

GAHC010265012023



2026:GAU-AS:8223

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

Case No. : WP(C)/6976/2023

MD INTAZ ALI
S/O LT. AKIBUR RAHMAN, VILL-NIZ DALA, P.O.-MESKAPUKHURI, P.S.-
KALAIGAON, DIST-UDALGURI, ASSAM, PIN-784525

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, EDUCATION
(ELE) DEPTT., DISPUR, GUWAHATI-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-781019
DIST-KAMRUP
ASSAM

3:THE BODOLAND TERRITORIAL COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY
BTC
KOKRAJHAR

4:THE DIRECTOR OF EDUCATION
BTC
KOKRAJHAR
BTAD
ASSAM

5:THE DEPUTY INSPECTOR OF SCHOOLS
BHERGAON SUB-DIVISION
BHERAGAON
P.O.-BHERAGAON
P.S.-TANGLA

DIST-UDALGUR

Advocate for the Petitioner : MS N SAIKIA,

Advocate for the Respondent : SC, ELEM. EDU, SC, BTC

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 09-06-2026

1. Heard Ms. N. Saikia, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned Standing Counsel, Elementary Education Department and Ms. B. Bhuyan, learned Senior Standing Counsel, Bodoland Territorial Council (BTC).

2. The petitioner in the present writ petition has prayed for a direction upon the respondent authorities for modification of the Order dated 01.04.2022, by which his services was regularized only with prospective effect. The petitioner has prayed for a further direction upon the respondent authorities to reckon the services rendered by him w.e.f. 04.12.1999, for the purpose of fixation of his pay and allowances as well as for the purpose of fixation of his seniority, pension, etc.

2.1. As projected in the writ petition, the petitioner in pursuance to a selection, was appointed as a Stipendiary Teacher in Ranthali L.P. School, vide an Order dated 04.12.1999, issued by the Deputy Inspector of Schools, Darrang, Mangaldoi. It is projected in the writ petition that after joining his service, the service book of the petitioner was opened and he was subsequently authorized the regular scale of pay w.e.f. 01.03.2000 and was also enrolled under the General Provident Fund Scheme. The petitioner further projects that in the year

2003, he was deputed for undergoing Basic Training Course at the Principal Basic Training Center, Dalgaon and he had successfully completed the said course. Upon completion of his basic training course, the petitioner was continued to be authorized a scale of pay along with other allowances. The petitioner projects that he received his salaries till the month of June, 2008. However, with effect from the month of July, 2008, the salaries of the petitioner were withheld and subsequently, vide an Order dated 08.10.2012, the service of the petitioner came to be terminated along with other similarly situated persons. The petitioner projects that being aggrieved by the order of his termination, he had approached this Court along with other similarly situated persons by way of filing a writ petition being W.P.(C) No. 528/2018. A Coordinate Bench of this Court accordingly vide Order dated 08.11.2019, was pleased to dispose of the said writ petition by following the directions passed vide Order dated 15.02.2019 in W.P.(C) No. 2168/2017.

2.2. The petitioner projects that persons appointed along with him as Stipendiary Teachers way back in the year 1999, in pursuance to directions passed by this Court in writ petitions filed by them, were reinstated in their services and adjusted against sanctioned vacant posts available in the matter. However, the same benefit was not extended to the petitioner in the matter. Subsequently, the respondent authorities, more particularly, the Director of Education, BTC vide an Order dated 01.04.2022, proceeded to accommodate the petitioner as an Assistant Teacher in a primary school on temporary basis, against a post created personal to him. The said order further stipulated that the petitioner would be covered under the New Pension Rules. The said appointment of the petitioner was stipulated in the said Order to be affected with prospective effect i.e. w.e.f. from 01.11.2020.

