted by Mr. J. Lotha, learned counsel for the petitioners. Also heard Mr. R. Borpujari,

learned standing counsel, Finance Department, appearing for respondent No.3 and Mr. N.J. Khataniar, learned standing counsel, Secondary Education Department, appearing for respondent Nos.1, 2 and 4.

2. The grievance of the petitioners, being sought to be addressed in this petition under Article 226 of the Constitution of India, is that pursuant to an advertisement dated 28.12.1996, issued by the Director of Secondary Education, Assam, respondent No.2 herein, for filling up of 1000 vacant posts of Graduate Teacher in High Schools and High Madrassa Schools of different districts of Assam, the petitioners being qualified for the same, applied in the district of Morigaon. Thereafter, the respondent No.2 had constituted a District Level Advisory Board for Morigaon district on 18.06.1999, for conducting interview/selection test in the district of Morigaon. The petitioners had participated in the aforementioned interview and thereafter, except the district of Morigaon, appointment of selected candidates was made in the year 1998-1999. But no select list was published in the district of Morigaon. Thereafter, the petitioners herein have preferred two writ petitions, being WP(C) Nos.4693/2001 and 7999/2001 and by an order dated 04.10.2002, passed in the aforementioned writ petitions, the respondent authorities were directed to pass appropriate order for approval of the select list, which was prepared in the month March, 2001 for the district of Morigaon. But, by an order dated 29.05.2004, the respondent Education Department had held that the select list in respect of Morigaon district has already expired on 31.03.2001. The petitioners then approached this Court again by filing WP(C) No.5079/2004 and vide order dated 26.10.2009, this Court was pleased to set aside the aforementioned order and directed to implement the earlier order dated 04.10.2002. Thereafter, the petitioners were appointed vide order dated 15.02.2011, as Graduate

Teachers in different High Schools/Higher Secondary Schools in Morigaon district. But they were denied the benefit of pension under the Assam Service (Pension) Rules, 1969, as in the meantime, New Pension Scheme came into force w.e.f. 01.02.2005. Thereafter, the petitioners again approached this Court by filing a writ petition, being WP(C) No.5817/2021. Then hearing the parties, this Court, vide order, dated 03.11.2021, directed the Principal Secretary to the Govt. of Assam, Education Department to pass a reasoned order on the petitioners' representation dated 23.12.2020, within a period of 4(four) months. Thereafter, the respondent No.1 passed an order on 27.07.2023 and thereby denied the claim of the petitioners, the benefit of Old Pension Scheme. Being aggrieved, the petitioners approached this Court with a prayer for issuing direction to the respondent authorities to extend the benefit of Old Pension scheme as per Assam Services (Pension) Rules, 1969 and to set aside the impugned order No.271545/281, dated 27.07.2023.

3. The respondent Nos.2 and 3 have filed their affidavit-in-opposition. The stand taken by the respondents is that the Government of Assam has introduced New Pension Scheme by making it mandatory that all fresh recruits joining the service of the State Government on or after 01.02.2005 shall have to furnish an undertaking along with the joining report stating that he/she shall not be governed by the existing Assam Services (Pension) Rules, 1969 and will be governed by New Pension Scheme and thereafter, New Defined Contributory Pension Scheme was introduced making the same applicable to all the new entrants joining State Government services on regular basis against vacant sanctioned posts on or after 01.02.2005 and the earlier Assam Services (Pension) Rules, 1969 was amended by inserting a new Rule i.e. Rule 2A, in the

same and since the petitioners were appointed on 15.02.2011 and as they have given an undertaking that they will be governed by the New Pension Scheme, they are not entitled to be governed by the Old Pension Scheme, 1969.

4. Mr. Das, the learned Senior counsel for the petitioners, submits that though the petitioners were appointed in the year 2011, the selection process was initiated in the year 1996 and their selection was made in the year 1999 and except in Morigaon district, in rest of the districts of Assam the appointments were made in the year 1998-1999 and the select list of Morigaon district was not published, for which they have approached this Court and as per order of this Court, the selection list was published, but no appointment was made and thereafter, the respondents contended that the list prepared for the Morigaon district expired on 31.03.2001. Thereafter, the petitioners again approached this Court and pursuant to the orders they were appointed in the year 2011 and they have been denied the benefit of old pension scheme and again they have approached this Court by filing a writ petition, wherein a direction was issued to the respondent No.1 to pass a reasoned order on the representation filed by the petitioners on 23.12.2020 and the same was also dismissed vide order dated 27.07.2023.

