GAHC010129012025

2026:GAU-AS:16741

THE GAUHATI HIGH COURT

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

WRIT PETITION [C] NO. 3333/2025

Pritimoni Dutta, aged about 38 years, wife of Mayur Dutta, resident of Village Parbotia, P.O.: & P.S.: Tinsukia, District : Tinsukia, Assam.

.....**Petitioner**

-**VERSUS**-

1. The State of Assam, represented by the Secretary to the Government of Assam, Department of School Education, Dispur, Guwahati-6.
2. The Director of Secondary Education, Assam, Kahilipara, Guwahati-19.
3. Commissioner and Secretary to the Government of Assam, Pension and Public Grievances Department, C Block 3rd Floor, Assam Secretariat, Dispur, Guwahati-781006.
4. The Commissioner & Secretary to the Government of Assam, Finance Department, Dispur, Guwahati-6.
5. Inspector of Schools, Tinsukia District Circle, Tinsukia, PIN - 786125

.....**Respondents**

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Advocate for the Petitioner	:	Mr. S.K. Das, Advocate
Advocate for the Respondent nos. 1, 2 & 5	:	Mr. U. Sharma, Standing Counsel, Secondary Education Department.
Advocate for the Respondent no. 3	:	Ms. S. Konwar, Junior Government Advocate, Asssam
Advocate for the Respondent no. 4	:	Mr. A. Chaliha, Standing Counsel, Finance Department
Date of hearing	:	10.11.2026.
Date of pronouncement of judgment	:	10.11.2026.
Whether the pronouncement is of the Operative part of the judgment ?	:	No
Whether the full judgment has been Pronounced ?	:	Yes

JUDGMENT & ORDER [ORAL]

[M. Choudhury, J]

In this writ petition filed under Article 226 of the Constitution of India, the petitioner who had joined in the post of Post Graduate Teacher [Political Science] in Tinsukia Bengali Girls' Higher Secondary School on 27.02.2024 pursuant to an Order of Appointment dated

21.02.2024 issued under the hand of the respondent no. 5, has inter-alia sought a relief in the form of pay protection in view of her more than decade long previous service as a Graduate Teacher [Arts] in G.B. Chowkhani Higher Secondary School. The petitioner has also sought restoration of her seniority in the post of Post Graduate Teacher on the premise that the petitioner's appointment as a Post Graduate Teacher [Political Science] in Tinsukia Bengali Girls' Higher Secondary School was delayed due to fault attributable specifically to the State respondents, besides Death cum Retirement Gratuity benefits by inclusion of the past services.

2. The background facts which have led the petitioner to prefer the present writ petition can be narrated, briefly, at first, in order to understand the issues raised by the petitioner for determination. The petitioner passed the High School Leaving Certificate [HSLC] Examination conducted by the Board of Secondary Education, Assam [SEBA] in the year 2003. The petitioner obtained Graduate [Arts] Degree from the Women's College, Tinsukia, affiliated to Dibrugarh University, in the year 2008. The petitioner obtained the B. Ed. Degree in the year 2016. Thereafter, the petitioner obtained the Masters Degree in Political Science from the Dibrugarh University in the year 2019. The petitioner had also qualified in the Teachers Eligibility Test [TET].

3. In the year 2013, the respondent authorities in the Secondary Education Department published an Advertisement for filling up vacancies in the post of Graduate Teacher in Government/Provincialised High Schools and Higher Secondary Schools, district-wise, in Pay Band - II with Scale of Pay : Rs. 5,200/- – Rs. 20,200/- and Grade Pay : Rs. 3,300/-, plus other allowances admissible as per the rules with effect from the date of joining. In response to the Advertisement, the petitioner submitted her candidature for a post of Graduate Teacher [Arts] in Tinsukia district. At the end of selection process, the respondent no. 5 issued an Order of Appointment on 12.02.2014 whereby twelve nos. of candidates including the petitioner, who were selected by the District School Selection Committee, came to be appointed as Graduate Teachers in the Schools in the district of Tinsukia, shown against their names. By the Order of Appointment dated 12.02.2014, the petitioner came to be appointed as a Graduate Teacher [Arts] in G.B. Chowkhani Higher Secondary School. In the Order of

