

GAHC010311612019



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

Case No. : WP(C)/9536/2019

KHURSHED HUSSAIN
S/O LATE JALEYA SHEIKH, P.O. AND P.S.-BILASIPARA, DIST-DHUBRI,
ASSAM

VERSUS

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

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

3:THE ACCOUNTANT GENERAL
ASSAM
BELTOLA
GUWAHATI-29

4:THE TREASURY OFFICER
BILASIPARA
DIST-DHUBRI
ASSAM
PIN-783329

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
PIN-783329

6:THE DEPUTY INSPECTOR OF SCHOOLS

BILASIPARA
DHUBRI
ASSAM
PIN-783329

7:THE BLOCK ELEMENTARY EDUCATION OFFICER
BILASIPARA
DIST-DHUBRI
PIN-78332

Advocate for the Petitioner : MR. J RAHMAN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 16.05.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. P.N. Sharma, learned Standing Counsel, Elementary Education.

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 1450 No. Athiabari L.P. School. 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 at 1499 No. Kalipara L.P. School under Block Elementary Education Officer, Bilasipara in the district of Dhubri by order dated 08.04.1999 under memo No. DB/II-2/98-99/256-63 issued by the Deputy Inspector of Schools, Bilasipara, namely, respondent No. 6 therein. The petitioner was initially granted a stipend of Rs. 900/- per month with effect from the date of his joining. In the said

appointment order, the petitioner as required, was deputed to undergo the Assam Junior Basic Training Examination in terms of the letter dated 25.08.2004 issued by the Additional Director, Elementary Education, Assam. The petitioner thereafter completed the Assam Junior Basic Teachers Training Final Examination on 06.05.2005. It is stated that on 07.07.2005 by an order vide Memo No. DB/I-10/2004-05/4717-29 issued by the Deputy Inspector of Schools, Bilasipara, 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 06.05.2005. It is submitted that the petitioner thereafter was receiving the regular scale of pay along with all revision and pay fixation as payable. It is further submitted that on 11.09.2007, the petitioner was transferred from 663 No. Simlakandi L.P. School to 1450 No. Athiabari L.P. School as Head Teacher vide memo No. DB/II-1/Trans/pt-1/07/943-47, where the petitioner had been working as Head Teacher of the said School till his superannuation. The petitioner claims to be receiving his salary upto March, 2010 but thereafter he did not receive his monthly salary till his date of superannuation which is 31.03.2020 inspite of discharging his duties regularly. The petitioner claims to approach the competent authority for release of regular pension but no steps has been taken towards release of his pensionary papers. The petitioner claims that he fulfills the condition of qualifying service under Rule 31 of the Assam Pension Rules, 1969, however inspite of his 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 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 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