2.3. Being aggrieved, the petitioner has instituted the present writ petition.

3. Ms. N. Saikia, learned counsel for the petitioner by referring to the materials brought on record in the present writ petition has submitted that the petitioner was so appointed as a Stipendiary Teacher vide the Order dated 04.12.1999, in pursuance to a selection process initiated vide a Notice dated 01.11.1997. She submits that the said appointment of the petitioner being in pursuance to a process of selection, the initial appointment of the petitioner cannot be held to be illegal and/or irregular. She submits that the petitioner was granted his scale of pay immediately subsequent to his appointment and he continued to enjoy the said scale of pay. The petitioner in terms of the procedure prescribed was also deputed for undergoing Basic Training Course and the petitioner having successfully completed the said training, the scale of pay as authorized to the petitioner was continued to be authorized to him. She submits that the Director, Elementary Education, Assam without appreciating the background leading to the appointment of the petitioner in the present proceeding, had issued the Order dated 08.10.2012, terminating the services of the petitioner. She submits that the said termination was affected in respect of 285 teachers and the name of the petitioner was also included in the said order of termination. She further submits that being aggrieved by the Order of termination, the petitioner along with three others had approached this Court by way of instituting a writ petition being W.P.(C) No. 528/2018. The said writ petition is projected to have been disposed of by a Coordinate Bench of this Court vide Order dated 08.11.2019 and therein by noticing the directions passed in W.P.(C) No. 2168/2017, similar directions came to be passed. Ms. Saikia submits that this Court having directed the reinstatement of the petitioner, the respondent authorities have miserably failed to comply with the directions

passed by this Court vide Order dated 08.11.2019 and the petitioner's service was left hanging, although the petitioner is contended to have been rendering his service in the school concerned during the said period. Ms. Saikia submits that the respondent authorities without assigning any reason whatsoever and in clear violation of the directions passed by this Court vide Order dated 08.11.2019 in W.P.(C) No. 528/2018, proceeded to issue an Order dated 01.04.2022 accommodating the services of the petitioner against the newly created post and holding the said post to be personal to him. She submits that the said accommodation of the petitioner was made effective w.e.f. 01.11.2020 only. The services rendered by the petitioner since the date of his initial appointment, that is, w.e.f. 04.12.1999, were ignored and the said service was wiped out. She further submits that the petitioner although was rendering services since 1999, the authorities having now accommodated him against a sanctioned post, w.e.f. 01.11.2020, the petitioner was held to be covered by the New Pension Scheme. She submits that the petitioner being in continuous service w.e.f. 04.12.1999, the petitioner ought to have been brought under the Provisions of the Assam Services (Pension) Rules, 1969, with regularization of the period when he had to remain out of service on account of the operation of the termination order passed in his case vide the Order dated 08.10.2012. Accordingly, she submits that the Order dated 01.04.2022, would mandate a modification and prays that this Court would direct the respondent authorities to give effect to the said Order with retrospective effect, that is, with effect from the date of his initial appointment, that is, w.e.f. 04.12.1999 with all consequential benefits of pay, seniority, pension, etc.

4. Per contra, Ms. Bhuyan, learned Standing Counsel, BTC, at the outset, has submitted that the petitioner had accepted the stipulations made in the Order

dated 01.04.2022 and had submitted his joining report in the matter. She submits that the petitioner while submitting his joining report in pursuance to the Order dated 01.04.2022 had not raised any objection with regard to the stipulations made therein. She submits that it is only after more than one year of his joining in pursuance to the Order dated 01.04.2022, that the petitioner has instituted the present writ petition on 01.12.2023. Ms. Bhuyan further submits that in terms of the directions passed by this Court vide Order dated 08.11.2019 in W.P.(C) No. 528/2018, the case of the petitioner was held to be covered by the decision of the Division Bench of this Court in W.A. No. 182/2013. She submits that the persons covered by the decision of a Division Bench of this Court in W.A. No. 182/2013, were regularized immediately after passing of the said direction in accordance with the decision arrived at in the matter by the BTC authorities. Subsequently, the said persons were again regularized in their services in the year 2022-2024 and were held to be entitled to receive their salaries only with effect from the subsequent second regularization affected in their respective cases. She submits that the second regularization has affected in case of persons, covered by the decision of the Division Bench in W.A. No. 182/2013, is similar to the regularization of the services affected in respect of the petitioner herein vide Order dated 01.04.2022. She submits that the said persons who were held to be entitled to receive salaries and other service benefits in terms of their second regularization affected their cases in the year 2022-2024 had approached this Court by way of filing various writ petitions including W.P.(C) No. 6020/2017. She submits that the Coordinate Bench of this Court had considered the issues arising in W.P.(C) No. 6020/2017 and other analogous matters and vide Judgment and Order dated 14.07.2025 had proceeded to dismiss the writ petitions by holding that

the petitioners, therein, would be entitled to receive their salaries only w.e.f. the date of the second regularization affected in their cases against sanctioned valid post created for that purpose. She submits that the said decision would squarely apply to the facts arising in the present writ petition.

