GAHC010211532018

2026:GAU-AS:17278

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

Case No. : WP(C)/6570/2018

NABIN BARMAN
S/O LT. ANANDI BARMAN
R/O VILL- GOBRADAL
P.O. GOBRADAL, P.S. TIHU
DIST. NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AN SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DISPUR, GUWAHATI-6.

2:COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI -6.

3:DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-19.

4:DIRECTOR OF PENSION
HOUSEFED
DISPUR
BASISTHA
GUWAHATI-6

Advocate for the Petitioner : MR. B CHAKRABORTY, MRS P HAZARIKA,MD S HUSSAIN

Advocate for the Respondent : GA, ASSAM, SC, ELEM. EDU,SC, FINANCE DEPTT.

Linked Case : WP(C)/6583/2018

JOGEN CH. DAS
S/O LT. JADAV DAS
R/O VILL- AKHARA P.O. SURADI
DIST.NALBARI
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOV.T OF ASSAM
ELEMENTARY EDUCATION
DISPUR
GUWAHATI-6.

2:COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

3:DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-19

4:DIRECTOR OF PENSION
HOUSEFED DISPUR
BASISTHAPUR
GUWAHATI-6.

Advocate for : MR. B CHAKRABORTY

Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved : 17.11.2026

Date of pronouncement of judgment : 23.11.2026

Whether the pronouncement is of

the operative of the judgment? : No

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

Heard Mr. B. Chakraborty, learned counsel for the petitioners. Also heard Mr. P. N. Sarma, learned Standing Counsel, Elementary Education Department for the respondent Elementary Education Department; and Ms. R. M. Barooah, learned counsel appearing on behalf of Mr. R. Borpujari, learned Standing Counsel, Finance Department, representing the respondent Finance Department.

2. Since the issues raised in both these writ petitions arise out of the same recruitment process and involve substantially similar facts and questions of law, the matters are taken up together for disposal by this common judgment and order.

3. By filing these writ petitions, the petitioner in WP(C) No. 6570/2018, Nabin Barman, who is serving as an Assistant Teacher at Gobradal Milan M.E. School, and the petitioner in WP(C) No. 6583/2018, Jogen Ch. Das, who is serving as an Assistant Teacher at Milan High Madrassa, formerly known as Milan MEM, Barnagar, Banekuchi, have sought a direction to the respondent authorities to extend to them the benefit of the Assam Services (Pension) Rules, 1969, instead of the New Defined Contributory Pension Scheme introduced by the Government of Assam with effect from 01.02.2005. They have also challenged the condition imposed upon them, at the time of their respective appointments, to furnish

undertakings accepting that their services would be governed by the New Pension Scheme.

4. The claim of the petitioners arises out of a recruitment process initiated in January 1997, when the Director of Elementary Education, Assam, issued an advertisement inviting applications for appointment to 7,500 posts of Assistant Teachers in M.E./M.V./M.E.M./L.P. schools in different districts of the State. The petitioners participated in the selection process in respect of Nalbari District. Their names figured at Sl. No. 123 and Sl. No. 121 in the retention list prepared pursuant to the said selection, respectively.

5. However, instead of the petitioners, Dhiren Barman and Kushal Das came to be appointed as Assistant Teachers by order dated 03.11.1998, in place of Nabin Barman and Jogen Ch. Das, respectively. The petitioners questioned the said appointments, contending that the persons appointed in their places had not been selected in the relevant recruitment process. They jointly approached this Court challenging the appointments made in their places. During the pendency of the said litigation, the District Elementary Education Officer, Nalbari, passed an order dated 07.07.2000, whereby the names of Dhiren Barman and Kushal Das were substituted in place of the names of the petitioners, which had earlier been approved by the Government. The Director of Elementary Education, Assam, thereafter, by order dated 14.03.2002, held the action of the DEEO, Nalbari, to be unauthorised and set aside the order dated 07.07.2000.

6. The matter thereafter came to be considered by the Government. Vide order dated 20.02.2008, the Commissioner and Secretary to the Government of Assam recorded that the petitioners were the selected candidates and that

Dhiren Barman and Kushal Das had been appointed in their places. Subsequently, vide order dated 16.09.2008, the Government directed the Director of Elementary Education to take necessary steps for appointment of the petitioners in their respective schools.

