

GAHC010003072024



2026:GAU-AS:6675

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

Case No. : WP(C)/142/2024

PABINDRA KUMAR DAS
S/O- LATE RAJENDRA KUMAR DAS,
PERMANENTLY RESIDING AT VILLAGE KHATIKUCHI,
P.O- KHATIKUCHI,
DIST- NALBARI, ASSAM, PIN-781369

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPARTMENT, DISPUR, GUWAHATI-06

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS

NALBARI DISTRICT CIRCLE
PO AND PS- NALBARI
DISTRICT- NALBARI (ASSAM)
PIN- 781335.

4:THE PRINCIPAL
PACHIM BANBHAG HIGHER SECONDARY SCHOOL

P.O- KHATIKUCHI
DIST- NALBARI
ASSAM
PIN-781369

5:THE TREASURY OFFICER
NALBARI
ASSAM
P.O- NALBARI
PIN-781335

6:THE MANAGING COMMITTEE
PACHIM BANBHAG HIGHER SECONDARY SCHOOL
KHATIKUCHI

P.O- KHATIKUCHI
DIST- NALBARI
ASSAM
PIN-78136

**BEFORE
HON'BLE MRS. JUSTICE SHAMIMA JAHAN**

Advocate for the petitioner(s): Mr G Das

Advocate for the respondent(s):Ms H Terangpi,
Mr A Chaliha, SC, Finance
Ms S Chakraborty,
Mr Sauradeep Dey.

Date on which judgment was reserved :**NA**

Date of pronouncement of judgment :**13.05.2026**

Whether the pronouncement is of the :

operative part of the judgment?:**NA**

Whether the full judgment has been :**Yes**

pronounced?

JUDGMENT AND ORDER (ORAL)

Heard Mr G Das, learned counsel for the petitioner. Also heard Ms H Terangpi, learned counsel for the respondent Nos. 2 and 3, Mr A Chaliha, learned counsel appearing for the respondent No. 5, i.e., the Treasury Officer,

and Ms S Chakraborty, learned counsel appearing on behalf of Mr Sauradeep Dey, learned counsel for the respondent Nos. 4 and 6.

2. By this application under Article 226 of the Constitution of India, the petitioner has prayed that the respondent No. 2, i.e., the Director of Secondary Education, Assam, be directed to sanction the Grade-IV post, and/or to hold the selection process to accommodate the petitioner.

3. The case of the petitioner is that he was appointed temporarily in a Grade-IV post in Paschim Bonbhag High School, in the scale of Rs. 900/-Rs. 1435/- plus other allowances, against a leave vacancy and his appointment was made effective from 01.03.1991 to 31.03.1991. The petitioner also states that his appointment was extended from time to time and vide order dated 19th of April, 1991, the petitioner who was appointed in the said vacancy, was allowed to continue as Grade-IV employee in the same school. Thereafter, a resolution was passed by the Executive Committee of the said school, whereby it was decided to request the authority concerned for sanctioning a post in the Grade-IV, along with one post of Night Chowkidar. Thereafter, on 13th of June, 1994, the Principal of the said school appointed the petitioner against an honorary post and it was also stated in the said letter that petitioner, who has been working since 01.06.1991, would continue to work from that date. Thereafter, on the same day, i.e., 13th of June, 1994, the Inspector of Schools by a communication to the Director of Secondary Education, sent a proposal for sanctioning one Grade-IV post in the school. It was further stipulated in the said letter that since the school has been newly provincialized, only 3 (three) Grade-IV posts have been sanctioned and that another Grade-IV post may also be sanctioned for the interest of the school. The petitioner has stated that since his appointment in

the year 1991 till the year of 2002, he was paid the salary against the leave vacancy and that vide order dated 6th of September, 2004, the petitioner, who was appointed on an honorary basis in the said school, was allowed to draw his salary against the retired vacancy and the monthly salary was paid to him as such. The petitioner, therefore, states that he was drawing his salary from 2002 to 2005, against the retired vacancy, but after 2005, he did not get any salary. Accordingly, he had made representations before the Inspector of Schools from 2017 onwards, praying for payment of his salary as well as to sanction his post in the said school and it is also stated that the Principal of the said school had forwarded the representation to the Inspector of Schools, Nalbari, wherein, after stating the facts narrated above, a request was made by the Principal for payment of his salaries since 01.01.2006, with a further statement that Grade-IV post was lying vacant due to the retirement of the erstwhile employee. .

