GAHC010176432020

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

Case No. : WP(C)/5269/2020

MD. NUR ISLAM
S/O- LT. KALU MIYA, VILL- KAWATIKA AND P.O. BIJNI, PIN- 783390, P.S. BIJNI, DIST.- CHIRANG, ASSAM, PHONE- 8638051545

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, SECONDARY EDUCATION, DEPTT., DISPUR, GHY-6, ASSAM

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED
COMPLEX
DISPUR
GHY-6

4:THE FINENCE AND ACCOUNTS OFFICER
DIRECTORATE OF PENSION
ASSAM
HOUSEFED
COMPLEX
DISPUR
GHY-6

5:THE INSPECTOR OF SCHOOLS
CHIRANG DISTRICT CIRCLE

KAJALGAON
B.T.A.D.

6:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GHY-2

Advocate for the Petitioner : MR. N N KARMAKAR

Advocate for the Respondent : SC. B.T.A.D.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

O R D E R

11.12.2020

Heard Mr. N.N. Karmakar, learned counsel for the petitioner. Also heard Mr. S.R. Barua, learned counsel for the Pension Department, Ms. P. Chakraborty, learned counsel for the Secondary Education Department, Ms. R.B. Bora, learned counsel for the authorities under the BTC and Mr. R.K. Talukdar, learned counsel for the Accountant General (A & E) Assam.

2. The petitioner was initially serving as an Assistant Teacher in the Bijni Girls M.E. School on the intermediate scale of pay and she joined her service on 01.11.1983. By an order dated 10.04.2001 of the Director of Secondary Education, Assam, the Bijni Girls M.E. School was amalgamated with BijniGirls High School.

3. By an order dated 10.04.2001, the Director of Secondary Education, Assam had absorbed the petitioner in the post of Assistant Teacher of Bijni Girls High School on a graduate scale of pay w.e.f.03.04.2001.

4. A reading of the order dated 10.04.2001 which is annexed at Annexure-1 page 8 of the writ petition would go to show that the said order was passed by the Director of Secondary Education, Assam. But it is also discernible that the by the said order of the Director it was merely provided that the Bijni Girls M.E. School stood amalgamated with the

Bijni Girls High School w.e.f. 03.04.2001 and all the qualified staff of the M.E. School serving against the sanctioned posts be absorbed in the amalgamated High School w.e.f. the date of amalgamation at their respective pay and amalgamated seniority position. Therefore, the order of 10.04.2001 of the Director had not provided the benefit of any graduate scale of pay to the petitioner and all that it had provided is that the amalgamation took place at the scale of pay which the petitioner received as an Assistant Teacher of the Bijni Girls M.E.School.

5. Subsequently, there is an indication from the communication of the Inspector of Schools dated25.05.2019 addressed to the Director of Secondary Education, Assam that the Inspector of Schools, Bongaigaon had fixed the pay of the teachers of Bijni Girls M.E. School in the graduate scale of pay as on 03.04.2001 and that the upgradation of the scale of pay was done on the basis of the order dated 30.12.1993. Accordingly, the said report was forwarded by the Inspector to the Director. At that stage, the Finance and Account Officer in the Directorate of Pension, Assam makes a communication to the Inspector of School, Kajalgaon stating that upon amalgamation of the Bijni Girls M.E. School, the pay scale of the petitioner cannot be upgraded to a graduate scale of pay w.e.f. 03.04.2001 and further the power to do so was not available with the Inspector of Schools for upgrading to a graduate scale of pay. Raising the issue, the final pension of the petitioner has not been paid although he had retired from service on 31.03.2017. The reason given by the Finance and Accounts Officer merely provides that upon amalgamation, the teachers of the Bijni Girls M.E. School are not entitled to a graduate scale of pay and secondly it cannot be upgraded by the Inspector of Schools.

6. Be that as it may, the communication dated 25.05.2019 of the Inspector of Schools, Kajalgaon clearly provides that the upgradation of the scale of pay was done on the basis of the Government order No. B(3) 888/93/10 dated 30.12.1993. In other words, the said Government order of 30.12.1993 would give an indication as to whether the scale of pay of the Assistant Teachers of M.E. Schools upon being amalgamated with a High School can be upgraded to that of graduate scale of pay. If yes, such upgradation would be permissible.

7. From the said point of view, the view taken by the Finance and Accounts Officer in the Directorate of Pension dated 29.05.2018 would be an incorrect conclusion that may have been arrived at.

8. On the other question whether the Inspector of School has the power to make such upgradation, would be a determination of fact to be made by the authorities in the Secondary Education Department. Again if under the rules in force such upgradation is permissible and it was granted by the Inspector of Schools, although he did not have the power to do so, the same by itself would not vitiate as because the upgradation was done by the Inspector.

9. In such event, the appropriate procedure to be followed would be that the upgradation be forwarded to the higher authority who has the power to make such upgradation, requiring such higher authority to take a decision on it. But however the basic fact cannot be ignored that the Government order No. B(3) 888/93/10 dated 30.12.1993 provides for upgradation of the scale of pay of the Assistant Teacher of M.E. School upon being amalgamated with the High School.

10. In the circumstance, we dispose of the writ petition directing the Director of Secondary Education to look into the above aspect and find out whether the upgradation of the scale of pay of the petitioner to graduate scale of pay on being amalgamated with the high school was an act done pursuant to the relevant provision of the rules or it was an act which could not have been done under the rules.

11. If it was an act which would be permissible under the rules, the Director may pass an appropriate order to regularize the same and forward it to the Pension Department to further process the pension of the petitioner.

12. The Director of Secondary Education, Assam may do the requirement within a period of two months from the date of receipt of the certified copy of the order and if the order goes in faovur of the petitioner, it be forwarded to the Directorate of Pension and the Directorate of Pension shall finalize the pension within another two months thereof.13. Writ petition stands disposed of in the above terms

JUDGE

Comparing Assistant