

GAHC010016572017



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

**Case No. : WP(C)/1694/2017**

MINA DUTTA and ANR.  
W/O- LATE PADMESWAR KONCH, VILL- MAJGAON, P.O- MACHKHOWA,  
P.S- DHEMAJI, DISTRICT- DHEMAJI, ASSAM

2: SRI MANI KANTA DUTTA  
S/O LATE KAMALA KANTA DUTTAVILL- BILOTIA  
P.O- MACHKHOWA  
P.S- MACHKHOWA  
P.S- DHEMAJI  
DIST- DHEMAJI  
ASSA

VERSUS

THE STATE OF ASSAM and 7 ORS.  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT,  
SACHIVALAYA, DISPUR, GUWAHATI-781006, ASSAM

2:THE COMMISSIONER AND SECRETARY  
TO THE GOVT OF ASSAM FINANCE DEPT. SACHIVALAYA  
DISPUR  
GUWAHATI-781006  
ASSAM

3:THE ACCOUNTANT GENERALAandE  
MOIDAMGAON  
BELTOLA  
GUWAHATI-19  
ASSAM

4:THE DIRECTOR OF ELEMENTARY EDUCATION  
KAHILIPARA  
GUWAHATI- 19

ASSAM

5:THE DIRECTOR OF PENSIONS  
HOUSE FED COMPLEX  
DISPUR  
GUWAHATI  
ASSAM

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER  
DHEMAJI  
PIN-787057  
ASSAM

7:THE DEPUTY INSPECTOR OF SCHOOLS  
DHEMAJI  
DISTRICT- DHEMAJI  
ASSAM

8:THE TREASURY OFFICER  
  
DHEMAJI  
DISTRICT- DHEMAJI  
ASSA

**Advocate for the Petitioner : MR.U J SAIKIA**

**Advocate for the Respondent : GA, ASSAM**

**BEFORE  
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

**Judgment & Order(Oral)**

**Date : 29.04.2024**

Heard Mr. A. Gohain, learned counsel for the petitioners. Also heard Mr. P. K. Borah, learned Standing Counsel for the Elementary Education Department appearing for the respondents no. 1, 4, 6 & 7 and Mr. B. Gogoi, learned Standing Counsel for the Finance Department representing the respondent no. 2 & 8 as well as Mr. B. Deori, learned Junior Government Advocate appearing for the respondent no. 5.

**2.** The petitioners by way of instituting the present proceeding have raised a grievance with regard to the non-finalization of their pension and pensionary benefits as well as the non-release of their salaries in arrears w.e.f. August 2017 till the date of their respective superannuation.

**3.** The writ petitioners in the writ petition have projected that they initially appointed as Assistant Teachers in the year 1989 in different L.P. School in the district of Dhemaji by the Deputy Inspector of School, Dhemaji. The petitioners contend that their appointments were so effected against vacancies available in their respective schools on account of the incumbents therein proceeding on retirement upon reaching their age of superannuation. The petitioners, on their appointments were authorized the scale of pay as attached to the posts in question. The petitioner no. 1 herein was so appointed as an Assistant Teacher at Borban Gohaingaon L. P. School and the petitioner no. 2 was so appointed at Mazagaon L. P. School. The petitioners have contended that in the year 1992, there was a move to terminate the services of teachers appointed in the year 1989 in the district of Dhemaji, but, no termination order was served upon the petitioners and they continued in their services in their respective schools. The petitioners also continued to draw their pay and allowances. It is contended that the services of the petitioners were confirmed by the jurisdictional Deputy Inspector of Schools.

**4.** The petitioners have also contended that on crossing the efficiency

bar as available in the scale of pay authorized to them, their pay were re-fixed vide orders dated 12.08.2005 and 07.12.2006 respectively. The petitioners by referring to a communication dated 09.02.2007 have contended that the Government of Assam in the Education Department had required the Director of Elementary Education, Assam to enquire as to whether teachers in the district of Lakhimpur, who were terminated from their services were still continuing in their services and were also drawing their respective salaries. A direction was further issued to stop the salaries of such teachers. In terms of the said communication dated 09.02.2007, the District Elementary Education Officer, Dhemaji vide a communication dated 17.03.2007, directed the Deputy Inspector of Schools, Dhemaji to take necessary steps so as to ensure that the teachers, whose services were terminated, are not allowed to work and to not draw their respective salaries. Accordingly, payment of salaries to the petitioner came to be stopped.

**5.** The petitioners being aggrieved by the steps so taken in the matter by the respondent authorities approached this Court by way of instituting WP(C)/1634/2007, *inter alia*, praying for a direction upon the respondents to allow the petitioners to continue in their services in their respective schools and also for release of their due salaries. The said writ petition was disposed of by this Court vide an order dated 09.05.2007, requiring the cases of the petitioners to be placed before the Expert Committee as constituted by this Court in the case of *S.M. Talukdar Vs. State of Assam & Ors*, reported in 2006 (2) GLT 216. It is contended by the petitioners that their salaries were stopped w.e.f. August 2007. As no steps were taken by

the respondent authorities for having their cases considered by the Expert Committee as constituted by this Court, and their prayer for being released their respective salaries having not been considered, the petitioners again approached this Court by way of instituting WP(C)/4410/2008, praying for a direction from this Court upon the respondent authority for release of their monthly salary in arrears w.e.f. August 2007. This Court, vide order dated 02.01.2004, on considering the issue arising in the matter was pleased to dispose of the writ petition by directing the respondent authorities to place the grievance of the petitioners before the committee as constituted by this Court in the case of S. M. Talukdar (supra). However, it is stated that the case of the petitioners were never placed before the said committee and the petitioners were never intimidated about the decision that may have been arrived by the said committee in the matter. The petitioners continued in their services as before however, their salaries were not released. The petitioner no. 1 on reaching the age of superannuation retired from his services w.e.f. 30.01.2016. Likewise, the petitioner no. 2 retired from the services on reaching the age of superannuation w.e.f. 31.05.2014. After retirement, their pay and allowances in arrears having not been released and their pension and pensionary benefits not having been finalized, the petitioner have instituted the present proceedings.