Appointment, it was mentioned that the petitioner, on joining the service of the State Government, would be governed by the New Pension Scheme prescribed by the State Government in the Finance [Budget] Department on 25.01.2005 and accordingly, the pension and other retirement benefits were to be governed by the New Pension Rules. On receipt of the Order of Appointment, the petitioner joined in the post of Graduate Teacher [Arts] in G.B. Chowkhani Higher Secondary School at Makum by submitting a Joining Letter on 15.02.2014. After joining so, the petitioner continued to serve as a Graduate Teacher [Arts] at G.B. Chaukhani Higher Secondary School till 26.02.2024.

4. On 27.12.2022, the Directorate of Secondary Education, Assam by an Advertisement invited applications from eligible candidates for filling up 1385 nos. of vacancies in the post of Post Graduate Teacher in different Provincialized Secondary Schools in Pay Band - III with Scale of Pay of Rs. 22,000/- to Rs. 97,000/- and Grade Pay : Rs. 11,800/- PM plus other allowances as admissible under the Rules. The district-wise, subject-wise, medium-wise and category-wise posts were notified in the official website. The conditions of recruitment were mentioned in the Advertisement. The Advertisement also set forth the criteria for selection for Post Graduate Teachers and as per the criteria of selection, the marks secured by the candidates in the Masters Degree Examination, Graduate Degree Examination, Higher Secondary Examination, B. Ed. Examination and TET Examination would be taken into consideration. In the Advertisement, provisions for additional marks for NCC Certificate, etc. were also mentioned.

5. Finding herself eligible to submit her candidature for the vacancies in the post of Post Graduate Teacher in Political Science in Tinsukia district the petitioner submitted her candidature by submitting the application online, as required by the Advertisement, along with all the documents required to be uploaded online. The list of documents which were required to be uploaded were mentioned in detail in the Advertisement dated 27.12.2022. In due course, the Directorate of Secondary Education, Assam published a list of candidates asking the candidates therein who had applied for the post of Post Graduate Teacher in Government / Provincialised Secondary Schools, to appear for physical verification of documents / testimonials in March-April, 2023. In response to the Notice, the petitioner

appeared for physical verification of the documents / testimonials. On 05.05.2023, the Directorate of Secondary Education, Assam published the final merit list for the post of Post Graduate Teacher in Political Science for the district of Tinsukia wherein the name of one Smti. Gayatree Saikia was inter-alia shown to have been selected for unreserved category. In the final merit list, Smti. Gayatree Saikia was shown to have secured a total marks of 320.181. With the publication of the final merit list by the Directorate of Secondary Education, Assam, the Inspector of Schools, Tinsukia District Circle, Tinsukia [the respondent no. 5] issued an Order dated 25.05.2023 publishing a list of eighteen nos. of candidates, who were selected by the District Selection Committee, Tinsukia and approved by the Directorate of Secondary Education, Assam for appointment as Post Graduate Teacher in different subjects in different Schools in Tinsukia district.

6. By the Order dated 25.05.2023, Smti. Gayatree Saikia was selected for appointment as a Post Graduate Teacher in Political Science in Tinsukia District in the Pay Band - III with Scale of Pay : Rs. 22,000/- to Rs. 97,000/- and Grade Pay : Rs. 11,800/- plus other allowances as admissible as per Rules with effect from the date of her joining.

7. The case of the petitioner was, at that point of time, that as per the criteria of selection for Post Graduate Teacher which was to be on the basis of the percentage of marks secured by the candidate at the time of Post Graduation, Graduation, Higher Secondary Examination, B. Ed. Examination and TET Examination, Smti. Gayatree Saikia should have been awarded 306.50 marks instead of 320.181 marks, as awarded by the Selection Committee on the basis of percentage of marks Smti. Gayatree Saikia had secured in these examinations. The petitioner also brought to the notice of the respondent authorities that since she had rightly been granted 312.66 marks which was more than 306.50 marks awarded to Smti. Gayatree Saikia, she should have been selected for the post of Post Graduate Teacher in Political Science in Tinsukia District instead of Smti. Gayatree Saikia and therefore, the select list required correction/modification.

