

GAHC010273792024



undefined

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

Case No. : WP(C)/6897/2024

KUSHALYA DAS
W/O. SRI ADITA CH. KALITA, R/O. VILL.- DUNI BHERUADAL, P/O. DUNI,
DIST. DARRANG, ASSAM, ASSISTANT TEACHER OF NO. 2 BHERUADAL L.P.
SCHOOL (RETD.)

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GUWAHATI-6, ASSAM.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6
ASSAM.

3:THE ADDL. CHIEF SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6
ASSAM.

4:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHEMAJI
DIST. DHEMAJI
ASSAM

PIN-787057.

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DARRANG
DIST. DARRANG
ASSAM
PIN-784148

Advocate for the Petitioner : MR. N BORAH, G. R. SINGHA

Advocate for the Respondent : SC, ED, SC, FINANCE,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 19-12-2024

Heard Mr. N. Borah, learned counsel for the petitioner; Mr. P.N. Sharma, learned Standing Counsel, School Education Department for the respondent nos. 1, 4, 5 & 6; Mr. M. Bhuyan, learned counsel representing Mr. B. Gogoi, learned Standing Counsel, Finance Department for the respondent nos. 2 & 3.

2. The case projected by the petitioner in this writ petition, in brief, is that, the petitioner was appointed as an Assistant Teacher in Rajabari Lower Primary School in the year 2001 under the DEEO, Dhemaji pursuant to an Advertisement dated 28.12.1996 under the Operation Black Board [OBB] Scheme. The petitioner has claimed that in the year 2010, the service of the petitioner was regularized and the petitioner was allowed to draw fix pay and allowances. The petitioner also completed Junior Basic Training Course and after completion of such course, the petitioner was allowed to draw the scale of pay. But the petitioner and similarly situated OBB Teachers, though were regularized in the year 2013 and were allowed to draw regular scale of pay from the date of the initial joining, the petitioner and similarly situated OBB teachers were not brought under the purview of Assam Services [Pension] Rules, 1969.

3. Mr. Borah, learned counsel for the petitioner has submitted that a writ petition, W.P.[C].

no. 5535/2024, involving similar issue, has been disposed of by an Order dated 02.12.2024 after having considered an Order dated 26.07.2024 passed by the Division Bench of this Court in a batch of writ appeals, Writ Appeal no. 188/2023 and others.

4. Mr. Sharma, learned Standing Counsel, School Education Department has submitted that this writ petition can also be disposed of in similar lines, as the writ petition, W.P.[C]. no. 5535/2024 had been disposed of.

5. In view of the broad consensus arrived at by the learned counsel for the parties in the afore-stated manner, the writ petition is taken up for disposal at the motion stage itself. Similarly situated persons like the present petitioner had earlier approached this Court by filing W.P.[C]. No. 4892/2021 and other connected writ petitions seeking for a declaration that they are entitled to the Old Pension Scheme and not the New Pension Scheme. The said writ petitions were dismissed by Judgment & Order dated 31.03.2023, holding that the petitioners therein were not entitled to get pensions under the Old Pension Scheme.

6. Being aggrieved, that petitioners filed Writ Appeals before the Hon'ble Division Bench and the lead case was registered as W.A. No. 188/2023. The Writ Appeals were accordingly, disposed of on 26.07.2024 with the following observations and directions:-

“It is informed that in a meeting took place between the Hon'ble Chief Minister of Assam with Assam Karmachari Parisahd, held on 15.03.2024, it is decided that the Government of Assam will consider extending the benefit of old pension scheme to those employees who joined the Government services after January, 2005 but the recruitment process of the concerned post was started prior to January, 2005 in line with the Office Memorandum issued by the Central Government. Learned counsel for the appellants has submitted that all the appellants were appointed in the year 2001 and, therefore, their case comes within the ambit of aforesaid decision of the meeting. It is further submitted that the issue regarding extending the benefit of old pension scheme to those employees, who joined the Government services after 2005 wherein, the recruitment process was started prior to 2005, is pending with the Administrative Department. In view of the above development, we are of the view that once the State Government has decided to consider the demand of the employees, who were though appointed after 2005 wherein, the recruitment process of the concerned posts were started

prior to January, 2005, despite the order passed by the learned Single Judge, it would be appropriate to dispose of these appeals, awaiting the decision of the State Government on this issue. It is made clear that if the appellants failed to get any favourable decision from the State Government, they are free to approach this Court again by filing fresh writ appeals. We hope that the Government shall take a decision expeditiously, preferably within a period of 6 (six) months from the date of receipt of a certified copy of this order.”

7. The present petitioner before this Court also claims that she is equally situated and circumstanced with the appellants in Writ Appeal No. 188/2023 and other analogous Writ Appeals.

8. This Court, after considering the above facts, is also of the considered opinion that the case of the present petitioner is equally situated and circumstanced with the appellants in Writ Appeal No. 188/2023 and analogous Writ Appeals.

9. Accordingly, this writ petition is also disposed of in terms of the observations and directions made by the Hon'ble Division Bench in Writ Appeal No. 188/2023 by the Order dated 26.07.2024.

10. However, it is made clear that the time period of 6 [six] months granted by the Hon'ble Division Bench by Order dated 26.07.2024 passed in WA No. 188/2023 and other analogous Writ Appeals, shall start in case of the present petitioner from the date of production of a certified copy of the Order of this Court.

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

JUDGE

Comparing Assistant