

GAHC010054672023



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

**Case No. : WP(C)/1630/2023**

RATUL DAS AND 9 ORS  
S/O LT. DHIREN DAS VILL. BHURAPARA P.O. BHAGAWATIPARA DIST.  
KAMRUP ASSAM PIN 781122

2: SAMAR RABHA  
VIL. CHUKANIPARA P.O. SINGRA DIST. KAMRUP ASSAM PIN 781135

3: SANJOY SUTRADHAR  
S/O SUSHEN SUTRADHAR VILL. SIMILA P.O. SIMILA DIST. KAMRUP  
ASSAM PIN 781135

4: HEMEN KUMAR  
S/O LT. BHUPEN KUMAR VILL. SALESALA P.O. BANGARA DIST. KAMRUP  
ASSAM PIN 781017

5: HENDRY CHALLANG S SANGMA  
S/O CHAMBERLINE U MARAK VILL. GLHALKONA P.O. GOHALKONA  
DIST. KAMRUP ASSAM PIN 781123

6: DIPANKAR RABHA  
S/O SHRI BALEN RABHA VILL. MAJPARA P.O. KHALIHA DIS. KAMRUP  
ASSAM PIN 781123

7: JYOTISH DAS  
S/O NAGEN DAS VILL. PITAMBAR HATBAJALI. P.O. PITAMBAR  
HATBAJALI DIST. KAMRUP ASSAM PIN 781354

8: BAARKAT ALI  
S/O LT. KHINARUDDIN VILL. NO. 1 BARUAPATHAR P.O. BARUAPATHAR  
DIST. KAMRUP ASSAM PIN 781136

9: MINTU MEDHI  
S/O HEM CH. MEDHI VILL. KALUBARI P.O. MAGARBERA DIST. KAMRUP  
ASSAM PIN 781127

10: ANANDA MAZUMDAR  
S/O LT. SUBAL MAZUMDAR VILL. NANGTU JUGIPARA P.O.  
MALIBARIBAZAAR DIST. KAMRUP ASSAM PIN 78113

VERSUS

THE STATE OF ASSAM AND 12 ORS  
REP BY THE SECRETARY TO THE GOVT. OF ASSAM DEPTT. OF  
EDUCATION DISPUR GUWAHATI 6

2:THE DIRECTOR OF SECONDARY EDUCATION ASSAM  
KAHILIPARA GUWAHATI 19 ASSAM

3:THE INSPECTOR OF SCHOOLS  
KAMRUP  
AMINGAON  
GUWAHATI 31 ASSAM

4:THE HEAD MASTER  
MADHAB DEV GIRLS HIGH SCHOOL BHAGAWATI PARA P.O. BATORHAT  
KAMRUP ASSAM PIN 781132

5:THE HEAD MASTER  
SINGRA HIGH SCHOOL  
SINGRA P.O. SINGRA KAMRUP ASSAM PIN 781135

6:THE HEAD MASTER  
TARABARI HIGH SCHOOL  
SIMINA TARABARI P.O. SIMINA KAMRUP ASSAM PIN 781135

7:THE HEADMASTER  
SRI SANKAR DEV HIGH SCHOOL BANGARA P.O. BANGARA KAMRUP  
ASSAM PIN 781015

8:THE HEADMASTER  
GOHALKONA HIGH SCHOOL GOHALKONA P.O. GOHALKONA KAMRUP  
ASSAM PIN 781123

9:THE HEADMASTER  
KHALIHA HIGH SCHOOL  
KHALIHA P.O. KHALIHA BOKO KAMRUP ASSAM PIN 781135

10:THE HEADMASTER  
RANGIA GIRLS HIGHER SECONDARY SCHOOL RANGIA P.O. RANGIA  
KAMRUP ASSAM PIN 781354

11:THE HEADMASTER

PRABIN KR. CHOUDHURY HIGH SCHOOL BARUAPATHAR P.O. BOKO  
KAMRUP ASSAM PIN 781136

12:THE HEADMASTER  
SANKAR DEV HIGH SCHOOL  
KALUBARI P.O. KALUBARI KAMRUP ASSAM PIN 781127

13:THE HEADMASTER  
NO. 2 JOGIPARA L B S HIGHER SECONDARY SCHOOL P.O.  
MALIBARIBAZAR BOKO KAMRUP ASSAM PIN 78113

**Advocate for the Petitioner** : MS. N S THAKURIA

**Advocate for the Respondent** : SC, SEC. EDU.

**BEFORE**  
**HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

**ORDER**

**22.03.2023**

Heard Ms. N S Thakuria, learned counsel for the petitioners and Mr. SMT Chistie, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1 to 3.