5. Rejoining her submissions, Ms. Saikia, learned counsel for the petitioner submits that the decision of the Hon'ble Coordinate Bench of this Court in W.P. (C) no. 6020/2017 and other analogous matters would have no application in so far as the case of the petitioner is concerned and his case has to be so considered basing on the decision rendered by this Court vide Order dated 08.11.2019 in W.P.(C) No. 528/2018 instituted by the petitioner, herein. She submits that the petitioner on completion of his Basic Training Course having been authorized a regular scale of pay by posting him against a valid sanctioned post vide order dated 21.03.2005, the said order must be construed to the order regularizing the services of the petitioner. She further submits that it being permissible to consider the stipendiary period of service rendered by the petitioner for the purpose of reckoning his qualifying service for the purpose of determination of pension and pensionary benefits, his such service would be mandated to be so reckoned w.e.f. 04.12.1999 and not from date pursuant thereof. Accordingly Ms. Saikia submits that this Court would be pleased to direct the respondent authorities to release to the petitioner his salaries and arrears w.e.f. 01.07.2008 to 08.10.2012 and w.e.f. 08.11.2019 to 01.04.2022, along with a direction to consider the petitioner to be covered by the provisions of the Assam Services (Pension) Rules, 1969 for the purpose of his entitlement to pension and other pensionary benefits.

6. I have heard the learned counsel for the parties and perused the materials

available on record.

7. At the outset, this Court would examine as to whether the petitioner was so initially appointed as a Stipendiary Teacher in pursuance to a process of selection as mandated under the Rules, holding the field. The petitioner in the present writ petition has contended that his appointment was in pursuance to an Advertisement dated 01.11.1997, issued by the Deputy Inspector of Schools, Darrang. While the said contention has been made by the petitioner, the petitioner in the present writ petition has not brought on record any select list pursuant to which the petitioner's appointment was so affected vide Order dated 04.12.1999. A perusal of the Order dated 04.12.1999, also does not reveal that such appointment of the petitioner was in pursuance to his selection for the post in question. Another fact which comes to the notice of the Court from the materials brought on record, is that the petitioner after he was appointed w.e.f. 04.12.1999, as a Stipendiary Teacher, was subsequently authorized his pay and allowances in the scale of pay as authorized to an Assistant teacher in a Primary school, without, however, requiring the petitioner to acquire his Junior Basic Training Certificate. The petitioner received his pay and allowances in the scale of pay, even before he was deputed for undergoing the Junior Basic Training course by the respondent authorities. The petitioner having completed his said training course, the Director, Elementary Education Department, Assam, Kahilipara vide Order dated 21.03.2005 proceeded to permit the petitioner to draw his scale of pay w.e.f. 05.03.2004 i.e. the date when the results of the said Basic Training course was announced. This Court on appreciating the said submission proceeds to reject the same and holds that the initial appointment of the petitioner as a Stipendiary Teacher was so effected, without following the due procedure mandated for the purpose. The Director, Elementary Education

Department, Assam on appreciating the said position coming on record had proceeded to issue an Order dated 08.10.2012, terminating the service of the petitioner along with another 284 nos. of teachers who were appointed in Darrang district in Lower Primary schools. The said termination of services so affected vide the Order dated 08.10.2012, was in view of the fact that the said teachers including the petitioner herein were found to have been appointed without their being a due selection process carried out in the matter in their respective cases.

8. Persons similarly situated like the petitioner herein being aggrieved by the termination affected in their respective cases by the BTC authorities had approached this Court by way of instituting various writ petitions, including W.P. (C) No. 5840/2009. A Coordinate Bench of this Court upon considering the issues arising in the proceeding of W.P.(C) No. 5840/2009 and other analogous matter, proceeded vide Judgment and Order dated 02.07.2010, to dismiss the said writ petition upholding the termination of services of the petitioners, therein. Being aggrieved, the said petitioners approached the Division Bench of this Court by way of instituting a Writ Appeal being W.A. No. 182/2013. The Division Bench of this Court appreciating the policy decision taken by the BTC authorities, to the effect that the persons who were receiving salaries regularly upto 17.10.2006 would be regularized and that the said policy was in the process of being implemented, had proceeded to dispose of the said Writ Appeal vide an Order dated 06.02.2015, directing the respondent authorities to affect regularization as per the policy decision arrived at in the matter in respect of teachers who had regularly received salaries up to 17.10.2006.