8. When the afore-mentioned anomaly was brought to the notice of the respondent authorities, the respondent no. 5 by an Office Letter dated 17.07.2023 brought to the notice of the Director of Secondary Education, Assam that the marks of Smti. Gayatree Saikia was

wrongly counted as 320.181 instead of 306.50 marks for which she was entitled. Moreover, Smti. Gayatree Saikia did not secure 60% marks in individual papers in TET [PGT]. In his Letter dated 17.07.2023, the respondent no. 5 drew attention of the Director of Secondary Education, Assam that on review, it was found that the petitioner secured 312.66 marks and therefore, the matter required re-consideration.

9. When the Director of Secondary Education, Assam did not take any action despite bringing the above anomaly to his notice by the Office Letter dated 17.07.2023, the petitioner approached this Court by way of a writ petition, W.P[C.] no. 5762/2023 raising the grievance. The Court taking note of the observations made by the respondent no. 5 after verification of the original documents/testimonials that Smti. Gayatree Saikia should have been awarded 306.50 marks instead of 320.181 marks, and the petitioner had secured 312.66 marks, disposed of the writ petition, by an Order dated 03.10.2023, with a direction to the Director of Secondary Education, Assam to pass a reasoned order. It was observed that if the contents of the Office Letter dated 17.07.2023 were correct and Smti. Gayatree Saikia was incorrectly shown as Serial No. 1 in order of merit in the list of selected candidates for the post of Post Graduate Teacher for the subject – Political Science in Tinsukia District then it would be the petitioner who was shown as the second candidate in order of merit, who would be construed to be at Serial No. 1 in merit.

10. After disposal of the writ petition, W.P[C.] no. 5762/2023 by the Order dated 03.10.2023, the Director of Secondary Education Assam, passed an Order on 21.02.2024, whereby the petitioner came to be appointed as a Post Graduate Teacher in Political Science in a post for Unreserved Category in Tinsukia Bengali Girls Higher Secondary School. On receipt of the Order of Appointment dated 21.02.2024, the petitioner joined as the Post Graduate Teacher in Political Science in Tinsukia Bengali Girls Higher Secondary School by submitting a Joining Letter on 27.02.2024. The issues raised herein are subsequent to the Order of Appointment dated 21.02.2024 having genesis to earlier events.

11. I have heard Mr. S.K. Das, learned counsel for the petitioner; Mr. U. Sharma, learned Standing Counsel, Secondary Education Department, Government of Assam for the respondent no. 1, 2 & 5; Ms. S. Konwar, learned Junior Government Advocate, Assam for the

respondent no. 3; and Mr. A. Chaliha, learned Standing Counsel, Finance Department, Government of Assam for the respondent no. 4.

12. Mr. Das, learned counsel appearing for the petitioner has submitted that the petitioner joined in the post of Post Graduate Teacher in Political Science on 27.02.2024 after resigning from her earlier post as Graduate Teacher [Arts], in which post she was serving in substantive capacity. The Scale of Pay in the Post of Graduate Teacher [Arts] is in Pay Band - II and the Scale of Pay in the post of Post Graduate Teacher in Political Science is in Pay Band - III. Meaning thereby, the post of Post Graduate Teacher is in a higher Pay Band with a higher Scale of Pay and Grade Pay and the post also carries higher responsibilities. He has submitted that both the posts of Graduate Teacher [Arts] and Post Graduate Teacher in Political Science are under the Secondary Education Department of the State Government.

12.1. He has further pointed out that like the Advertisement dated 27.12.2022, the Secondary Education Department published another Advertisement on 26.12.2023 with an Addendum on 16.10.2024 for filling up 1424 nos. of vacancies in the post of Post Graduate Teachers in the different Provincialized Secondary Schools under the Directorate of Secondary Education in the same Scale of Pay and Grade Pay. He has submitted that the only difference in the two advertisements is that in the first Advertisement dated 27.12.2022, there was no specific requirement either to obtain any No Objection Certificate [NOC] or to upload the NOC at the time of submitting the online application for a serving candidate whereas in the second Advertisement dated 26.12.2023 read with the Addendum dated 16.10.2024, the candidates in Government Service were mandatorily required to upload the NOC at the time of submission of the application online and any NOC after filing of online application was not to be entertained. He has submitted that in fact, there was provision to upload the NOC in the designation portal, even separately.