7. Pursuant to the aforesaid direction, the Director of Elementary Education, Assam, issued an appointment order dated 25.09.2008, appointing Nabin Barman as an Assistant Teacher at Gobradal Milan M.E. School and Jogen Ch. Das as an Assistant Teacher at Srimanta Sankardev M.E. School. Both joined their respective posts on 29.09.2008. In the meantime, Dhiren Barman and Kushal Das had also approached this Court challenging the decisions of the Government. Their writ petitions came to be dismissed by this Court by judgment/order dated 24.07.2013.

8. At the time of joining service, the petitioners were required to furnish undertakings to the effect that they would not be governed by the Assam Services (Pension) Rules, 1969, and that their retirement benefits would instead be regulated under the New Pension Scheme, as their dates of joining were after 01.02.2005. The petitioners furnished the undertakings. The service of Nabin Barman was thereafter confirmed by an order dated 11.08.2015. Jogen Ch. Das was subsequently transferred, by order dated 02.03.2016, to Milan MEM, Barnagar, Banekuchi, where he is presently serving at Milan High Madrassa. Aggrieved by the application of the New Pension Scheme to their services, the petitioners have approached this Court by filing the present writ petitions.

9. Mr. B. Chakraborty, learned counsel for the petitioners, submits that the cases of the petitioners cannot be considered in the same manner as those of

persons who entered Government service through recruitment processes initiated after 01.02.2005. The recruitment process in which the petitioners participated had commenced in January 1997, and their names had figured in the retention list prepared pursuant to that selection. Their appointments in 2008 were not the result of any fresh selection process, but were made in implementation of the Government's subsequent decision recognising their claims as selected candidates and directing that they be appointed in the respective schools.

10. It is further submitted that the petitioners could not be appointed at the relevant time because other persons had been appointed in their places. They were, therefore, compelled to pursue the matter before this Court, and it was only after the authorities examined the matter and the Government issued the necessary directions that their appointments could be given effect to. The delay in their appointments was thus not attributable to them. In these circumstances, it is contended that the petitioners should not be denied the benefit of the Old Pension Scheme merely because the appointment orders were issued and they joined service after 01.02.2005.

11. In support of the aforesaid contention, learned counsel places reliance on the decision of the Division Bench of this Court in **Sanjay Kumar & Anr. v. Union of India & 3 Ors., WP(C) No. 7369/2021**. It is submitted that, in the said case, the Division Bench extended the benefit of the Old Pension Scheme to the petitioners therein, although their appointment orders were issued and they joined service after the relevant cut-off date. The Division Bench took into consideration that the recruitment process had commenced before the introduction of the New Pension Scheme and that the delay in their appointment

was not attributable to the candidates.

12. Learned counsel further submits that, in a meeting held on 15.03.2024 under the chairmanship of the Hon'ble Chief Minister of Assam, in the presence of representatives of the Sadou Asam Karmachari Parishad, the Government had decided to consider extending the benefit of the Old Pension Scheme to those employees who had joined service on or after 01.02.2005, although the recruitment process in their respective cases had commenced prior to that date. Pursuant to the said decision, the Government undertook an exercise to identify such employees. The Education Department called for the relevant particulars from the district authorities, and the Inspector of Schools, Nalbari, prepared a list in which the names of the petitioners are stated to have been included. The matter was thereafter processed by the Directorate and is stated to be pending consideration before the Government.

13. On the other hand, Mr. P. N. Sarma, learned Standing Counsel, Elementary Education Department, submits that although the names of the petitioners figured in the retention list of Nalbari District, their appointments were made only in 2008, pursuant to the subsequent directions of the Government. It is pointed out that the Government had directed the Director of Elementary Education to take necessary steps for their appointment and that the petitioners were accordingly appointed on 25.09.2008 and joined service on 29.09.2008. Learned Standing Counsel submits that, having entered Government service after 01.02.2005, the petitioners are governed by the New Pension Scheme in terms of the Office Memorandum issued by the Finance Department. It is further pointed out that the petitioners had furnished undertakings at the time of joining service, accepting the applicability of the

New Pension Scheme and agreeing not to claim the benefit of the Assam Services (Pension) Rules, 1969.