**2.** Petitioners herein are serving as Grade-IV/Chowkidars in their respective secondary schools on the basis of the resolutions adopted by the School Managing Committees (SMC) of each school.

**3.** It is submitted by them that there are vacant sanctioned post of Grade-IV/Chowkidar in the schools, where they are serving and as such, they have filed this writ petition on 20.03.2023, praying for a direction to the respondent authorities in the Secondary Education Department to appoint/absorb them permanently in the vacant post of Grade-IV in their respective schools considering their length of service and also on the basis of the resolutions adopted by the SMCs of the said schools.

**4.** In this regard, it is placed before the Court that the petitioner No. 1 is working honorarily as Grade-IV Chowkidar in Madhav Dev High School, Bhagabatipara, since 31.05.2015 till date, on the basis of the resolution adopted on 27.05.2015 by the SMC

of the said school.

**5.** Petitioner No. 2 is working honorarily as Grade-IV Chowkidar in Singra High School, Singra since 2013 without any break as per the resolution of the SMC of the said school.

**6.** Petitioner No. 3 is working honorarily as Grade-IV Chowkidar in Tarabari Anchalik High School, Simila Tarabari since 11.09.2014 till date without any break as per the resolution of the SMC of the said school.

**7.** Petitioner No. 4 is working honorarily as Grade-IV Chowkidar in Sri Sankardev High School, Bangara since 04.07.2016 till date without any break as per the resolution of the SMC of the said school.

**8.** Petitioner No. 5 is working honorarily as Grade-IV Chowkidar in Gohalkona High School, Gohalkona since 15.03.2018 till date without any break as per the resolution of the SMC of the said school.

**9.** Petitioner No. 6 is working honorarily as Grade-IV Chowkidar in Khaliha High School, Khaliha, Boko since December, 2019 till date without any break as per the resolution of the SMC of the said school.

**10.** Petitioner No. 7 is working honorarily as Grade-IV Chowkidar in Rangia Girls' Higher Secondary School, Rangia since 05.09.2012 till date without any break as per the resolution of the SMC of the said school.

**11.** Petitioner No. 8 is working honorarily as Grade-IV Chowkidar in Prabin Kr Choudhury High School, Baruapther, Boko since 01.01.2007 till date without any break as per the resolution of the SMC of the said school.

**12.** Petitioner No. 9 is working honorarily as Grade-IV Chowkidar in Sankar Dev High School, Kalubari since 05.06.2014 till date without any break as per the resolution of the SMC of the said school.

**13.** Petitioner No. 10 is working as honorary Chowkidar in No. 2 Jogipara LBSA Higher Secondary School, Malibari Bazar since 25.08.2009 till date without any break.

**14.** It is also contended by the petitioner No. 8 that his late father Khinaruddin

Dewani during his life time donated 13 Bighas of land to said Prabin Kr Choudhury High School, Barua Pathar, over which the said school is now established.

**15.** On being enquired, it is placed before the Court that except the Sankardev High School, Bangara, other nine secondary schools are under the Inspector of Schools, Kamrup, whereas the said Sankardev High School is under the Inspector of Schools, Kamrup (Metro) and that all these ten secondary schools are provincialised secondary schools of the State where the SMCs of those provincialised secondary schools by their respective resolutions appointed the petitioners as honorary Grade-IV/ Chowkidar in these schools.

