

(2024) 04 GAU CK 0072

In the Gauhati High Court

Case No : Writ Petition (C) No. 5916 Of 2013, 4870 Of 2015

Kiran Kumar Sarma And 7 Ors.

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 24-04-2024

Acts Referred:

Citation : (2024) 04 GAU CK 0072

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : G. Rahul, H. Terangpi, P. Nayak

Final Decision : Allowed

Judgement

1. Heard Shri G. Rahul, learned counsel for the petitioners in these two cases. Also heard Ms. H. Terangpi, learned Standing Counsel, Education Department as well as Shri P. Nayak, learned Standing Counsel, Finance Department.

2. Since the issue in both these cases are analogous, the same are heard together and are being disposed of by this common judgment and order.

3. The facts in brief are that some time in the year 1992, the Central Government had floated a Scheme for creation of 500 posts of Hindi Teachers. Though the said Scheme was subsequently withdrawn, the State Government has recreated 401 numbers of such posts of Hindi Teachers. Pursuant to such action, 82 numbers of Hindi Teachers were adjusted against non-sanctioned posts and were given a fixed pay. In the aforesaid regard, a writ petition was filed in this Court being WP(C) No. 1676/2005 which was disposed of vide an order dated 04.03.2005 by directing the official respondents to consider the grievance. Subsequently, on 17.02.2010 an adjustment process was initiated by which the petitioners were adjusted in vacant sanctioned posts in provincialised schools. They were also paid regular salaries.

4. The present writ petition is with the claim for opening GPF account.

5. Shri Rahul, the learned counsel for the petitioners has submitted that in the year 1999, another writ petition was filed for salaries as per which the same was paid. The learned counsel by referring to the additional affidavit filed on 23.04.2024 has submitted that relevant materials have been brought on records which includes the judgment dated 06.03.2017 passed by this Court in WP(C) No. 6279/2012. By the aforesaid judgment, the authorities were directed to pass appropriate orders on the grievances of the petitioners. It is submitted that a review petition against the said judgment was unsuccessfully filed by the State and the petitioners also had to resort to file a contempt petition. Finally, an order was passed on 10.10.2022 by the Department whereby the enhanced pay scale was granted to the petitioners with retrospective effect from 01.03.1999. The learned counsel for the petitioners has also informed this Court that some of the petitioners have retired in the meantime and it is only for the petitioners who are still in service that the present claim would be confined to.

6. Shri Nayak, the learned Standing Counsel, Finance Department has however submitted that the GPF (Assam Services) Rules, 1937 had undergone an amendment vide a notification dated 14.07.2011. By presenting a copy of the said notification, the learned counsel has submitted that for Government servants who were appointed on or after 01.02.2005 to services and posts in connection with the affairs of the State Government will not be eligible to join the fund. He has also submitted that the initial directions passed by this Court pursuant to which the present claim is based is dated 04.03.2005 and therefore any actions taken thereafter would also be covered by the amended notification. The learned Standing Counsel has also submitted that the petitioners were adjusted in vacant sanctioned posts only on 17.02.2010 and therefore it cannot be construed that the petitioners were appointed prior to 01.02.2005 merely because they have been granted retrospective pay.

7 Ms. Terangpi, the learned Standing Counsel, Education Department submits that an affidavit has been filed in WP(C) No. 5916/2013 opposing the claim of the petitioners. Specific reference has been made to the averments made in paragraph nos. 5, 6 & 10.

8. The rival submissions have been duly considered.

9. The petitioners had initially entered into the service pursuant to the scheme of the Central Government introduced in the year 1992. Though the said scheme was withdrawn, the State Government had recreated 401 numbers of posts of Hindi Teachers. The appointment of 82 numbers of Hindi Teachers were against non-sanctioned posts with a fixed salary. The respondent authorities had thereafter passed an order dated 17.02.2010 whereby the petitioners were adjusted in vacant sanctioned posts in provincialised schools and were given regular salaries. Such order was passed pursuant to the earlier direction of this Court dated 04.03.2005 in WP(C) No. 1676/2005. This Court in a subsequent writ petition being WP(C) No. 6279/2012 had passed another direction on 06.03.2017 for passing appropriate orders redressing the grievances of the

petitioners. Though a review application was filed against the said judgment by the State, the same was rejected and thereafter the petitioners had instituted a contempt petition. The matter was put to rest by an order dated 10.10.2022 by the Education Department whereby the petitioners were granted enhanced pay scale with retrospective effect from 01.03.1999. For ready reference the operative part of the aforesaid order is extracted herein below:-

“Order: After careful consideration of the above stated facts, the Government in the Department of School Education has decided to grant the claim of the petitioners of WP(C) No. 6210/2010 (Abdul Jalil & Others –Vs- the State of Assam & Others) and WP(C) No. 6279/2012 (Mukut Saikia & Others-Vs-the State of Assam & Others) regarding enhancement of the pay scale with retrospective effect from 01/03/1999.”

10. The objection raised on behalf of the Finance Department is based on the notification dated 14.07.2021 by which an amendment was brought to the GPF (Assam Services) Rules, 1937 wherein a date was specified as 01.02.2005 to be the date which will determine as to whether an employee would be eligible to join the fund or not. The amended Rule specifies that government servants appointed on or after 01.02.2005 shall not be eligible to join the fund. As indicated above, the learned Standing Counsel, Finance Department has also emphasized that even the order of this Court is 04.03.2005 which is subsequent to the date fixed by the amendment.

11. The issue however has to be examined from which date the enhanced pay scale has been given effect to. It is not in dispute that though the initial appointment of the petitioners were against non-sanctioned posts and were given a fixed salary, they were subsequently adjusted in vacant sanctioned posts in provincialised schools and were given regular salary. The said action was further clarified/modified vide the order dated 10.10.2022 whereby the enhanced pay scale was given retrospective effect from 01.03.1999. Such action of the Department is conclusive to come to a finding that for all purposes the entry of the petitioners in service has to be construed at least from 01.03.1999. In the considered opinion of this Court, the objection that the amended Rules would be an impediment cannot be accepted.

12. In view of the aforesaid discussions, the writ petition stands allowed by directing the appropriate authorities to take immediate steps to open the GPF account of those petitioners who are still in service. The said petitioners may submit necessary applications along with the necessary testimonials and a certified copy of this order for doing the needful which is to be done within a period of 3 (three) months from the date of receipt of a certified copy.

13. No order as to cost.