9. The petitioner, herein, being aggrieved by the termination affected in his

service had approached this Court by way of instituting a writ petition, W.P.(C) No. 528/2018. A Coordinate Bench of this Court vide Order dated 08.11.2019 proceeded to dispose of the said writ petition with the following observations and directions :-

Learned counsel for the parties have submitted that the writ petition can be disposed of in terms of the order dated 15.02.2019, passed by this Court in WP(C) 2168/2017, as the issue involved in this petition is covered by the aforesaid order. The relevant portion of the aforesaid order dated 15.02.2019, passed in WP(C) 2168/2017 reads as follows:

"It is stated that the petitioners were appointed as Stipendiary Teachers in the year 1999, following advertisement, selection and approval of the concerned Sub Divisional Level Advisory Board. The petitioners continued to serve until the year 2012 and were also in regular receipt of salary. However, on and from 2012 they were not allowed to discharge their function although no order of termination were served upon them. The petitioners are now before this Court claiming regularisation of their service, having regard to the policy decision of the Bodoland Territorial Council as well as the decision taken by the Government of Assam. It is stated that in the case of persons similarly situated, benefit of regularisation was directed to be given vide order dated 06.02.2015 rendered by a Division Bench of this Court in a bunch of appeals, the lead case being Writ Appeal 182/2013. In the said order a direction was made to the respondents concerned to effect regularisation as per the aforesaid policy decision in respect of eligible teachers who had regularly received salaries up to 17.10.2006. Following the order passed by the Division Bench, Mr. Mannan submits that similar order has been passed by this Court in WP(C) 3905/2011, wherein a direction was made to the respondent authorities in the Education Department of Bodoland Territorial Council to examine the case of the petitioners therein and to determine as to whether they were regularly receiving salary upto 17.10.2006. Further direction was made that if the

authorities arrive at a conclusion that the petitioners therein were receiving salary upto 17.10.2006, their services be regularised in the same terms as directed in the aforesaid order of the Division Bench dated 06.02.2015 passed in Writ Appeal 182/2013.

It is seen that the petitioners herein are persons similarly situated as in the case of the appellants in the bunch of writ appeals and as in the case of the petitioners in WP(C) 3905/2011. Having regard to the above, this writ petition stands disposed of by holding that the petitioners herein are entitled to the same benefits flowing out of the order dated 06.02.2015 passed in Writ Appeal 182/2013. It is, however, clarified that while making necessary exercise for effecting regularisation of their services, the Education Department, Bodoland Territorial Council would verify the case of the petitioners and reach a conclusion as to whether they were regularly receiving salary upto 17.10.2006. In the event they had received salary upto the said period and had been serving in respective schools under the jurisdiction of Bodoland Territorial Council, their services be accordingly regularised. With the above findings and direction, this writ petition stands disposed of."

As submitted and prayed for by the learned counsel for the parties, the writ petition is disposed of with similar directions as contained in the aforesaid order dated 15.02.2019, passed by this Court in WP(C) 2168/2017.

10. A perusal of the directions passed by the Coordinate Bench of this Court vide Order dated 08.11.2019, in W.P.(C) No. 528/2018 would go to reveal that the said directions were passed basing on the Order dated 06.02.2015 passed by the Division Bench of this Court in W.A. No. 182/2013 and other analogous matters. Accordingly, the directions for implementation of the policy with regard to reinstatement in service of the similarly situated teachers whose services were terminated was also applied in respect of the petitioner, herein. The grievances raised by the petitioner in the present writ petition is that after

passing of the directions by this Court in W.P.(C) No. 528/2018, he was not reinstated in service, whereas, persons similarly situated like him and engaged as Stipendiary Teachers, in the year 1999, whose services were also terminated, were reinstated in their services and adjusted against sanctioned vacant posts. However, the petitioner is not found to have approached this Court alleging violation of the directions passed by this Court vide Order dated 08.11.2019 in W.P.(C) No. 528/2018.

11. The contention raised by the learned counsel for the petitioner that the petitioner's services stood regularized vide issuance of an Order dated 21.03.2005 is now being considered.

12. This Court has perused the Order dated 21.03.2005 and finds that the said Order was passed after the petitioner had completed his Basic Training Course. The said Order had authorized to the petitioner to receive his regular salary against the valid sanctioned post. As noticed herein above, even before the petitioner was deputed for undergoing his Basic Training course, the petitioner was authorized his scale of pay which was clearly impermissible, in as much as in the case of a Stipendiary Teacher a scale of pay is mandated to be authorized only after he has completed his Basic Training Course. Accordingly, this Court is of the considered view that the Order dated 21.03.2005 cannot be construed to have the effect of regularizing the illegal appointment affected in respect of the petitioner vide the Order dated 04.12.1999, which as held, hereinabove, was so done clearly in derogation of the provisions of the Rules holding the field. Accordingly, the contention of the learned counsel for the petitioner that the Order dated 21.03.2005 had the effect of regularizing the services of the petitioner is rejected.