12.2. He has submitted that after the Order of Appointment dated 21.02.2024, the petitioner resigned from the post of Graduate Teacher [Arts] in G.B. Chowkhani Higher Secondary School by submitting a Resignation Letter on 26.02.2024 to the Principal, G.B. Chowkhani Higher Secondary School and the Principal, G.B. Chowkhani Higher Secondary School accepting the resignation issued a Release Letter stating inter-alia that the Resignation Letter

of the petitioner had been accepted and the petitioner had been released from her duties w.e.f. 26.02.2024 as she had been appointed as a Post Graduate Teacher in Political Science vide an Order of Appointment dated 21.02.2024.

12.3. Mr. Das has further pointed out that the respondent no. 5 has also issued an NOC for fifteen nos. of Graduate Teachers/Assistant Teachers including the petitioner, serving in different High Schools/Higher Secondary Schools in Tinsukia District on 11.01.2024. But despite the fact that the resignation of the petitioner was technical resignation, the respondent authorities have not extended the benefit of pay protection to the petitioner and have continued to treat her appointment pursuant to the Order of Appointment dated 21.02.2024 as a fresh appointment in the post of Post Graduate Teacher and as a result, the petitioner, as on date, is deprived from the benefits of pay protection under F.R. 22 I [a][1] and the Death-cum-Retirement Gratuity under Rule 135 under the Assam Services [Pension] Rules, 1969.

13. Mr. Sharma, learned Standing Counsel, Secondary Education Department and Mr. Chaliha, learned Standing Counsel, Finance Department appearing for the State respondents have submitted that the petitioner vide a Resignation Letter dated 26.02.2024 tendered her resignation from the post of Graduate Teacher [Arts] and accordingly, she was released from G.B. Chowkhani Higher Secondary School on 26.02.2024. It was pursuant to such release, the petitioner joined in the Post Graduate Teacher in Political Science as a fresh appointee. They have contended that at the time of submitting the online application in response to the Advertisement dated 27.12.2022, the petitioner did not obtain the NOC to apply for the post of Post Graduate Teacher. Thus, it is evident that the petitioner had accepted the terms and conditions in the Order of Appointment dated 21.02.2024 without any objection. As the petitioner did not produce any NOC while applying for the post of Post Graduate Teacher in response to the Advertisement dated 27.12.2022 and as she resigned from the Post of Graduate Teacher on her own choice without any NOC, the petitioner is not entitled to any pay protection.

13.1. They have further contended that the Death-cum-Retirement Gratuity [DCRG] benefits is granted only to those Government employees who either retired from service or died while

in service and therefore, the grant of DCRG benefits to the petitioner does not arise.

13.2. It is further contended that as the petitioner had joined in the post of Post Graduate Teacher only on 27.02.2024 and seventeen nos. of other candidates joined as Post Graduate Teachers in Tinsukia District pursuant to the Order of Appointment dated 25.05.2023 wherein the name of Smti. Gayatree Saikia was also included, the petitioner's seniority can only be counted on the basis of the Order of Appointment dated 21.02.2024 and her date of Joining on 27.02.2024.

13.3. They have submitted that the benefit of past service can only be given in a case where the Government employee applies for a post in the same or other department through proper channel and on selection, he/she is asked to resign from the previous post for administrative reasons. The benefit of past service may, if otherwise admissible under Rules, be given for purpose of fixation of pay in the new post treating the resignation as a technical formality. But, the case of the petitioner does not fall in such category as the petitioner did not obtain any NOC while submitting the online application in response to the Advertisement dated 27.12.2022.

14. I have duly considered the submissions of the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings. Among the respondents, only the respondent no. 2 has filed an affidavit-in-opposition to which the petitioner has filed an affidavit-in-reply.

