



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 3779/2023

Shri Rupak Chandra Kalita,
S/o Late Gajen Kalita,
Resident of Village-Dowamakha,
PO-Latibari, PS-Tamulpur,
District-Baksa (BTR), Assam.

.....Petitioner.

-Versus-

1. The State of Assam,
Represented by the Secretary to the
Government of Assam, Department of Elementary Education,
Dispur, Guwahati-781006.
2. The Bodoland Territorial Council (BTC),
Kokrajhar, represented by its
Principal Secretary, PO-Kokrajhar,
Dist.-Kokrajhar (BTR), Assam,
Pin-783370.
3. The Secretary,
Department of Education, BTC,
PO-Kokrajhar, Dist.-Kokrajhar (BTR), Assam,
Pin-783370.
4. The Director of Education,
BTC, PO-Kokrajhar, Dist.-Kokrajhar (BTR),
Assam, Pin-783370.
5. The Principal Secretary to the Govt. of Assam,
Finance Department, Dispur,
Guwahati-781006.

.....Respondents.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

For the Petitioner : S.K. Goswami.Advocate.

For the Respondents : Mr. P.N. Sharma, SC, Ele,
Mr. B. Choudhury, SC, BTC.
.....Advocates.

Dates of Hearing : 08.01.2025

Date of Judgment : 17.02.2025

JUDGMENT AND ORDER

Heard Mr. S.K. Goswami, learned counsel for the petitioner. Also heard Mr. P.N. Sharma, learned standing counsel, Education (Elementary) Department, appearing for the respondent Nos.1 and Mr. B. Choudhury, learned standing counsel, BTC, appearing for the respondent Nos.2—4.

2. In this petition, under Article 226 of the Constitution of India, the petitioner Rupak Chandra Kalita has prayed for issuing direction to the respondent authorities to provide pensionary benefit to the petitioner under Assam Services (Pension) Rules, 1969 as he was appointed on 04.12.1999 and also to consider his past service, with effect from the aforementioned date and not to act upon the undertaking given by him for accepting the pensionary benefit as per the prevalent Rule.

3. The background facts leading to filing of the present writ petition is briefly stated as under:-

“The petitioner, Shri Rupak Chandra Kalita was appointed by the Deputy Inspector of Schools, Nalbari, on 04.12.1999, as per approval of the Chairman, Sub-Divisional Elementary Education Advisory Board, Nalbari, Bodoland Autonomous Council (BAC). Thereafter, vide order dated 28.11.2000 the Deputy Inspector of Schools, Nalbari has allowed the petitioner to draw the regular salary in the scale of pay and other allowances as admissible and thereafter, the petitioner had completed his Junior Basic Training Course in the year 2006, on Government deputation and in the meantime, GPF account and service book in respect of the petitioner was also opened.

Thereafter, on 30.01.2009 the Director of Education, Bodoland Territorial Council (BTC), Kokrajhar, terminated the petitioner along with some other teachers from service. Thereafter, the petitioner approached this Court by filing one writ petition, wherein this Court was pleased to set aside the termination order vide order dated 06.12.2007 in WP(C) No.6067/2006. The respondent authorities then preferred one writ appeal before a Division Bench of this Court and the Division Bench of this Court vide order dated 06.02.2015, disposed of the writ appeal with a direction to the respondent authorities to regularize the service as per the policy decision of the BTC authorities of all those eligible teachers who were regularly receiving salaries up to 17.10.2006.

Thereafter, the BTC authority had withdrawn the termination order of the petitioner on 22.09.2015 and he has been regularized and reinstated as an Assistant Teacher in his original school, vide order dated 01.10.2015, in the scale of pay. Again, the respondent authorities passed another order dated 30.09.2022

regularizing the service of the petitioner for the 2nd time as Assistant Teacher, however, imposing certain conditions, and posted him at Bhangabarua L.P. School. And this time he was asked to give an undertaking that he will be governed by the new set of pension rules and not by the Assam Services (Pension) Rules, 1969.

The contention of the petitioner is that he should be governed by the Old Pension Scheme under the Assam Services (Pension) Rules, 1969, as he was appointed prior to coming into force of the New Pension Rule w.e.f. 01.02.2005 and therefore, he approached this Court by filing the present writ petition seeking aforementioned relief.

