

A ASSAM MADHYAMIK SIKSHAK ARU
KARMACHARI SANSTHA, NAGAON

v.

THE STATE OF ASSAM AND ORS.

B APRIL 30, 1996

[K. RAMASWAMY AND G.B. PATTANAIAK, JJ.]

Service law :

C *Assam Secondary Education (Provincialisation) Act, 1977 :*

D *Section 4—Teachers working in aided institutions taken over by Government—Recognised to be the existing employees with reference to the appointed day—Those who opt to retire on attaining the age of 58 years entitled to pension—Those who opt to continue till the completion of 60 years entitled to CPF—In the absence of Rules no option given to teachers and they continued in service till completion of 60 years—Teachers who remained in service after the appointed day and were yet to complete the age of 60 years—Government treating them as entitled to pension—Held, those who continued till 60 years and withdrawn their CPF should redeposit the same to the credit of the Government—On such deposit being made State directed to treat them on par with those teachers entitled to pension as per the draft Rules now made—They should be treated as if they were Government teachers on the appointed day—Entitled to pensionary and other benefits admissible to them.*

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8854 of 1996.

From the Judgment and Order dated 27.9.94 of the Assam High Court in W.A. No. 90 of 1994.

G P.K. Goswami, Rajiv Mehta, C.K. Sasi and Kailash Vasdev for the Appellant.

S.N. Chaudhri and S.A. Syed for the Respondents.

H The following Order of the Court was delivered :

We have heard learned counsel on both sides.

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Leave granted.

This appeal by special leave arises from the order dated September 27, 1994 made in W.A. No. 90/94. As regards the validity of Section 4(3) of the Assam Secondary Education (Provincialisation) Act, 1977 (Assam Act No. XIX of 1977) (for short, the 'Act') which deals with teachers working in the aided institutions taken over by the Government under the State Act with effect from the appointed day who were recognised to be the existing employees with reference to the appointed day. Sub-section (3) of Section 4 envisages that notwithstanding anything in the preceding section, all employees other than Grade IV employees of a Secondary School coming within the purview of the Act, shall retire on superannuation of 58 years. Grade V employees on attaining the age of 60 years, shall get superannuated. But such of those teachers who intend to continue on service beyond 58 years, are required to exercise their option either to the Pension Scheme or to the payment of C.P.F. Scheme. Such of the teachers who opt to retire on attaining the age of 58 years, shall be entitled to the payment of pension and those who opt to continue till the completion of 60 years, are entitled to the C.P.F. The discrimination is discriminably based on policy. No fault can be found in this behalf. Teachers of the Provincialised Secondary Schools who had not exercised their option for either of the scheme, were deemed to have not exercised their option for the latter scheme and are required to retire on attaining the age of 58 years.

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It is the case of the appellant-Association of teachers that since Rules have not been made, no option has been given to the teachers and they remained in service till completion of 60 years. In the case of teachers who had remained in service after the appointed day and were yet to complete the age of 60 years, the State Government itself has resolved to treat them as Government teachers entitled to pension on attaining the age of 58 years but the salary paid to such teachers would not be recovered from them.

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In view of the above resolution, it is contended by Mr. P.K. Goswami, learned senior counsel appearing for the Association, that the same benefit may be given to the teachers who continued as teachers on appointed day, namely, October 1, 1977 and those who remained in service till attaining 60 years be treated as Government employees entitled to the benefit of the pension. The admitted position is that they had already withdrawn their

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- A C.P.F. which was due to them after their attaining the age of 60 years. Such of the teachers who had withdrawn the C.P.F. should re-deposit the same to the credit of the government. On such deposit being made, the State is directed to treat them at par with the second category of teachers as per the draft Rules now made and to treat them as if they are the Government teacher on the appointed day and on that basis, they would be entitled to pensionary benefits as applicable to all the Government employees who would retire on attaining the age of 58 years and other benefits admissible to them.
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The appeal is accordingly disposed of. No costs.

C G.N.

Appeal disposed of.