15. The relevant facts which are not in dispute, have already been narrated above. It is to be iterated that till 26.02.2024 the petitioner was serving in a regular sanctioned post of Graduate Teacher [Arts] in Pay Band - II in G.B. Chowkhani Higher Secondary School in substantive capacity. When the petitioner was serving as such Graduate Teacher [Arts], the Advertisement dated 27.12.2022 came to be published. The conditions for recruitment and the criteria for selection as Post Graduate Teacher were set forth in detail in the Advertisement. In the Advertisement, the documents which were required to be uploaded with the on-line application were mentioned. Amongst the documents which were required to be uploaded, there was no mention of any NOC from the previous employer. The petitioner

has asserted that the official website, www.madhyamik.assam.gov.in wherein on-line applications were to be uploaded did not have any option to upload the NOC. To buttress such facts, the petitioner has annexed a copy of the downloaded application form which the petitioner had uploaded in the designated official website in response to the Advertisement dated 27.12.2022. Upon perusal of the downloaded application form, it does not emerge that there was any provision to indicate whether the applicant had applied or obtained NOC or the applicant had to mention whether he/she had applied for the NOC or not.

16. In the contents of the Advertisement dated 26.12.2023 read with the Addendum issued thereafter on 16.10.2024, it was specifically mentioned that for applicants who were already in Government Service in order to prove their employment, must upload the NOC issued by the competent authority against the applied post and an NOC after filing of the online application shall not be entertained. Thereafter on 25.10.2024, the State Government in the School Education Department had issued a General Circular conveying no objection, thereby, allowing all working teachers under the Directorate of Secondary Education, Assam to apply for the vacancies in the post of Post Graduate Teacher in different Government/Provincialized Secondary Schools under the Directorate of Secondary Education, Assam, advertised by the Advertisement dated 26.12.2023 read with the Addendum dated 16.10.2024. The learned counsel appearing for the respondents has not brought on record any document/circular/notification etc. of the State Government which required submission of an NOC by a candidate submitting on-line application in response to the Advertisement dated 27.12.2022.

17. It is an admitted position, as emerged from the Office Letter dated 17.07.2023 of the respondent no. 5 which ultimately led to the Order of Appointment dated 21.02.2024 issued under the hand of the respondent no. 5 after approval of the Director of the Secondary Education, Assam on 17.05.2023, that one Smti. Gayatree Saikia was mistakenly came to be selected as a Post Graduate Teacher in Political Science in Tinsukia District vide the Order of Appointment dated 25.05.2023 issued under the hand of the respondent no. 5. After filing of the earlier writ petition, W.P.[C.] 5762/2023 by the present petitioner, the situation stood corrected resulting in the petitioner's Order of Appointment dated 21.02.2024, pursuant to

which the petitioner tendered her resignation on 26.02.2024 from the post of Graduate Teacher [Arts] in G.B. Chowkhani Higher Secondary School and on acceptance of resignation by issuance of the Release Order dated 26.02.2024, joined as a Post Graduate Teacher in Tinsukia Bengali Girls' Higher Secondary School on 27.02.2024.

18. The issue which has arisen, therefore, is whether the benefits of the past service rendered by the petitioner as a Graduate Teacher [Arts] would be available in the present post of Post Graduate Teacher or not.

19. Rule F.R. 22 of Fundamental Rules and Subsidiary Rules has provided for initial substantive pay of a Government employee.

19.1. F.R. 22[I][a][1] has inter-alia provided that where the Government employee holding a post in a substantive capacity is appointed in a substantive capacity, subject to fulfillment of the eligibility conditions as prescribed in the relevant recruitment rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him/her, his/her initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his/her pay in respect of the lower post held by him/her regularly by an increment at the stage at which such pay has accrued. The Government employee shall have the option, to be exercised within one month from the date of appointment to have the pay fixed under F.R. 22 from the date of such appointment. The first proviso thereto has provided that where a Government employee is immediately before his appointment on regular basis to a higher post drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale for the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post.

