GAHC010096932022

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

Case No. : WP(C)/3520/2022

MAKABBIR ALI LASKAR
S/O. LT. MADORIS ALI LASKAR, VILL. KACHUDARAM PART - II, P.O. KACHUDARAM, DIST. CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
THROUTH- THE COMMISSIONER AND SECY., TO THE GOVT. OF ASSAM, ELEMENTARY EDUCATION DEPTT., DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE DEPUTY INSPECTOR OF SCHOOLS

SILCHAR
DISTRICT CACHAR
ASSAM
PIN-788001.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER

SONAI ROAD
SONAI
DIST. CACHAR
ASSAM
PIN-788119.

5:THE PRINCIPAL ACCOUNTANT GENERAL

(A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-781029.

6:THE DIRECTOR OF PENSION

ASSAM
HOUSEFED COMPLEX
CENTRAL BLOCK 6TH FLOOR
BELTOLA ROAD
GUWAHATI-781006

Advocate for the Petitioner : MS N KHATUN, MR. JUNM LASKAR,MR. R MAJUMDAR

Advocate for the Respondent : SC, ELEM. EDU, GA, ASSAM,SC, AG

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

Date : 06.11.2026

Heard Mr. R. Majumdar, learned Counsel for the petitioners and Mr. B. Talukdar, learned Standing Counsel for Elementary Education representing respondent nos. 1, 2, 3 and 4. Also heard Ms. S. Sharma, learned Counsel appearing on behalf of Mr. B. Sharma, learned Standing Counsel, Account General for respondent no.5 and Mr. G. Pegu, learned Counsel appearing for respondent no.6.

2. By this application filed under Article 226 of the Constitution of India, the petitioner has raised his grievance that he was not paid pension under the old pension scheme.

3. The case of the petitioner is that he was appointed as an Assistant Teacher

of 479 No. Madhurbond L.P. School, District Cachar on 25.08.2019 and that subsequently he was regularized as an Assistant Teacher against non plan vacant post by order dated 19.02.2001. The petitioner also states that he was thereafter confirmed against a sanctioned post vide order dated 10.10.2007. Thereafter, he retired on 31.03.2019. It is the further case of the petitioner that after his retirement, he was paid pension from the Contributory Provident Fund, which is granted under the new defined contribution pension scheme of 2005.

4. The learned Counsel for the petitioner submits that the petitioner was paid Rs. 3,87,000/- at the time of his retirement under the NPS Scheme and thereafter Rs. 1600/- was paid per month from his Contributory Provident Fund as per the New Pension Scheme. However, he submits that the petitioner was appointed and regularized much before the new pension scheme was promulgated and as such, he filed a number of representations before the concerned authority to allow him pension under the Old Pension Scheme. The learned Counsel further submits that during the service tenure of the petitioner, the general provident fund account number was not issued to him and that on 23.09.2010, the Block Elementary Education Officer wrote to the Director of Elementary Education for allotment of GPF account number against the petitioner and others, who were appointed prior to 01.02.2005, when the New Pension Scheme was promulgated. He further submits that subsequent thereof the Block Elementary Education Officer had also submitted the photocopy of the service book before the Director of Elementary Education, Assam for issuance of GPF account number in favor of the petitioner. The learned Counsel submits that although the petitioner has information that GPF account was issued to him but he is not aware of the number. Being aggrieved by the non-payment of pension under Old Pension Scheme and non consideration of his representation, the

learned Counsel submits that the petitioner has filed the instant petition for allowing him pension under the Old Pension Scheme.

5. The learned Counsel further submits that during the proceeding of the instant petition, the Counsel for the Elementary Education has placed a letter dated 24.03.2026 addressed by the Deputy Inspector of Schools to the Director of Elementary Education stating inter alia that the BEEO has submitted a detailed report clarifying that the petitioner was appointed prior to 2005 and that his service falls under the purview of Old Pension Scheme. It was further intimated that in case the service of the petitioner is covered under the old pension scheme, which is already agreed to by the BEEO, the confirmation was sought for from the Director of Elementary Education, Assam, as to whether the NPS withdrawal amount has been deposited by the petitioner to the Government Treasury.

6. As such, the learned Counsel submits that there is no iota of doubt that the services of the petitioner falls under the Old Pension Scheme and not under the New Pension Scheme. However, he submits that refunding of the amount that was given to him under the New Pension Scheme was not possible on the part of the petitioner since the petitioner was ailing and that he had spent that amount in his treatment. He also submits that the petitioner due to his ailment has become paralyzed. As such, he states that the petitioner has made a representation before the Director of Pension on 02.05.2026 with the prayer that he be allowed pension under the Old Pension Scheme and whatever money he had received under the New Pension Scheme be adjusted while paying his pension under the Old Pension Scheme. However, it is submitted that the respondent authorities have not replied to his representation till date.

7. It is seen in the letter dated 24.03.2026 issued by the Deputy Inspector of

Schools that a report was submitted by the BEEO clarifying that the petitioners services comes within the purview of the Old Pension Scheme since he was appointed prior to 2005. It is also an admitted fact that the petitioner was appointed in the year 1998 and was regularized as an Assistant Teacher of the said school in the year 2001 and his services was confirmed in the year 2007. In the New Defined Contribution Pension Scheme, it was specifically provided that the employees who had joined their services on or after 01.02.2005 would be covered by the New Pension Scheme. It is specifically provided therein that the scheme would be applicable only to the new entrants joining State Government services on regular basis against vacant sanctioned post on or after 01.02.2005. The petitioner has admittedly been in service before the said cut of date as has been stated earlier.

8. As such, there is no quarrel with the proposition that the petitioner's service will be covered under the Old Pension Scheme. However, further as per the direction i.e. contemplated by the authorities that the petitioner should refund the amount that he had taken under the NPS scheme is concerned, the petitioner being on ailment is not able to refund the same as he had spent the same in his treatment. Furthermore since there is a fault on the part of the department to give him pension under the New Pension Scheme, the petitioner cannot be directed to refund the same. At best it is the duty of the respondent authorities to adjust the amount while allowing the petitioner his pension under the Old Pension Scheme. Had it been the mistake of the petitioner, the matter would have been different but the mistake lies in the hands of the respondent authorities in allowing the petitioner his pension under the New Pension Scheme. It is also seen that as far as the GPF account is concerned, number of communications were made by the officials of the Elementary Education and the

account was opened as could be seen in the facts of the case but again the fault does not lie with the petitioner.

9. As such, this Court directs the respondent authorities not to insist on refund of the amount by the petitioner i.e. amount he was paid under the New Pension Scheme and the authorities are directed to adjust the said amount while allowing the petitioner his pension under the Old Pension Scheme. The authorities are further directed to consider paying interest since the fault does not lie on the part of the petitioner.

10. With these observations, the petition is disposed of

JUDGE

Comparing Assistant