**6.** At the outset it is to be noted that the respondent authorities, more particularly, the authorities of the Elementary Education Department, although granted repeated opportunity by this Court to bring on record their stand by way of filing affidavit, no affidavit came to be filed in the matter.

**7.** Mr. P. K. Borah, learned Standing Counsel, Elementary Education Department has during the hearing of the matter today, placed before this Court a communication received by him from the Director of Elementary Education, Assam, wherein notices purportedly issued to the petitioner herein as well as order issued towards terminating their services were enclosed. The communication dated 26.04.2020; on perusal by this Court along with the enclosures thereto, reveals that neither the show cause notice issued to the petitioner nor, the order terminating their services have an endorsement of the same being received by the petitioners herein. A query was raised by this Court to the learned Standing Counsel, Elementary Education, Assam, as to whether the said notices as well as the order of the termination were ever served on the petitioners and as to whether there exists any material to justify the said position. Mr. Borah, learned counsel had submitted that he has not been furnished any such material by the department to demonstrate that the said show cause notices and orders of termination were served upon the petitioners. It is to be noted herein that the petitioners in the writ petition have made categorical statement to the effect that they were at no point of time served with either the show case notices and or, the orders terminating their services and the said position was not controverted by the respondents.

**8.** The termination orders purportedly issued against the petitioners herein, in the year 1992, were contended to have never been served at any point of time during their service tenure before their superannuation from their respective services. This Court had on two occasion required the

respondent to place the case of the petitioner before the committee constituted by this Court in the case of S.M. Talukdar (supra) however, no material has been placed before this Court by the departmental authorities indicating the decision that might have been arrived at in the matter by the said expert committee. The salaries of the petitioners were stopped from August 2007 and as can be seen such stoppage of their salaries was on the ground that the petitioners were treated as employees whose services were terminated. However in absence of any material available on record to show that such termination orders even if issued, were actually served on the petitioners, it cannot be conclusively held that the petitioners were terminated from their services at any point of time prior to their superannuation from service. Therefore, it is settled law that orders of termination would not be effective unless it is published or communicated to the employee concerned, if the authorities passed an order of termination but it is not communicated to the employee concerned, such order would have no effect and only on account of issuance of such order, without getting the same served upon the employee concerned, the service of the employee concerned cannot be deemed to have been terminated.

**9.** At this stage, it is relevant to take note of the decision of the Hon'ble Supreme Court in the case of *Dulu Devi Vs State of Assam and others* reported in (2016) 1 SCC 622, wherein, under similar circumstances the Hon'ble Supreme Court had held that in absence of material brought on record of an order of termination from service being served upon the person concerned, the service of such person cannot be held to have been actually terminated.

**10.** In view of the conclusion reached herein above, that the services of the petitioners were never terminated at any point of time during their service career, this court holds that in absence of any material contrary to the said position being brought on record by the respondent authorities, and also appreciating the fact that the petitioners herein had continued to discharge their duties till the date of their respective superannuation from service, the petitioners are held to have never been terminated from their respective services. The petitioners having been held to have continued in their respective service till the date of their superannuation, they would now be entitled to all benefits as would be legally accruing to them for the services rendered and would also be entitled to being authorized pension and pensionary benefits for the services so rendered by them.

**11.** In view of the determination that the services of the petitioners were never terminated by the respondent authorities, the following directions are hereby passed:-

(i) The petitioners are held entitled to receive their respective salaries and allowances for the period of service rendered by them w.e.f. August 2007 till the date of their superannuation from service, which occasioned on 31.01.2016 (Petitioner no. 1) and 31.05.2014 (Petitioner no 2) respectively.

(ii) The arrears of the salaries so due to the petitioners would now be computed by the Director of Elementary Education Assam and the amount so computed shall be released to the petitioner within the period of 3 months from the date of receipt of the certified copy of



this order.

(iii) The petitioners being held to have continued in service till the date of their respective superannuation from service, the petitioners now would be authorized pension and pensionary benefits as per the provision of the Assam services (Pension) Rule, 1969. The Director of Elementary Education, Assam would now take requisite initiative for processing the pension papers of the petitioners and thereafter submit the same before the Director of Pension, Assam for issuance of necessary Pension Payment Orders and for the dispersal of pension and pensionary benefits so computed in respect of the petitioners.

(iv) The Director of Pension, Assam on receipt of the pension proposal in respect of the petitioners herein from the Director of Elementary Education, Assam shall process the same and issue the Pension Payment Orders (PPOs) to the petitioners herein within a period of 3 months from the date of receipt of such proposal. The arrears of the pension now becoming due to the petitioner in terms of the direction passed herein above shall be released by the Director of pension, within the time frame as prescribed hereinabove.

(v) Pending finalization of the pension and pensionary amounts due to the petitioners herein in the manner directed above, the Director of Elementary Education, Assam shall within a period of one month from the date of receipt of a certified copy of this order, authorize to the petitioners provisional pension w.e.f. 01.02.2016 and 01.06.2014 respectively.

(vi) The petitioners for facilitating the implementation of the direction as passed herein above by this court, shall individually submit certified copies of this order before the Director, Elementary Education, Assam along with a forwarding for taking the matter forward.

With the above observation and direction the writ petition has been

disposed of.

**JUDGE**

**Comparing Assistant**