19.2. F.R. 22[I][a][2] has provided that when the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage next above the stage equal to his pay in

respect of the old post held by him on regular basis. The first proviso thereof has provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay. By the second proviso thereto, it has been provided that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post in cases where pay is fixed at the higher stage he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post. It has been further provided that on appointment on regular basis to such a new post, the Government employee shall have the option to be exercised within one month from the date of such appointment for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post.

19.3. In essence, when a Government employee is appointed to a post carrying duties and responsibilities of greater importance, his initial pay in the higher time-scale is fixed by granting one notional increment in the lower post in terms of F.R. 22[I][a][1]. If the new post does not carry higher responsibilities, then the pay in the new post is to be fixed in terms of F.R. 22[I][a][2].

20. The matters of recruitment and conditions of service of both the posts – Graduate Teacher [Arts] and Post Graduate Teacher in Government/Provincialized High Schools and Higher Secondary Schools were governed by the Assam Secondary Education [Provincialized] Service Rules, 2003 [since repealed] ['the 2003 Rules', for short] and are presently governed by the provisions of the Assam Secondary Education [Provincialised Schools] Service Rules, 2018 ['the 2018 Rules', for short], sets of rules framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 3 of the 2003 Rules had as well as of the 2018 Rules has provided for the classes / cadres and posts which come under the Assam Secondary Education [Provincialised Schools] Service. As per Rule 3, the post of Post Graduate Teacher was/is in Class II and a Graduate Teacher was/is in Class III. As per Schedule I to the 2018 Rules, the Scale of Pay of both the posts are different and the Post Graduate Teacher carries a higher Scale of Pay. In other words, the Post Graduate Teacher is

a post which carries a higher Scale of Pay in Pay Band - III than the Graduate Teacher with Scale of Pay in Pay Band - II Both the posts are under the Secondary Education Department, Government of Assam and the Directorate of Secondary Education, Assam. A Post-Graduate Degree is the minimum essential qualification for appointment as a Post Graduate Teacher. To be appointed as a Graduate Teacher, the minimum essential qualification is a Graduate Degree. Thus, prima facie, the provisions contained in F.R. 22 is found applicable, subject to fulfillment of the other conditions.

21. The concept of technical resignation refers to a resignation, which is, treated as a technical formality allowing the Government employee to retain benefits for past service rendered earlier in a post under the Government, and pensionary benefits, provided certain specific conditions are made. In a case of technical resignation, the employer-employee relationship is not treated as disrupted as in a case of resignation simpliciter. A technical resignation, thus, allows the benefit of past services to be counted for pension and pay fixation purposes, contrary to the general rule that a voluntary resignation entails forfeiture of past services because a voluntary resignation results in the severance of the employer-employee relationship. Ordinarily, for a resignation to be treated as technical resignation, the Government employee has to apply for the new post through proper channel and the new post must be in the same or another Department of the Government, and the resignation is required for administrative reasons upon selection. In other words, when a Government employee applies for a post in the same or any other Department in the Government, such application is to be routed ordinarily through the proper channel and on selection, such a candidate is required to resign from the previous post prior to joining the subsequent post and in such situation, the benefit of past service, if otherwise admissible under the rules, is to be given for the purpose of fixation of Pay in the new post treating the resignation as a technical formality.

22. The petitioner has contended that the case of the petitioner is to be treated as a case of technical resignation. To support such contention, the petitioner has placed reliance in an Office Memorandum dated 22.01.1993 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances & Pensions, Government of India [GoI] on the

subject : 'Condonation of Resignation for purpose of Pay Fixation'. The Ministry of Personnel, Public Grievances & Pensions, GoI has also reiterated the same position in two subsequent Office Memoranda – Office Memorandum dated 17.08.2016 on the subject : 'Technical Resignation & Lien-Consolidated Guidelines'; and Memorandum dated 24.11.2022 on the subject : 'Technical Resignation & Lien'.