4. The respondent No.4 had filed affidavit-in-opposition, wherein a stand is taken that the petitioner was serving in the Barbalishiha Janata L.P. School and was terminated from his service on 22.11.2010, vide order No.DE/BTC-Appt-148/09/97, by the BTC authority for being illegal-doubtful teacher, as he did not fulfill the following conditions as per the statutory rules i.e.:-

- (a) No advertisement was issued by the DEEO, D.I. of Schools, Nalbari, inviting applications to fill up the vacant posts in the school;**
- (b) No approval of the SLEC of the Personal Department of Government of Assam to fill up the posts;**
- (c) No record of holding interview and preparation of score sheets by the Interview Board;**
- (d) No list of selected candidates indicating the vacancies of schools to fill up the selected candidates and**

(e) No approval of the erstwhile BAC for appointment was taken and that the termination order was issued after issuance of show cause notice and he had never approached this Court assailing his termination order.

4.1. However, taking note of the order of this Court dated 06.02.2015, in WA No.182/2013, the petitioner was reinstated with prospective effect and that his reinstatement was not against any substantive post and a policy decision was taken with approval of the Government of Assam, pursuant to the order of this Court in WA No.182/2013 and accordingly, the service of the petitioner was regularized and scale of pay was granted and he joined on 07.10.2022, and gave his undertaking to the DDO as per the NPS Rules, 2005 and since then, he has been receiving the salary continuously and that the respondent authorities are not in a position to provide him the scope to bring his service under the Old Pension Scheme as already mentioned and therefore, it is contended to dismiss this petition.

5. Mr. Goswami, learned counsel for the petitioner submits that the petitioner was appointed as Assistant Teacher by the then D.I. of Schools, Nalbari District on 04.12.1999 and he joined on 06.12.1999 as Assistant Teacher in the Barbalishiha Janata L.P. School and since then he was serving in the said school and he also completed Basic Training on deputation and he applied for GPF account number and accordingly, GPF account number was allotted to him vide letter dated 07.08.2001 by the Senior Accounts Officer, Office of the Accountant General (A&E), Assam, being GPF No.PED/269676 and he also made subscription in the aforementioned GPF account. Mr. Goswami, further submits that

thereafter, he was terminated from service vide order dated 30.01.2009, on a wrong notion that he was not appointed against a sanctioned post. Further, Mr. Goswami, referring to Annexure-XIX at page No.65 of the petition, submits that the petitioner had applied for some information under the RTI Act in respect of the list of teachers appointed in 1999 and in the said reply, it was pointed out that the petitioner was appointed against one sanctioned post with permanent retention number and that an Enquiry Committee was also constituted and the Enquiry Committee has submitted a report, where it has been held that the petitioner was appointed after due selection and it was reflected in the selection list and the service of the petitioner was not touched by the enquiry report of 359 teachers appointed in the year 1999 and that the undertaking of the petitioner was taken by the authority, who stands in a higher position and as such, the petitioner is entitled to get the pensionary benefit as per the Assam Services (Pension) Rules, 1969. Mr. Goswami has also referred to a decision of this Court in **WP(C) No.4961/2023, (Jugal Kishore Choudhury and 15 Others vs. The State of Assam and Three Others)** wherein the State respondent was directed to provide pensionary benefit to the petitioner of that writ petition as their appointment was initiated prior to coming into force of the new pension rule in 2005. Under the aforesaid facts and circumstances, Mr. Goswami has contended to allow this petition.

6. Per contra, Mr. Choudhury, learned standing counsel for the respondent BTC authority, submits that the petitioner is not entitled to the benefit of Old Pension Scheme as his service was regularized in the year 2022, as per the policy decision of the Government and the petitioner had given one undertaking that he will be governed by the pension rule presently holding the field and he had also not preferred any

writ petition before this Court and having reinstated in service, he is being given the scale of pay and he will be entitled to the pensionary benefit as per the new pension rule and therefore, Mr. Choudhury has contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the decision referred by Mr. Goswami, learned counsel for the petitioner.

