
(2010) 08 GAU CK 0025
In the Gauhati High Court
Case No : Writ Petition (C) No. 718 of 2007

Haobijam Birmangol Singh	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 24-08-2010

Acts Referred:

Manipur Services (Revised Pay) Rules, 1999 — Rule 49

Citation : (2011) 130 FLR 137 : (2011) 2 GLR 148

Hon'ble Judges : Madan B. Lokur, C.J

Bench : Single Bench

Advocate : Ch. Dhananjoy, for the Appellant; G.A. Manipur, for the Respondent

Judgement

Madan B. Lokur, C.J.—Heard Mr. Ch. Dhananjoy, learned Counsel for the Petitioner.

2. The Petitioner has made two prayers in the writ petition.

3. The first prayer is that the Respondents should pay to the Petitioner the arrears of pay in the pay scale of Rs. 4,500-7,000 attached to the post of Primary School Teacher and to make necessary corrections in the pension papers in terms of the Manipur Services (Revised Pay) Rules, 1999 ("ROP 1999").

4. The second prayer of the Petitioner is for a direction to the Respondents to pay his arrears of pension in the pay scale of Headmaster in terms of the Government order dated 5.8.1998.

5. The Petitioner was working as Headmaster (Lower Primary/Primary Schools) at the time of his retirement on 31.1.1996. At that time the Petitioner was in the pay scale of Rs. 4000-100-6000.

6. According to learned Counsel for the Petitioner, in terms of ROP 1999 the pay scale was revised from 1.1.1996 to Rs. 4,500-7,000. It was submitted that the Petitioner was not paid the arrears of pay w.e.f. 1.1.1996 till the date of his retirement on 31.1.1996. It was also submitted that changes consequent to the

revision of pay were not incorporated in his pension papers. Thus, the Petitioner is facing a continuous financial loss.

7. The Respondents have rebutted the submissions by stating that the higher scale of pay of Rs. 4,500-7,000 is not the pay scale for Metric (Untrained)/Under Metric (Trained) Teachers. Since the Petitioner is not a trained teacher, but an untrained teacher, he is not entitled to the pension as claimed.

8. It is true that there is nothing in the writ petition to suggest that the Petitioner was a trained teacher. However, it is also mentioned in the affidavit in opposition that the service book of the Petitioner shows that he is an untrained teacher but since the Respondents do not have his service book, it is not possible to make any corrections therein.

9. Learned Counsel for the Petitioner says that he will produce before the Respondents his service book and pension papers within a period of four weeks from today and the Respondents may examine the same within a period of six weeks thereafter and take a final decision in the matter.

10. Insofar as the second prayer made by the Petitioner is concerned, he was only officiating as Headmaster on the date of his retirement. It is submitted that the Petitioner was regularised by an order dated 5.8.1998 (subsequent to his retirement) and, therefore, he is not entitled to the pensionary benefits of a regular Headmaster.

11. It is pointed out by learned Counsel for the Respondents that this issue came up for consideration in Deba Kanta Sarmah Vs. State of Assam and Others, After examining the entire position including Fundamental Rule 49, a Division Bench of this Court concluded that merely because an employee was regularised in a position after his retirement, it does not entitle him to get the benefit of that post. In other words, the employee must be regularly holding the post on his date of retirement. The Division Bench held in paragraph 19 of the Report as follows:

19. Having regard to the fact that the Petitioner till the time of his retirement on 31.3.1994 was holding the substantive post of teacher and was additionally permitted to hold higher charge of the post of Assistant Headmaster and Headmaster respectively and only after his retirement, first an order permitting him to officiate in the two higher posts and a second order regularizing the said officiating service was passed, the claim of the writ Petitioner for getting pensionary benefits with reference to emoluments in the higher posts of Assistant Headmaster and Headmaster on the strength of the two posts are not tenable. The pensionary entitlement of the Petitioner be decided accordingly.

12. In view of the clear expression of opinion by the Division Bench, there is no merit in the second prayer made by the Petitioner and that is accordingly rejected.

13. The writ petition is disposed of with a direction to the Petitioner to produce

the service book and pension papers before the Respondents as mentioned above and with a direction to the Respondents to take a decision after the Petitioner produces his service book and pension papers, with regard to the arrears of pay on the basis of ROP 1999.