23. In the Office Memoranda, it is laid down that a resignation is treated as a technical formality where a Government employee had applied through proper channel for a post in the same or some other Department, and is on selection, required to resign the previous post for administrative reasons. The resignation then would be treated as technical resignation if the conditions are made, even if the Government employee has not mentioned the word 'Technical' while submitting his resignation. The benefit of past service, if otherwise admissible under the Rules, may be given in such cases. The Office Memoranda mentioned above, apart from the above situation which occurs normally, have dealt on another situation relating to technical resignation : whether the same benefit is admissible to a Government employee who applies for post in the same or other Department of the Government and on that account, the application was not routed through proper channel. After examination of the second situation, the President of India had decided that the benefit of past service would be allowed in the second situation also subject to fulfillment of the following three conditions : [i] the Government employee should intimate the details of such application immediately on their joining; [ii] the Government employee at the time of resignation should specifically make a request, indicating that he is resigning to take up another appointment under the Government for which he applied before joining the Government service; and [iii] the authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel. If all the three conditions are met, the resignation tendered by the Government employee from the previous post is also to be treated as a technical formality. By the Office Memoranda, the benefits of past service and pay fixation are also extended to a Government employee who had applied before joining the new post, on selection, in the same or other Department of the Government and on that account, the application was not routed through proper channel.

24. Turning back to the facts of the case in hand, it is found that by an Office Letter dated 11.01.2024, with copies to : [i] the Commissioner & Secretary to the Government of Assam, Department of School Education; [ii] the Directorate of Secondary Education, Assam; [iii] The Principal / Headmaster / Headmistress of the concerned School; [iv] and the person concerned, the Inspector of School, Tinsukia District Circle, Tinsukia certified that the fifteen nos. of teachers who were then serving in the High Schools / Higher Secondary Schools within Tinsukia District as Graduate Teacher [Science] / Graduate Teacher [Arts] / Assistant Teacher / Post Graduate Teacher, etc. were permitted to apply for any public sector job at higher Grade of Pay and the authority had no objection to it. By the said Office Letter, the petitioner who was then serving as Graduate Teacher [Arts] in G.B. Chowkhani Higher Secondary School was given No Objection Certificate to apply for any public sector job at higher Grade Pay. From the Release Order dated 26.02.2024, it is discernible that the petitioner was released from the post of Graduate Teacher [Arts] on and from 26.02.2024 only to join as a Post Graduate Teacher in Political Science pursuant to the Order of Appointment dated 21.02.2024. From the Release Order itself, it is evident that the petitioner had tendered resignation from the post of Graduate Teacher [Arts] stating the fact that the petitioner had tendered resignation for the purpose of joining the post of Post Graduate Teacher, after selection, which carries a higher Scale of Pay and Grade Pay. Upon issuance of Release Order dated 26.02.2024, the petitioner was also issued the Last Pay Certificate on 26.02.2024 itself to join in the post in Tinsukia Bengali Girls Higher Secondary School.

25. From the facts and circumstances narrated above, it is discernible that all the conditions required to be fulfilled to treat the case of resignation of the petitioner from the post of Graduate Teacher [Arts] in Pay Band – II at G.B. Chowkhani Higher Secondary School to join in the post of Post Graduate Teacher in Political Science in Pay Band – III at Tinsukia Bengali Girls Higher Secondary School are found to be fulfilled to be treat the resignation as a technical formality for extension of the benefits of past service and pay fixation. This Court finds no justification to the contention advanced by the State respondents to the effect that the case of resignation of the petitioner would not come within the ambit of technical resignation when the highest authority in the School Education Department pursuant to the Advertisement dated 26.12.2023 with the Addendum dated 16.10.2024 issued No Objection

Certificate *en masse* to all working teachers under the Directorate of Secondary Education, Assam to apply in response to the same.

26. Therefore, the contention advanced on behalf of the respondent authorities that the case of the petitioner could not be treated as a case of technical resignation is found untenable and is discriminatory, when examined qua the applicants responding to the Advertisement dated 26.12.2023. The case of the petitioner, due to the reasons assigned above, is to be treated as a case of technical resignation for all intents and purposes, and therefore, the petitioner is entitled to the benefits of past service rendered in the post of Graduate Teacher [Arts] in G.B. Chowkhani Higher Secondary School, District – Tinsukia are to be considered for the purpose of pay fixation in the present post of Post Graduate Teacher in Political Science in terms of F.R. 22[I][a][1] or F.R. 22[I][a][2], as the case may be, depending on the decision taken by the respondent authorities with regard to the post of Graduate Teacher [Arts] with Pay Band – II vis-à-vis the post of Post Graduate Teacher in Pay Band – III.