5. Mr. Das, learned Senior counsel for the petitioners further submits that the delay in appointment of the petitioners was caused by the respondent authorities and the petitioners are no way responsible for the same. Further, Mr. Das submits that the advertisement was published in the year 1996 and the counterpart of the petitioners in other districts were appointed in the year 1998-1999 and the benefit of old pension scheme was extended to them, but the present petitioners were denied the said benefit for no fault of them and as such, their right to equality as

provided under Article 14 of the Constitution of India is violated and without any basis they have been discriminated and therefore, Mr. Das contended to set aside the impugned order dated 27.07.2023. In support of his submission, Mr. Das has referred to a decision of Division Bench of this Court in WP(C) No.7369/2021 (*Sanjay Kumar And Anr. Vs. Union Of India And 3 Ors.*), wherein discussing various decisions of other High Courts of the land, it has been held that the consistent view of the High Court in the said matter is that where the process of recruitment has been initiated in the year 2003 and the examination and selection was completed in the year 2003, merely because the appointment orders were issued subsequently in the year 2004 or later, such delay not be attributed to the appointees or the recruitees, the benefit of old pension scheme, which was replaced by the new scheme w.e.f. 01.01.2004 cannot be denied to such recruitees/appointees, who have applied for and were duly scrutinized and were declared successful in the year 2003 and thereafter, allowed the said writ petition directing the respondent authorities to extend the benefit of old pension scheme to the petitioners of said writ petition.

6. Mr. Das, has also referred to the following decisions in support of his submission:-

- (i) **Balmer Lawrie & Company Limited & Ors. v. Partha Sarathi Sen Roy & Ors.**, reported in (2013) 8 SCC 345;
- (ii) **State of Madhya Pradesh Thr. Principal Secretary & Ors. v. Jagdish Prasad Dubey**, reported in 2024 SCC OnLine MP 1567; and
- (iii) **Manati Basumatary v. State of Assam & Ors.**, reported in (2021) 6 GLR 659.

7. Per contra, Mr. Borpujari, learned standing counsel, Finance Department, appearing for the respondent No.3 vehemently opposed the petition and submits that it is an admitted fact that the petitioners were appointed in the year 2011 and the New Pension Scheme was introduced in the year 2005 and the Assam Services (Pension) Rules, 1969 was amended and a new Rule, i.e. Rule 2A has been inserted and thereafter, New Defined Contributory Pension Scheme, 2009 is also introduced by the Government of Assam and there is no provision for extending the benefit of the old pension scheme to the petitioners. Besides, at the time of appointment, the petitioners have given an undertaking that they shall not be governed by the existing Assam Services (Pension) Rules, 1969 and orders issued thereunder and that they will be governed by the set of New Pension Scheme formulated in the line of contributory pension scheme of Government of India and as such, they are not entitled to the benefit of old pension scheme and there is no illegality or infirmity in the order passed by the respondent No.1 in the order dated 27.07.2023 and therefore, it is contended to dismiss the same.

8. Mr. Borpujari, referring to a decision of this Court in WP(C) No.6403/2021, submits that similar prayer made in the said writ petition was dismissed and that the decisions referred by Mr. Das, learned Senior counsel for the petitioners in WP(C) No.7369/2021 (*Sanjay Kumar And Anr. Vs. Union Of India And 3 Ors.*) is not applicable in the case in hand and the said decision has to be considered as *per incuriam*, in view of the decision of this Court in WP(C) No.6403/2021, as in the said writ petition, the petitioners were governed by CCS Rules and there is no embargo in the said Rules in giving benefit to the petitioners. Another contention of Mr. Borpujari is that the Rule 2A has not been put to challenge by the

petitioners and having not done so, their prayer in this petition cannot be allowed.

9. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also the affidavit-in-opposition submitted by the respondent Nos.2 and 3 and the decisions referred by Mr. Das, learned Senior counsel for the petitioners and also Mr. Borpujari, learned standing counsel for the respondent No.3.

10. In view of the submission of learned Advocates of both the parties, the issue to be decided by this Court is –

Whether the benefit of old pension scheme under the Assam Services (Pension) Rules, 1969, can be extended to the petitioners in view of their appointment being made in the year 2011, while the New Pension Scheme came into force and in view of the undertaking given by them to the effect that they will be governed by the New Pension Scheme?

11. It is not in dispute that the selection process was initiated in the year 1996. The advertisement was published for filling up of 1000 vacant posts of graduate teachers in High Schools and High Madrasahs of different districts. In order to conduct the interview and selection test, a District Level Advisory Board was constituted for all the districts including the district of Morigaon, to which the petitioners belonging, on 18.06.1999. The petitioners appeared in the interview so conducted, but the select list was not published for the district of Morigaon, though in respect of other districts of Assam, select list was published and appointment was made in the year 1998-1999. It is also not in dispute that the benefit of old pension scheme of 1969 was extended to the

aforementioned selected candidates of the districts of Assam, except the Morigaon district.