4. The learned counsel for the petitioner submits that the petitioner was under the constant belief that since his services were utilized in the school he will be paid regularly and his services will be regularized. He also submits that the appointment of the petitioner can be termed as irregular, but not illegal and he has been continuing since the date of his temporary appointment till date, first few years on receiving the salary against the leave vacancy, and few years thereafter, on the salaries against the retired vacancy. As such, a prayer is made for payment of his salary as well as regularization of his service. To substantiate his arguments, Mr Das has placed his reliance on the following decisions:-

- i) ***Secretary, State of Karnataka and Others -Vs- Uma Devi;*** reported in **(2006) 4 SCC 1.**
- ii) ***Jaggo -Vs- Union of India & Others;*** reported in **2025 0 AIR (SC)**

296.

5. Ms H Terangpi, learned Standing Counsel for the Secondary Education Department, submits that the petitioner was appointed against a leave vacancy and his services were extended from time to time and that later, the Managing Committee of the school took a decision to appoint the petitioner on an honorary basis and the Headmaster had issued the appointment letter and that in the meantime, the petitioner was allowed to draw his salary against the retired vacancy and that he received the same till 2005. She further states that to allow the petition for accommodating him against a Grade-IV post would only accrue through a valid selection process, which was not undertaken in the instant case.

6. Ms S Chakraborty, learned counsel appearing on behalf of the respondent Nos. 4 and 6, submits that the petitioner was not appointed against any sanctioned post and that he is voluntarily working as a Grade-IV employee in the said school, and as such, he has no right for regularization of his services as the post was not a sanctioned post.

7. It is seen that the petitioner has been temporarily appointed in the year 1991 and his services were utilized in a Grade-IV post till date and the petitioner is stated to have been working till December 2025, as a Grade-IV employee. It is the case of the petitioner that since January,, 2026, he is working in the same school as a Cook for the Mid-Day Meal provided to the students. It is, as such, seen that he had never left the school and that he had offered his service for the smooth running of the same. It is also seen that the petitioner had received his salaries against the leave vacancies initially and then against the retired vacancies from 2002 to 2005, and after 2005, he had not received any salary.

He had made representations to the authorities concerned for regularizing his services as well as to pay his salary and it is also seen that the Principal of the said school had forwarded the case of the petitioner to the Inspector of Schools, for consideration.

8. It is no longer res integra that if a service is utilized by the authority concerned even without a sanctioned post, the basic salary, i.e., the payment has to be made to the employee concerned. Non-payment is considered to be unconstitutional and in violation of the fundamental rights, particularly, if the employee is made to work for a long period of time. In the instant case, the petitioner is made to work since the year 1991. In the instant case, the petitioner has worked for almost 35 years in service to the school. As such, his payment cannot be denied. Although it is seen that the petitioner has filed the instant petition after a period of 19 years, but it is also seen that he had made his representations in the intervening period, and being a Grade-IV employee, he was under the impression that the authorities would regularize his services and give him his salaries. It is as such, directed that the authorities in the Secondary Education Department, would consider the case of the petitioner. It is also seen that the Principal had written letter to the Inspector of Schools, forwarding the case of the petitioner, but the Inspector of Schools had not replied to the same and in the forwarding report, a request was also made to sanction one more Grade-IV post and the petitioner having worked since long in a Grade-IV post, a legitimate expectation is built up in respect of the petitioner. Although the petitioner is no longer in Grade-IV post and he is working as a Cook in the said school, his case should be considered since he has worked in the Grade-IV post for long 35 years.

9. In view of the same, this Court directs the authorities in the Secondary Education Department to consider the case on a representation being made by the petitioner afresh. The petitioner is directed to make the representation before the said authority, along with a copy of this order and the authorities to consider his case within a period of one month from the date of receipt of a certified copy of this order.

10. The writ petition stands disposed of.

JUDGE

Comparing Assistant