27. By an Office Memorandum issued by the Pension and Public Grievances Department, Government of Assam on 01.02.2021, the State Government has extended the benefit of 'Retirement Gratuity and Death Gratuity' to the State Government employees covered by the New Defined Contribution Pension System [National Pension System]. It has been provided that the Government employees covered by the National Pension System shall be eligible for the benefit of 'Retirement Gratuity and Death Gratuity' on the same terms and conditions, as are applicable to employees covered by the Assam Services [Pension] Rules, 1969.

28. The petitioner by the Order of Appointment dated 12.02.2014 in the post of Graduate Teacher was brought under the New Defined Contribution Pension System [NPS]. On acceptance of resignation and pursuant to the Release Order on 26.02.2024, the petitioner was issued the Last Pay Certificate mentioning the pay and allowances entitled on 26.02.2024. Therefore, the issue of grant of Retirement Gratuity and Death Gratuity in case of the petitioner is covered by the Office Memorandum dated 01.02.2021 of the Pension and Public Grievances Department, Government of Assam, treating the petitioner's case of resignation as a case of technical formality. Therefore, the petitioner is eligible for the benefit

of Retirement Gratuity and Death Gratuity on the same terms and conditions, as applicable under the Assam Services [Pension] Rules, 1969.

29. In so far as the contention of the petitioner regarding restoration of her seniority in the post of Post Graduate Teacher on and from 25.05.2023 on which date eighteen nos. of selected candidates in different subjects were appointed as Post Graduate Teachers including Smti. Gayatree Saikia as a Post Graduate Teacher in Political Science is concerned, this Court is of the considered view that the matter of restoration of such seniority of the petitioner on and from 25.05.2023, instead on the basis of the Order of Appointment dated 21.02.2024, involves the issue of inter-se seniority also, and in the absence of the remaining seventeen nos. of selected candidates, other than Smti. Gayatree Saikia, in the present writ proceeding, such contention is not to be gone into as those selected candidates should at least have been arrayed as parties or some of them at least in the intransitive capacity.

30. In view of the discussion made above and for the reasons assigned therein, this Court is of the considered view that as the resignation of the petitioner is to be treated as technical formality, the petitioner is entitled to the benefits of past service rendered as Graduate Teacher [Arts] in G.B. Chowkhani Higher Secondary School for the purpose of pay fixation in the present post of Post Graduate Teacher in Political Science of Tinsukia Bengali Higher Secondary School in terms of F.R. 22[I]. In addition, the benefit of Retirement Gratuity and Death Gratuity is to be extended to the petitioner in terms of the Assam Services [Pension] Rules, 1969. It is, therefore, directed that the respondent authorities shall complete the above formalities in the above terms to extend the benefits of past service for pay fixation in the present post of Post Graduate Teacher on the basis of the Order of Appointment dated 21.02.2024 strictly in terms of F.R. 22[I] and Retirement Gratuity and Death Gratuity by passing a speaking order within a period of three months from the date of submission of a certified copy of this Order at the Office of the respondent no. 2.

31. The writ petition stands allowed to the extent, indicated above. There shall, however, be no order as to cost.

JUDGE

Simanta Das

Digitally signed by Simanta Das
DN: c=IN, o=Personal, postalCode=783384, l=Bongaigaon, st=Assam, street=TownAbhayapuri, Ward No4 Tengnamari , Bongaigaon, Bongaigaon Assam India 783384, title=8727, 2.5.4.20=caa9a1c0be943e0740ca5dfbbfb8695db6814b46202926df0aea3036caed4e3c, serialNumber=d950a33227bd4a5ce185958e9d34bdfd7c09a2ca0a1f463628d94fa581ffcb03, email=simnds08@gmail.com, cn=Simanta Das
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Comparing Assistant