8. It is not in dispute that the petitioner was appointed initially on 04.12.1999 by the then D.I. of Schools, Nalbari. Then the petitioner had joined in Barbalishiha Janata L.P. School on 06.12.1999 and since then he was discharging his duties in the said school and he was also granted scale of pay vide order dated 28.11.2000. Further, he has also completed the basic training course on Government deputation and he applied for GPF number to the AG and the AG has also granted the GPF number to him and he also made subscription in the aforementioned GPF number. But, thereafter, the petitioner was terminated from service by the authority, vide order dated 30.01.2009, but on being challenged the same was set aside in WP(C) No.6067/2006, vide order dated 06.12.2007 and thereafter, the respondent authorities have preferred a writ appeal and the same was also disposed of with a direction that the service of the petitioners shall be regularized, who were drawing salaries regularly till 17.10.2006 and thereafter, the service of the petitioner was regularized in the year 2015. But, interestingly, the service of the petitioner was again regularized, vide order dated 30.09.2022, and one undertaking was also given by him that he will be governed by the New Pension Scheme.

9. Further, it appears that though, a stand is being taken by the respondent authority that the service of the petitioner was irregular for

being appointed without advertisement and approval and in absence of record of holding of interview and in absence of approval of the erstwhile BAC council, yet, from the Annexure-XIX at page No.65 of the writ petition it appears that the petitioner was appointed against a vacant post created in the year 1975 and retained permanently on 30.07.1992.

10. However, whether he was appointed regularly or irregularly that is not the issue before this Court. The issue before this Court is which pension rule will govern the case of the petitioner. Be that as it may, it appears that the petitioner was appointed in the year 1999. He was given the regular scale of pay w.e.f. 28.11.2000. He had also taken the basic training course on Government deputation and he had received salaries regularly till 17.10.2006. Though he was terminated from service, the said termination order was set aside by this Court in WP(C) No.6067/2006 vide order dated 06.12.2007. The respondent authority had preferred an appeal being Writ Appeal No. 182/2013, and a Division Bench of this Court, vide order dated 06.02.2015, was pleased to uphold the decision of the learned Single Judge. Thereafter, the petitioner was reinstated and as such, his past service has to be counted for the pensionary benefit with effect from the date of his initial appointment i.e. 04.12.1999 and he has also applied for GPF number and the same was allotted on 07.08.2001 by the Office of the Accountant General, much before coming into force of the New Pension Scheme in the year 2005.

11. I have gone through the decision of this Court in WP(C) No.4961/2023, (**Jugal Kishore Choudhury and 15 Others vs. The State of Assam and Three Others**). In the said case, this Court was pleased to direct the State respondents to provide pensionary benefit to the petitioner of the said writ petition as their recruitment process was initiated prior to coming into force of the New Pension Rule in 2005 and

in doing so, this Court has relied upon a decision of a Division Bench of this Court in WP(C) No.7369/2021 (*Sanjay Kumar And Anr. Vs. Union Of India And 3 Ors.*), wherein discussing various decisions of other High Courts of the country, it has been held that the consistent view of the High Court in the said matter is that where the process of recruitment has been initiated in the year 2003 and the examination and selection was completed in the year 2003, merely because the appointment orders were issued subsequently in the year 2004 or later, such delay not be attributed to the appointees or the recruitees, the benefit of old pension scheme, which was replaced by the new scheme w.e.f. 01.01.2004 cannot be denied to such recruitees/appointees, who have applied for and were duly scrutinized and were declared successful in the year 2003 and thereafter, allowed the said writ petition directing the respondent authorities to extend the benefit of old pension scheme to the petitioners of said writ petition.

12. Though the petitioner has given one undertaking, yet, the same would not stand in the way of extending the pensionary benefit to him as having been appointed in the year 1999, already a right has been accrued in his favour to get the pension as per Old Pension Scheme. The said undertaking was taken by regularizing his service for the second time in the year 2022. Though he was terminated on a wrong notion, yet, subsequently, he was regularized/reinstated on 01.10.2015. Since he has been re-instated with prospective effect, his past services from the year 1999, till his termination on 30.01.2009, would not automatically wiped out, nor on the strength of the undertaking given by him under duress.

13. Under the aforementioned facts and circumstances, this Court is inclined to allow this petition. The respondent authorities are directed to

extend the benefit of Old Pension Scheme to the petitioner w.e.f. 04.12.1999, counting his past services for the aforementioned purpose.

14. In terms of above, this writ petition stands disposed of. The parties have to bear their own costs.

Sd/- Robin Phukan
JUDGE

Comparing Assistant