

GAHC010052432021



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

Case No. : WP(C)/2013/2021

SYED MOHBUBUL MAJID

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY COMM. AND SECY. TO THE GOVT. OF ASSAM, THE SECONDARY
EDUCATION DEPTT., SACHIVALAYA, DISPUR, ASSAM-781006.

2:THE DIRECTOR

SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DIRECTOR

DIRECTORATE OF PENSION
HOUSEFED COMPLEX
DISPUR
GUWAHATI-781006.

4:THE ACCOUNTANT GENERAL ASSAM

MAIDAMGAON
BELTOLA
GUWAHATI
-781029.

5:THE INSPECTOR OF SCHOOLS

GOLAGHAT
DIST. GOLAGHAT
ASSAM
PIN-785621.

6:THE PRINCIPAL

KACHARIHAT GIRLS HIGHER SCHOOL
P.O. KACHARIHAT
DIST. GOLAGHAT
ASSAM
PIN-785621

Advocate for the Petitioner : MR. S S S RAHMAN

Advocate for the Respondent : SC, EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 09-05-2022

Heard Mr. S S S Rahman, learned counsel for the petitioner. Also heard Mr. R Mazumdar, learned counsel for the respondents no. 1, 2, 5 and 6 being the authorities under the Secondary Education Department, Government of Assam, Ms. D D Barman, learned counsel for the respondent no. 3 being the Director of Pension and Mr. A Hassan, learned counsel for the respondent no. 4, Accountant General, Assam.

2. The petitioner was appointed as an Assistant Teacher under the Elementary Education Department of Government of Assam on 25.11.1988 and he retired from service as an Assistant Teacher of Kacharihat Girls' High School in the Golaghat district on 31.08.2019. The total length of service rendered by the petitioner is stated to be 30 (thirty) years 279 (two hundred seventy nine) days. This writ petition is instituted on the grievance that the pensionary benefits have not been paid to the petitioner after retirement.

3. By our earlier order dated 22.03.2022, we required the departmental authorities in the Secondary Education Department to examine from the service records of the petitioner as to whether he was in a pensionable service and if yes, to pay the provisional pension at the rate to be determined by the departmental authorities under Rule 22 of the *Assam Services (Pension) Rules, 1969*.

4. In response thereof, the Director of Secondary Education, Assam has made a communication to the learned Standing Counsel for the Secondary Education Department dated 15.09.2021 wherein a communication from the Inspector of Schools, Golaghat dated 10.08.2021 is enclosed.

5. By referring to the said communication from the Inspector of Schools, Golaghat dated 10.08.2021, a stand is sought to be taken that the writ petitioner could not produce a copy of the HSLC passed certificate when it was asked for and in fact, the petitioner had replied to the authorities that he had not passed the HSLC examination or any other equivalent examination. In the circumstance, the departmental authorities was of the view that it could not be ascertained as to whether the petitioner was in a pensionable service.

6. What is discernable from the communication dated 10.08.2021 is that there is a possibility that the petitioner did not have the requisite qualification in the year 1988 when he was appointed as an Assistant Teacher and for the said reason, the department is unable to pay the pensionary benefits.

7. Payment of pension is governed under Rule 21 of the *Assam Services (Pension) Rules, 1969*, which is extracted as below:

*“21. The Governor of Assam reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery form a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct for negligence during the period of his service, including service rendered upon re-employment after retirement provided that
-...”*

8. A reading of the Rule 21(1) of *the Assam Services (Pension) Rules, 1969* inter-alia provides that the Governor of Assam reserves to himself the right of withholding or withdrawing a pension or any part thereof, whether permanently or for a specified period if in the departmental or judicial proceeding the pensioner is found guilty of grave misconduct for negligence during the period of his service. In other words, any withholding of the pensionary benefits would have to satisfy the conditions precedent of there being an order in a departmental or judicial proceeding which may indicate that the pensioner is found guilty of grave misconduct or negligence. Secondly, the proviso (b)(ii) under Rule 21 of *Assam Services (Pension) Rules, 1969* provides that the departmental proceeding, if not instituted while the person concerned was in service shall not be in respect of any event which took place more than four years before such institution of a departmental proceeding.

9. In the instant case, even if it is accepted that the petitioner did not have the necessary qualification at the time of his initial appointment in the year 1988, a conclusion of misconduct thereof would have to be arrived in a departmental proceeding and further the cause of action for such misconduct would have to be within a period of four years from the initiation of the departmental proceeding. In the instant case, records reveal that neither there was any departmental proceeding nor the cause of action of the misconduct is within the period of four years from which a departmental proceeding can be initiated.

10. Admittedly, the cause of action took place in the year 1988 itself when the petitioner entered service without having the necessary qualification. From such point of view, we are of the view that the pensionary benefits of the petitioner cannot be now withheld by invoking the proviso to Rule 21 of the *Assam Services (Pension) Rules, 1969*.

11. Accordingly, the respondents in the Secondary Education Department as well as the authorities in the Pension Department are directed to process the payment of pensionary benefits to the petitioner as per law, if otherwise eligible.

12. The process be done within a period of three months from the date of receipt of the certified copy of this order.

13. A copy of the communication of the Director dated 15.09.2021 along with the communication dated 10.08.2021 of the Inspector of Schools, Golaghat are kept on record.

14. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant