
(2021) 10 GAU CK 0024

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5187 Of 2021

Afaz Uddin Ahmed Vs State Of Assam And 5 Ors

Date of Decision : 04-10-2021

Acts Referred:

Citation : (2021) 10 GAU CK 0024

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : A M Barbhuiya

Final Decision : Partly Allowed

Judgement

1. Heard Mr. A.M. Barbhuiyan, learned counsel for the petitioner. Also heard Ms. N.M. Sarma, learned counsel for the respondents No.1, 3 and 5 being the authorities under the Secondary Education Department, Mr. B. Gogoi, learned counsel for the respondents No.2 and 6 being the authorities being the authorities under the Finance Department of the Govt. of Assam, Ms. D.D. Barman, learned counsel for the respondent No.4 being the Pension Department of the Govt. of Assam.

2. The petitioner was appointed as an Assistant Teacher on 22.11.1984 on an intermediate scale of pay in the Belsor Higher Secondary School, Nalbari. Subsequently he was transferred to Milan High School, Panigaon, Nalbari. On and from 14.07.2003, the petitioner was granted the graduate scale of pay as he was a graduate by qualification. He retired from service upon attaining the age of 60 years on 31.01.2017. The grievance raised is that even though the petitioner had held pensionable service but the pension had not been paid. It is stated that there is an issue with the departmental authorities as to whether the petitioner under the law was entitled to graduate scale of pay. We are not expressing any view on merit on the entitlement of the petitioner for a graduate scale of pay, but what we are concerned is that irrespective of his correct scale of pay, the petitioner under the law would be entitled to pension on his retirement. It is for the respondent authorities to pass an appropriate order and to determine as to what would be the correct scale of pay. If under the appropriate notification

which was in force at that relevant point of time, the petitioner was entitled to a graduate scale of pay by virtue of having a graduate qualification, there may not be any reason to subsequently arrive at a conclusion that he is not entitled to a graduate scale of pay. But on the other hand if the condition of service of the petitioner was such that he was not entitled to a graduate scale of pay and the graduate scale of pay was incorrectly given to him in such event, the petitioner would be entitled to his pensionary benefits on the intermediate scale of pay.

3. Accordingly, we direct the Director of Secondary Education, Assam to examine the claim of the petitioner by calling for the records and pass a reasoned order as to whether as per his service condition the petitioner was entitled to a graduate scale of pay. If the conclusion arrives is that he infact was entitled to graduate scale of pay, his pensionary benefit can be given from the date of his retirement on the basis of graduate scale of pay and on the other hand, if the Director arrives at a conclusion that the petitioner was not entitled to graduate scale of pay, in such event, the pensionary benefit be paid on the basis of intermediate scale of pay.

4. If the Director arrives at his conclusion that the petitioner was not entitled to graduate scale of pay, in such event, the determination would be made as to whether there was any fraudulent contribution from the petitioner requiring the respondents to pay him the graduate scale of pay. If there was no fraudulent contribution from the side of the petitioner and the graduate scale of pay was paid because of no fault on the part of the petitioner, the purported excess amount that have been paid to the petitioner shall not be recovered from him by following the pronouncement of Hon'ble Supreme Court in Shyam Babu Verma and others -vs- Union of India and others, reported in (1994) 2 SCC 521 and State of Punjab and Others -vs- Rafiq Masih (White Washer) and others, reported in (2015) 4 SCC 334.

5. The requirement of passing the order by the Director be done within a period of two months from the date of receipt of certified copy of the order and thereafter to pay the pensionary benefit to the petitioner as per the appropriate scale of pay to which he was entitled during his service period. Till such time, the provisional pension be continued to be paid. If it is found that the provisional pension paid to the petitioner was lower than the final pension, the difference amount be paid to the petitioner within a period of four months thereafter.

6. Writ petition is partly allowed.