13. The further contention of the learned counsel for the petitioner is that the persons appointed along with him in the year 1999 whose services were terminated, subsequently, were reinstated in their services and appointed against vacant sanctioned post in pursuance of the directions passed by the Division Bench of this Court in W.A. No. 182/2013 is being considered.

14. At this stage, it is to be noticed that the respondent authorities on processing the case of the petitioner and after receiving due approval in this connection from the Education Department, Government of Assam, proceeded vide Order dated 01.04.2022, to adjust the services of the petitioner as an Assistant Teacher against the post created for the purpose. The said post was so created with the stipulation that it would be personal to the petitioner, herein. A perusal of the Order dated 01.04.2022 would reveal that the accommodation made in respect of the services of the petitioner was so made against a post created for the purpose w.e.f. 01.11.2020 and not prior thereto. The petitioner was held to be eligible to receive his salaries only w.e.f. 01.11.2020. Further, the petitioner in view of the fact that he now came to be appointed w.e.f. 01.11.2020, against a valid created post, was brought under the provisions of New Pension Rules. The petitioner, as projected by the respondents, had accepted the stipulations made in the Order dated 01.04.2022 and had joined his service without raising any objection. It is only after lapse of around one year from the date of passing of the Order dated 01.04.2022, that the petitioner had instituted the present writ petition. The prayer in the present writ petition is primarily for giving effect, of the accommodation made in his case against the valid sanctioned post, with retrospective effect i.e. a period covering the period when the petitioner had remained out of service on account of being terminated from his service.

15. This Court finds that the issue similar to the one raised in the present writ petition was raised before this Court in the proceeding of W.P.(C) No. 6020/2017 (***Ganesh Narzary and others vs. The State of Assam and others***). A Coordinate Bench of this Court considered the writ petition, W.P.(C) no. 6020/2017 along with other analogous matters and had dismissed the claims made by the petitioners, therein, vide Judgment and Order dated 14.07.2025. The Coordinate Bench of this Court upon appreciating the submissions made by the learned counsel for the parties framed an issue for consideration to the effect that as to whether the petitioners in the said proceeding were entitled for regular salary w.e.f. the first regularization or whether they were rightly being given their service benefit including their salaries w.e.f. the second regularization. The Coordinate Bench thereafter, on examining the background leading to the decisions taken by the BTC authorities for reinstatement of teachers who were terminated, as well as the directions passed by the Division Bench of this Court vide order dated 06.02.2015 in W.A. No. 182/2013, had proceeded to draw a conclusion that the initial regularization of the petitioners, therein, was so made without an approval in the matter being received from the Government of Assam in the Department of School Education, which was held to be mandatory in terms of Memorandum of Understanding, basing on which the BTC was created. Further, it was held that the concurrence of the Finance Department, Government of Assam was also not received before the first regularisation was affected in respect of the said teachers and that the Finance Department was not a transferred subject. Having drawn the said conclusion, the Coordinate Bench of this Court drew the following further conclusions :-

XXIV. This Court is also of the unhesitant opinion that when it comes to the creation of posts and resultant appointment, at the hands of the State, may be for

*the BTC authorities, the State will be under its bounded duty to follow the statutory mandate under the AFBRM Act, 2003 and therefore, in absence of such approval, the 1st Regularization without concurrence from the State and without creation of such posts by the State, cannot create any vested right upon the petitioners to a substantive posts and / or such regularization by BTC cannot make them eligible for salary more particularly, when their appointments are held to be illegal and their terminations were found to be justified in **Jagannath Kumar Dey** (supra).*

*XXV. The direction issued by the Division Bench under its order dated 06.02.2025, is to the effect that the BTC authorities is to effect regularization as per the policy decision, who were regularly receiving salaries upto 17.10.2006. Such determination in the considered opinion of this Court shall not wipe out the findings of the Coordinate Bench in **Jagannath Kumar Dey** (supra) as regards the nature of appointments of the petitioners and the justification of their termination inasmuch as question of regularization would not have arisen had there been a reversal of such determination made in **Jagannath Kumar Dey** (supra) by Division Bench*

XXVI. The determination made as regards nature of appointment of the petitioners was not touched by the Division Bench, rather allowed the authorities to go ahead with the policy and to consider the case of the petitioners, if they are within the policy. Thus, at best such determination is to the effect that these illegally appointed teachers can be regularized as per policy decision inasmuch as question of regularization has arisen for the determination that the terminations of these teachers were just. It is reiterated herein that except a bald argument that petitioners were getting salary as on 17.10.2006, the petitioners have measurably failed to bring on record any cogent material inasmuch as fact remains that 1st regularization and payment of salary was subject to authentication in this regard.