14. Learned Standing Counsel further raises the issue of delay and laches, pointing out that the petitioners had furnished the undertakings in 2008 but approached this Court only in 2018. It is, therefore, submitted that the petitioners cannot now seek to challenge the applicability of the New Pension Scheme after having accepted the condition at the time of joining service.

15. Learned counsel appearing for the Finance Department refers to the communication dated 29.09.2026 issued by the Finance (Budget) Department in connection with the present writ petitions. It is submitted that, in terms of the Office Memorandum dated 06.10.2009, the New Pension Scheme applies to Government servants whose services were regularised against regular posts on or after 01.02.2005, including teaching and non-teaching employees of provincialised educational institutions who joined State Government service regularly after the said date.

16. Learned counsel further refers to the letters dated 28.03.2025, 21.05.2025 and 15.07.2025, whereby particulars were called for from the Administrative Departments in respect of employees who joined service on or after 01.02.2005, though their recruitment processes had commenced earlier. It is pointed out that particulars relating to 31,608 applications have been received and are under examination. The exercise is stated to be time-consuming and is still under process.

17. I have considered the submissions advanced by learned counsel for the parties and have perused the materials available on record.

18. The issue which arises for consideration in these writ petitions is whether the petitioners, whose recruitment process commenced in January 1997 but who were appointed and joined service on 29.09.2008, can be denied the benefit of the Assam Services (Pension) Rules, 1969, solely on the ground that their actual dates of joining were after 01.02.2005.

19. There is no dispute that the New Defined Contributory Pension Scheme was introduced by the Government of Assam with effect from 01.02.2005. The Office Memorandum dated 06.10.2009 issued by the Finance Department provides for the applicability of the New Pension Scheme to new entrants joining State Government service on regular basis against vacant sanctioned posts on or after 01.02.2005. The petitioners admittedly joined service on 29.09.2008. If their cases are examined only with reference to the dates of their appointment and joining, they would fall within the category of employees covered by the New Pension Scheme.

20. However, the facts leading to the appointment of the petitioners cannot be viewed in isolation from the recruitment process in which they had participated. The process had commenced in January 1997. Their names figured in the retention list prepared pursuant to that selection. They were not appointed at the relevant time because other persons had been appointed in their places. The petitioners questioned those appointments and jointly approached this Court. The subsequent proceedings before the departmental authorities culminated in the Government recognising the petitioners as the selected candidates and directing that they be appointed in their respective schools. Their appointments in September 2008 were thus the consequence of the earlier recruitment process and the subsequent steps taken by the

authorities to give effect to the petitioners' selection.

21. The delay in giving appointment to the petitioners cannot, in the facts of the present cases, be attributed to any inaction on their part. The petitioners had participated in the selection process initiated in 1997 and their names had found place in the retention list. The fact that they could not join service until September 2008 was the result of the appointment of other persons in their places and the subsequent proceedings arising therefrom. The Government ultimately recognised their claims and directed their appointment. In such circumstances, the date of actual joining, by itself, cannot be treated as conclusive for deciding the pension scheme applicable to them, without examining the circumstances which occasioned the delay.

22. The Division Bench of this Court, in **Sanjay Kumar** (Supra), considered a claim for the benefit of the Old Pension Scheme where the recruitment process had commenced before the introduction of the New Pension Scheme under the Central Government, but the appointment orders were issued thereafter. In that case, the recruitment process had commenced in 2003, whereas the appointment orders were issued in 2005, after the cut-off date of 01.01.2004. Taking note of the fact that the delay in completion of the recruitment process and issuance of appointment orders was not attributable to the candidates, the Division Bench held that they could not be denied the benefit of the Old Pension Scheme on that account.