**16.** Prior to the coming into force of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, a statutory Rule under Article 309 of the Constitution of India regulating the recruitment and service conditions of teaching and non-teaching staff appointed to the Assam Secondary Education (Provincialised Schools) Services that came into force w.e.f. 10.10.2019; the Assam Secondary Education (Provincialised) Service Rules, 2003 that came into force w.e.f. 12.08.2003, which was also a statutory Rule under Article 309 of the Constitution of India regulating the recruitment and service conditions of the persons appointed to the Assam Secondary Education (Provincialised) Service Rules was in force up to 09.10.2019.

**17.** Rule 4 of said 2003 statutory Rules provides for Method of Recruitment to the Class-IV posts in such provincialised secondary schools of the State, which are to be made by way of direct recruitment through written test along with Viva-voce, following the provisions of the Article 14 and 16 of the Constitution of India by due process of advertisement and selection and collecting the names from the District Employment Exchange.

**18.** In the case in hand, the petitioners have been appointed by the School Managing Committee of the respective provincialised Secondary Schools, without any advertisement and selection, that too in violation of the provisions of the Statutory Recruitment Rules, namely, the Assam Secondary Education (Provincialised) Service Rules, 2003 during its force.

**19.** A Division Bench of this Court in the case of *Md. Abdul Bari -Vs- State of Assam and Ors.* reported in 1999 (3) GLT 31 with regard to regularization of honorary Teacher in a provincialised secondary school appointed by the Managing Committee of the school and approved by the concerned Inspector of Schools, have held that– *every eligible person is entitled to a chance to be selected. If such chance is not made available to such persons in general, undoubtedly it will be violative of Article 16 of the Constitution. By the device adopted, to by pass the statutory rules for direct recruitment, the right of all other eligible persons to be considered for appointment, cannot be done away with. They cannot be deprived of such opportunity to be candidates for regular appointments. If such deviation is allowed to be continued, opportunity for employment will be reduced to a selected few depriving majority of other eligible persons entitled for consideration on merit. As indicated above, as a matter of fact there is no such provision for appointment of honorary teachers, any provision for regularisation as well. Therefore, it is difficult to uphold the claim of the petitioner appellant only on the basis that the management allowed him to work in honorary capacity without backing of any provision under the law.*

**20.** In the case of *State of Karnataka and Ors. -Vs- Umadevi (3) and Ors.* reported in (2006) 4 SCC 1 decided on 10.04.2006, a Constitution Bench of the Hon'ble Apex Court categorically held that any such appointment made in violation of the provisions of the Articles 14 and 16 of the Constitution of India and in violation of the relevant statutory recruitment Rules is illegal, which cannot be considered even for one time process of regularization.

**21.** In the said case of *Umadevi (3) (Supra)*, the Hon'ble Apex Court however allowed the authorities of the State to initiate a process for regularization of only the irregularly appointed persons serving for more than 10 years prior to the date of the said judgment, who were serving without any order from the Court.

**22.** In the said judgment itself, the Hon'ble Apex Court observed that henceforth i.e., from the date of passing of the said judgment on 10.04.2006, the authorities concerned in any aspect shall not fill up any public post in violation of any statutory Rules in force.

**23.** In the case in hand, we have already noticed that the petitioners have been appointed as honorary Grade-IV/Chowkidars by the School Managing Committees of their respective schools, where all those ten schools are already provincialised schools under the Government and the post of Grade-IV/Chowkidar in these provincialised schools are public post which have to be filled up by way of direct recruitment following the procedure laid down in the relevant Statutory Recruitment Rules, i.e., said 2003 statutory Rules, noted above, during its force or by following the provisions of said 2018 recruitment Rules, noted above.

**24.** As the School Managing Committees of these ten provincialised schools, named above, have appointed the petitioners without any authority and jurisdiction and further, as the appointments of the petitioners in violation of the statutory Rules of recruitment being illegal, the prayers of the petitioners for regularization of their services cannot be considered and accordingly stand rejected.

**25.** For the reasons above, this writ petition being devoid of merit, stands dismissed.

**JUDGE**

**Comparing Assistant**