XXVII. This Court cannot also be unmindful of the fact that subsequently, the State of Assam has duly approved the regularization of the petitioners and

accordingly, by the 2nd Regularization, the services of the petitioners were regularized and admittedly, the petitioners are getting due salaries w.e.f. from the aforesaid date. This Court will not enter into the merit of such decision to regularize the services of those teachers who were held to be illegal appointee and also the contention raised by the respondents placing reliance on the judgment rendered by the Hon'ble Apex Court in **State of Bihar -Vs - Devendra Sarma** reported in **2020 (15) SCC 466**, wherein the Hon'ble Apex Court disapproved regularization of illegal appointees, for the reason that such policy is not a subject matter of the present proceeding rather the Division Bench allowed the BTC authorities to continue with such a policy decision.

XXVIII. However, when the claims for payment of arrears of salary is required to be considered, this Court cannot be unmindful of the principles of law laid down by the Full Bench of High Court of Bihar in **Rita Mishra and Ors –Vs- Director of Primary Education, Bihar and Ors** reported in **AIR 1988 Patna 26** and affirmed by the Hon'ble Apex Court in **R. Vishwanatha Pillai –Vs- State of Kerala & ors** reported in **2004 S SCC 105**.

XXIX. In **Rita Mishra (supra)** in no unambiguous term, it was held that rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post and otherwise, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. Such determination of the Full Bench was approved by the Hon'ble Apex Court in **R. Vishwanatha Pillai (supra)** at paragraph 17. Such view was again reaffirmed by the Hon'ble Apex Court in **Devendra Sarma (supra)**. Therefore, in view of the determination made in **Jagannath Kumar Dey (supra)** that the appointments of the petitioners were illegal, and that such appointments, were made without any due selection process, the principles laid down in **Rita Mishra (supra)**, in **R. Vishwanatha Pillai (supra)** and in **Devendra Sarma (supra)** shall also be made applicable to the claim of the petitioners.

XXX. In the case in hand, the policy of regularization, arise out of a situation, when the petitioners initial appointments were held to be illegal and it is the BTC authority, in its wisdom decided to regularize the services of 221 such teachers and subsequently, of the petitioners. Therefore, such legal right to get salary, pension and other service benefits shall arise on due regularization of their services, and such regularization can be said to be valid in terms of the policy decision, when the State approves it by creating substantive posts, which was done in the year 2022-2024

XXXI. Accordingly, for the reasons recorded hereinabove and determination made, it is held that the petitioners are rightly been paid their salary from the date of 2nd Regularization when new posts were created/sanctioned and the petitioners were regularized in service and they cannot claim salary based on the 1st Regularization inasmuch as the 1 st Regularization cannot be said to have validly been done by the BTC, when admittedly and as reflected in such regularization order itself, no approval was there from the State of Assam.

16. This Court has closely perused the conclusions drawn by the Coordinate Bench of this Court in the case of **Ganesh Narzary and others** (supra) and is in respectful agreement with the conclusion so drawn. The regularization of the services of the petitioner by way of accommodating him against the newly created post is found to be so affected after the approval in this connection was received from the Government of Assam in the Department of School Education, as well as concurrence from the Finance Department. This Court has already concluded that the initial appointment of the petitioner was de hors the provision of the Rules holding the field. Accordingly, the accommodation of the petitioner with prospective effect, that is, w.e.f. 01.11.2020 as affected vide Order dated 01.04.2022 in the facts and circumstances of the present writ petition, in the considered view of this Court would not mandate interference.

17. The petitioner in view of the background leading to his initial appointment as well as his continuance therein, would not permit this Court to direct the respondent authorities to also authorize to the petitioner his pay and allowances w.e.f. 01.07.2008. Accordingly, the claim made by the petitioner in the present writ petition would not mandate an acceptance and the prayer for modification of the Order dated 01.04.2022 to make it operative w.e.f. the date the petitioner was paid his salaries in the regular scale of pay would also not mandate an acceptance.

18. Accordingly for the reasons assigned herein above, the present writ petition is held to be devoid of any merit and the same stands dismissed. However, there would be no order as to cost.

JUDGE

Comparing Assistant