23. Although the cut-off date and the pension rules involved in **Sanjay Kumar** (Supra) were different, the principle applied therein is relevant to the facts of the present cases. The recruitment process in the present cases commenced in January 1997, and the petitioners' names figured at Sl. Nos. 123

and 121, respectively, in the retention list prepared pursuant to the said process. They were, however, not appointed at the relevant time, as Dhiren Barman and Kushal Das were appointed in their respective places by order dated 03.11.1998. It was only after the subsequent proceedings, culminating in the Government orders dated 20.02.2008 and 16.09.2008, that the petitioners were appointed by orders dated 25.09.2008 and joined service on 29.09.2008. Thus, their appointments were delayed on account of the circumstances arising out of the appointment of other candidates in their places and the subsequent proceedings, and not on account of any delay attributable to the petitioners. They cannot, therefore, be placed at a disadvantage in the matter of pensionary benefits merely because their appointment orders were issued and they joined service after 01.02.2005.

24. In the present cases, the petitioners' claims stand on a factual foundation which is supported by the subsequent decision of the Government itself. The Government did not treat the petitioners as fresh candidates selected through a recruitment process initiated after 01.02.2005. Rather, by its order dated 20.02.2008, it recognised them as the selected candidates in the recruitment process initiated in 1997 and directed that steps be taken for their appointment. The appointment orders issued thereafter were in implementation of that decision. The petitioners' cases, therefore, cannot be equated with those of persons whose recruitment processes commenced after the introduction of the New Pension Scheme.

25. The subsequent developments on the part of the Government may also be noted. In the meeting held on 15.03.2024, the Government decided to consider extending the benefit of the Old Pension Scheme to employees who

joined service on or after 01.02.2005, though the recruitment process in their cases had commenced prior to that date. The Finance Department thereafter called for particulars from the Administrative Departments and, as recorded in its communication dated 29.09.2026, has received particulars relating to 31,608 applications, which are under examination. The said communication does not record that a final decision has been taken in respect of the petitioners. Nevertheless, it indicates that the Government itself has undertaken an exercise to examine cases where the recruitment process commenced before 01.02.2005 but the employees joined service thereafter. The petitioners' cases fall within the category of cases which the Government decided to examine.

26. The objection based on the undertakings furnished by the petitioners at the time of joining service also cannot be accepted as a ground to deny them the benefit claimed. The undertakings were furnished in the circumstances of their appointments, when the authorities treated them as employees joining service after the cut-off date. The petitioners' claim, however, is founded on the recruitment process initiated in 1997 and the subsequent recognition by the Government of their status as selected candidates in that process. An undertaking furnished at the time of joining cannot, by itself, determine the applicability of the pension rules where the governing scheme is required to be decided in accordance with the applicable law and the circumstances in which the appointment came to be made, as the petitioners would not have such bargaining power with the mighty State authorities.

27. The objection as to delay and laches is also required to be considered in the context of the nature of the relief sought. The petitioners do not seek to reopen the selection process or disturb the appointments made in 2008. Their

grievance concerns the pension scheme governing their services and the consequences which would arise upon their retirement. The fact that they furnished the undertakings at the time of joining service is a circumstance to be considered, but it does not, in the facts of the present cases, extinguish their claim to have the applicable pension scheme determined in accordance with the recruitment process pursuant to which they were appointed. The petitioners' appointments were made only after the Government recognised their claims as selected candidates in the recruitment process initiated in 1997. In these circumstances, the objection of delay and laches is considered for rejection as the same cannot be ground for rejection of their claims.

28. For the reasons discussed hereinabove, this Court is of the view that the petitioners are entitled to the benefit of the Assam Services (Pension) Rules, 1969. The respondent authorities are, accordingly, directed to extend to Nabin Barman, petitioner in WP(C) No. 6570/2018, and Jogen Ch. Das, petitioner in WP(C) No. 6583/2018, the benefit of the Old Pension Scheme under the Assam Services (Pension) Rules, 1969, by treating their cases with reference to the recruitment process initiated in January 1997. The undertakings furnished by the petitioners at the time of their respective appointments shall not stand in the way of extending such benefit. The respondent authorities shall take all necessary consequential steps to give effect to this direction within a period of three months from the date of receipt of a certified copy of this judgment.

29. It is, however, made clear that the petitioners shall not be entitled, by virtue of the present judgment, to any claim for seniority or arrear salary for the period prior to their respective dates of joining service. The relief granted herein is confined to the applicability of the pension scheme and the consequential

pensionary benefits admissible under the Assam Services (Pension) Rules, 1969.

30. With the aforesaid directions, both the writ petitions stand disposed of.

JUDGE

Comparing Assistant