12. Since, no select list was published for the district of Morigaon, the petitioners have approached this Court by filing WP(C) Nos.4693/2001 and 7999/2001. In the said writ petitions, direction was issued vide order dated 04.10.2002, to pass appropriate order for approval of the list prepared in the year 2001 for the district of Morigaon, but the petitioners were not appointed. Thereafter, the respondent authorities had taken a stand vide order dated 29.05.2004, that the select list for the district of Morigaon expired on 31.03.2001 and thereafter, the petitioners again approached this Court by filing WP(C) No.5079/2004, wherein the order dated 29.05.2004 was set aside and the respondent authorities were directed to implement its earlier order dated 04.10.2002, and thereafter, the petitioners were appointed on 15.02.2011 in different schools of Morigaon district and they were denied the benefit of pension under the Assam Services (Pension) Rules, 1969. Thereafter, again the petitioners approached this Court by filing WP(C) No.5817/2021, wherein vide order dated 03.11.2021, the Principal Secretary to the Government of Assam, Education Department was directed to pass a reasoned order on the representation dated 23.12.2020 filed by the petitioners within a period of 4(four) months. However, the representation of the petitioners failed to yield any result and the same was dismissed vide order dated 27.07.2023. These are undisputed facts.

13. Though the respondent Nos.2 and 3 had taken a stand that while the petitioners were appointed in the year 2011, the New Pension Scheme was in force and besides, they have given one undertaking at the time of appointment that they will be governed by the New Pension Scheme and that they have also given an undertaking that they will be

governed by the New Pension Scheme and on such count, the respondent Nos.2 and 3 contended that the benefit of old pension scheme cannot be extended to the petitioners, yet the fact remains that while the counterparts of the petitioners in other districts were appointed in the year 1998-1999 and they were given the benefit of old pension scheme. Besides the advertisement was published in the year 1996, and the selection process was initiated in entire Assam along with the Morigaon district. But the select list for the teachers of Morigaon district was not published for whatever reason, as may be, their appointment was delayed till the year 2011 and the petitioners are no way responsible for the same and the cause of delay cannot be attributable to them.

14. Thus, I find substance in the submission of Mr. Das, learned Senior counsel for the petitioners that the right enshrined under Article 14 of the Constitution of India of the petitioners stands violated, and the decision referred by Mr. Das in WP(C) No.7369/2021 also strengthened his contention.

15. It is to be noted here that in the aforementioned writ petition, a Division Bench of this Court, discussing various judgments of Delhi High Court, Allahabad High Court and Uttarakhand High Court, especially the decisions of Delhi High Court in the cases of **Shyam Kumar Choudhury & Ors. v. Union of India & Ors.** [WP(C) No.1358/2017] and **Union of India & Ors. v. Tanaka Ram & Ors.** [WP(C) No.6680/2017], has held that a consistent view of the High Court in these matters is that where the process of recruitment has been initiated in the year 2003 and the examination and selection was completed in the year 2003, merely because the appointment orders were issued subsequently in the year 2004 or later, such delay not been attributed to the appointees or the recruitees, the benefit of old pension scheme w.e.f. 01.01.2004, cannot

be denied to such recruitees/appointees, who have applied for, were duly scrutinized and were declared successful in the year 2003 and it also appears that in the said writ petition, the respondent authorities were directed to extend the benefit of old pension scheme to the petitioners.

16. Though, Mr. Borpujari, learned standing counsel for the respondent No.3 submits that the said decision is per incuriam, in view of the decision of a coordinate bench of this Court in the case of Purnima Hore & Anr. v. State of Assam & Ors. [WP(C) No.6403/2021], yet, the said submission of Mr. Borpujari left this Court unimpressed. It is a fact that in the WP(C) No.7369/2021, the petitioners were governed by the CCS Rules. But, the proposition of law laid down in the aforementioned decision to the considered opinion of this Court, is squarely applicable to the given facts herein this case also. And applying the said proposition of law to the given facts and circumstances of the present case, it can be concluded that the petitioners are also entitled to the benefit of Old Pension Scheme of 1969 Rules.

17. It is a fact that they have given an undertaking that they will be governed by the New Pension Scheme. No doubt, this undertaking was given by them voluntarily but when balanced against their right guaranteed under Article 14 of the Constitution of India, the same outweighed the embargo of undertaking given by them. By virtue of the advertisement published in Assam in the year 1996 and applying for the posts, the present petitioners also stands in the same footing with their counterpart in other district. While the benefit of Old Pension Scheme was extended to the candidates of other districts, the same cannot be denied to the petitioners on the ground of they being appointed in the year 2011 when the New Pension Scheme came into force, while the cause of delay is not attributable to them. Service jurisprudence evolved

by Hon'ble Supreme Court from time to time postulates that all persons similarly situated should be treated similarly. [See: **State of Karnataka & Ors. v. C. Lalitha**, reported in (2006) 2 SCC 747]

18. I have also gone through the other decisions referred by Mr. Das, learned Senior counsel for the petitioners and I find that the same also lends credence to his submissions.

19. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. The impugned order dated 27.07.2023, No.271545/281, stands set aside.

20. By a mandamus of this Court, the respondent authorities, especially respondent Nos.2 and 3 are directed to extend the benefit of old pension scheme under the Assam Services (Pension) Rules, 1969 to the petitioners.

21. In terms of above, this petition stands disposed of. The parties have to bear their own costs.

Sd/- Robin Phukan
JUDGE

Comparing Assistant