

GAHC010234362023



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

Case No. : WP(C)/6187/2023

DEVA GOGOI
W/O SRI CHENIRAM GOGOI, RESIDENT OF VILLAGE AND PO LONGPATIA,
PS SONARI, DIST. CHARAIDEO, ASSAM 785692

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR GUWAHATI
781006 REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR GUWAHATI
781006 REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR GUWAHATI 781006

2: THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI 781006

3: THE COMMISSIONER AND SECRETARY

GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCE DEPARTMENT
DISPUR GUWAHATI 781006

4: THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 781019

5: THE ACCOUNTANT GENERAL (A AND E)

ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI
KAMRUP M ASSAM 781029

6:THE DIRECTOR OF PENSION AND PUBLIC GRIEVANCE
GOVT. OF ASSAM
HOUSEFED COMPLEX GUWAHATI 781006

7:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DIST. SIVASAGAR
ASSAM 785640

8:THE DEPUTY INSPECTOR OF SCHOOLS
NAZIRA
DIST. SIVASAGAR
ASSAM 785685

9:THE DEPUTY INSPECTOR OF SCHOOLS
CHARAIDEO
ASSAM 785690

10:THE BLOCK ELEMENTARY EDUCATION OFFICER
SAPEKHATI DIST. CHARAIDEO
ASSAM 78569

Advocate for the Petitioner : MR. M KALITA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

19.02.2024

Heard Mr. M. Kalita, learned counsel for the petitioner. Also heard Mr. P.N. Sharma, learned Standing Counsel, Elementary Education for the respondents No. 1, 4, 8, 9 & 10; Mr. R. Ahmed, learned Standing Counsel for the respondent No. 5; Mr. G. Pegu, learned Addl. Sr. Government Advocate for the respondent

No. 3 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 Old Pension Scheme to the petitioner who was Stipendiary Teacher at 36 No. Dihingia Konwar Gaon L.P. School, Nazira. As the issue involved is 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.

3. The petitioner was appointed as a Stipendary Teacher in 36 No. Dihingia Konwar L.P. School by order dated 24.03.1995 under memo No. NZR/APPTT/19/92/93/128/702 issued by the Deputy Inspector of Schools, Nazira, namely, respondent No. 8 therein. The petitioner was initially granted a stipend of Rs. 900/- per month with effect from the date of her joining. In the said appointment order, the petitioner as required, was deputed to undergo the Assam Junior Basic Training Examination for the year 2000-2001 at the Pre-Primary Teachers' Training Centre, Dibrugarh. The petitioner thereafter completed the Assam Junior Basic Teachers Training Final Examination held in the month of December, 2000 under Roll No. 15. It is stated that on 02.04.2002 by order No. 1396-1401 issued by the Deputy Inspector of Schools, the petitioner has been allowed to draw regular scale of pay of Rs. 3130/- to Rs. 6000/- and other Govt. admissible allowances with effect from 12.06.2001. It is submitted that the petitioner thereafter was receiving the regular scale of pay along with all revision and pay fixation as payable. Her service book was opened and contributions were made as per norms and procedure in the petitioner's GPF account. It is further submitted that on 05.05.2003, the petitioner was transferred from 36 No. Dehingia Konwar L.P. School under the Deputy Inspector of Schools, Nazira and BEEO, Khelua to 724 No. Aaideopukhuri L.P.

School, Longpotia under the Deputy Inspector of Schools, Charaideo and BEEO, Sapekhati vide memo No. EE/SIB/TNSF/03/466 where the petitioner had been working as Assistant Teacher of the said School till her superannuation. The petitioner claims to be receiving her salary upto February, 2012 but thereafter she did not receive her monthly salary till his date of superannuation which is 05.05.2020 inspite of discharging her duties regularly. The petitioner claims to approach the competent authority for release of regular pension but no steps have been taken towards release of his pensionary papers. The petitioner claims that she fulfills the condition of qualifying service under Rule 31 of the Assam Pension Rules, 1969, however inspite of her eligibility, the petitioner has not been granted his due pension.

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 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 her 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 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 petitioner is Stipendiary Teacher who was appointed prior to 05.03.2004 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