

GAHC010054882022



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

Case No. : WP(C)/2087/2022

MD. ALTAB UDDIN
PRESENTLY SERVING AS NIGHT CHOWKIDAR AT JALALPUR BLOCK
PRIMARY HEALTH CENTRE, CACHAR, S/O- LATE KUSHID ALI, VILL-
TARAPUR, PO JALALPUR, DIST. CACHAR, ASSAM, PIN- 788816

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY, TO THE GOVT. OF ASSAM,
DEPARTMENT OF HEALTH AND FAMILY WELFARE, ASSAM CIVIL
SECRETARIAT, DISPUR, GUWAHATI, ASSAM PIN- 781006.

2:THE DIRECTOR HEALTH SERVICE
ASSAM
HENGRABARI
GUWAHATI
ASSAM
PIN- 781036.

3:THE JOINT DIRECTOR OF HEALTH SERVICES
CACHAR
SILCHAR
ASSAM
PIN- 788003.

4:THE SUB-DIVISIONAL MEDICAL AND HEALTH OFFICER
JALALPUR PRIMARY HEALTH CENTRE
JALALPUR
CACHAR
ASSAM
PIN- 788816.

5:THE CHAIRMAN
HOSPITAL MANAGEMENT COMMITTEE
JALALPUR PRIMARY HEALTH CENTRE
JALALPUR
CACHAR
ASSAM
PIN- 788816.

6:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF FINANCE
ASSAM CIVIL SECRETARIAT
DISPUR
GUWAHATI
ASSAM
PIN- 781006

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

ORDER

19.01.2023

Heard Mr. B. Purkayashtha, learned counsel for the petitioners and Mr. D.P. Borah, learned Standing Counsel for the Health Department. This order will dispose of both the writ petitions.

[2.] The petitioner No. 1 in WP(C) No. 4773/2017 is the Silchar Medical College and Hospital Contractual Workers and Employees Union, which is registered under the Trade Unions Act, 1926 and the petitioner No. 2 is the Secretary of the Union. The lone petitioner in WP(C) No. 2087/2022 is working as a Night Chowkidar in Jalalpur Public Health Centre (PHC) on temporary basis and on fixed honorarium since

01.10.2005. It is the case of the petitioners in both the writ petitions that they are entitled to be given the minimum scale of pay given to regular employees in terms of the Notification dated 03.10.2019 issued by the Govt. of Assam in the Finance (EX-II) Department pursuant to the passing of the order dated 08.06.2017 by a Division Bench of this Court in Writ Appeal No. 45/2014 (*State of Assam -Vs- Upen Das & Others*).

[3.] A reference has been made by the learned counsels appearing for the rival parties that a similar matter i.e., WP(C) No. 7711/2016 filed by certain employees who were contractual workers being aggrieved with the dismissal of the writ petition vide order dated 05.12.2017 approached the Writ Appellate Court by filing Writ Appeal No. 206/2018. The Writ Appeal was taken up for final consideration on 25.08.2022 and was disposed of by remanding the matter back to the Writ Court for reconsideration and appropriate adjudication on the claim made by the petitioners therein. The Writ Petition i.e., WP(C) No. 7711/2016 finally came to be disposed of vide Judgment & Order dated 10.11.2022 wherein, it was held that out of the 29 writ petitioners, only 5 (five) of them were getting fixed wages and therefore, the case of *Upen Das & Others* (supra) would only cover the case of the 5 (five) petitioners. As for the remaining writ petitioners who were found to have been engaged by the Hospital Management Society, they were given the liberty to submit their representations before the Superintendent of the Hospital concerned with regard to their claim for payment of minimum scale of pay and the Hospital Management Committee was directed to

consider the same within a time from of 3 (three) months from the date of receipt of a copy of the order as well as the representation.

[4.] The learned counsel for the petitioners submits that the petitioners in the present case are also similarly situated and the Judgment & Order dated 10.11.2022 squarely covers their case. As such, a similar direction may be issued in the present case as well. Mr. D.P. Borah, learned Standing Counsel for the Health Department also submits that the case of the present petitioners are squarely covered by the said Judgment and Court may accordingly pass appropriate order as it deemed fit and proper.

[5.] Upon hearing the learned counsels for the parties and on perusal of the materials available on record, including the Judgment & Order dated 10.11.2022 passed in WP(C) No. 7711/2016, it is found that the case of the present petitioners are also squarely covered by the said Judgment. As such, the petitioners shall file their respective individual representations before the Hospital authority concerned within a period of 3 (three) weeks from today with regard to their claim of payment of minimum scale of pay. The concerned Hospital authority shall thereafter consider the claim made and take a decision within a period of 3 (three) months from the date of receipt of the representation and a certified copy of this order.

[6.] With the above observations and directions, the writ petitions are disposed of.

JUDGE

Comparing Assistant