

GAHC010108642023



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

Case No. : WA/208/2023

SANJAY BARMAN AND 7 ORS.
(ASSISTANT TEACHER OF PROTAPGANJ HIGH SCHOOL), S/O- LT.
MAHESWAR BARMAN, R/O- VILL. PURNI, P.O.- KACHAKHANA, P.S.-
GOLAKGANJ, DIST.- DHUBRI, PIN- 783334.

2: DIPANKAR PRODHANI
(ASSISTANT TEACHER OF 1931 NO. GAIKHOWA MAZARCHAR LP
SCHOOL)

S/O- LT. KANTESWAR PRODHANI

R/O- VILL.- LAKHIMARI PT-III

P.O.- DHUBRI
ASSAM
PIN- 783334.

3: AMINUR RAHMAN AHMED
(HEAD MASTER OF 342 NO. RAJARHAT LP SCHOOL)

S/O- LT. SABEDUR ALI AHMED

R/O- VILLAGE- DIGHALTARI

P.O.- DIGHALTARI
P.S.- GOLAKGANJ

DIST.- DHUBRI
ASSAM. PIN- 783335.

4: AJIT KUMAR CHOUDHURY
(ASSISTANT TEACHER OF 735 NO. KUTI BHAMANDANGA L.P. SCHOOL)

S/O- RAMDULER CHOUDHURY

P.O.- JHAPUSABARI
P.S.- GOLAKGANJ

DIST.- DHUBRI
PIN- 783335.

5: SAHIDA BEGUM
(ASSISTANT TEACHER OF KONARCHAR L.P. SCHOOL)
D/O- LT. SAHAJUL HOQUE MONDAL
R/O- VILLAGE- KHALISAMARI
P.O.- PIAZBARI
P.S.- SOUTH SALMARA
DIST.- SOUTH SALMARA
PIN- 783128.

6: ABDUL ROFIQUE MOLLAH
(HEAD MASTER OF 2123 NO. SOUTH MONULLAPARA LP SCHOOL)
S/O- LT. ABDUL AZIZ MOLLAH
R/O- VILLAGE- MONULLAPARA
P.O.- MONULLAPARA
P.S.- SOUTH SALMARA
DIST.- SOUTH SALMARA
PIN- 783135.

7: ABDUL WAHAB SK.
(ASSISTANT TEACHER OF SOUTH DANGA M.E. MADRASA)

S/O- LT. AMAL UDDIN SK.

R/O- VILL. SOUTH SALMARA

P.O. FEKAMARI
P.S.- SOUTH SALMARA

DIST.- SOUTH SALMARA
PIN- 783135.

8: SAHAJAMAL HOQUE
(ASST. TEACHER OF KALDOBA M.E. SCHOOL)

S/O- LT. MOZIBOR RAHMAN

R/O- VILL. BANIAMARI

P.O.- SAHEBGANJ
P.S. GOLAKGANJ

DIST.- DHUBRI
PIN- 783331

VERSUS

THE STATE OF ASSAM AND 3 ORS. H
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR, GUWAHATI-781006.

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
ASSAM.

4:INSPECTOR OF SCHOOLS
DHUBRI DISTRICT CIRCLE
DHUBRI
ASSAM

Advocate for the Petitioner : MR. M BHAGABATI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 19-07-2023

(Sandeep Mehta, CJ)

1. This intra-court writ appeal is directed against the judgment dated 08.02.2023 rendered by the learned Single Bench in WP(C) 613/2023 jointly filed by the appellants herein seeking directions upon the respondent authorities to provide financial benefits to the appellants/writ petitioners under the New Pension Scheme.

2. We have considered the arguments advanced by the learned counsel

representing the parties and have gone through the impugned judgment as well as other material placed on record.

3. There is no dispute on the fact that the appellants herein are all candidates who were appointed on compassionate basis pursuant to the deaths of their respective fathers, who were erstwhile government servants, in harness. Learned counsel for the appellants Mr. Bhagabati has vehemently and fervently contended that the appointments of the appellants/writ petitioners were effectively made right on the date on which the District Level Committee recommended the cases of the appellants for appointment on compassionate basis vide list dated 03.08.2004 (Annexure-1). Thus, as per Mr. Bhagabati, the mere fact that the actual appointment orders came to be issued after coming into force of the New Pension Scheme would not act to the detriment of the appellants in their right to claim benefits of Old Pension Scheme prevailing since 1969. As per Mr. Bhagabati, the appointments of the appellants/writ petitioners are required to be considered as relating back to the date of recommendation and, hence, the appellants herein are entitled to the relief claimed by them.

In support of his submissions, Mr. Bhagabati has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***P. Ranjitharaj vs. The State of Tamil Nadu and Ors.***, reported in ***MANU/SC/0538/2022***, and the judgment of a Division Bench of this court in WP(C) 7369/2021 (***Sanjay Kumar and Ors. Vs. The Union of India and Ors.***), reported in ***MANU/GH/0065/2022***.

4. Per contra, Mr. R. Mazumdar, learned Standing Counsel, Elementary Education Department, Assam, has vehemently and fervently opposed the submissions advanced by Mr. Bhagabati. He urged that mere recommendation of the appellants' names by the District Level Committee did not confer any right of appointment upon the appellants/writ petitioners and their entry into Government service was crystallised only with the issuance of the appointment orders, which

came to be issued well after coming into force of the New Pension Scheme. He thus urged that the appellants are not entitled to the relief claimed for and that the writ petition was rightly dismissed by the learned Single Bench.

5. We have given our thoughtful consideration to the submissions advanced at the Bar and the material on record.

6. Suffice it to say that the judgments in the cases of **P. Ranjitharaj** (supra) and **Sanjay Kumar** (supra), which were heavily relied upon by Mr. Bhagabati in support of the case set up on behalf of the appellants relate to selections on encadred posts pursuant upon advertisement. In both the cases the selections were completed but appointment orders could not be issued for reasons not attributable to the employees concerned and hence they were given retrospective benefits of service. However, in the present case, the appellants claimed appointment on compassionate basis pursuant to passing away of their fathers in harness. Law is well settled that compassionate appointment is not a matter of right and is an exception to the general mode of recruitment to a government post which must be filled up by open advertisement. The appellants herein were recommended for compassionate appointment by the District Level Committee concerned somewhere in the year 2003/2004. However, the authority competent to take a final decision on the claim for appointment on compassionate basis is the State Level Committee. It is not in dispute that the State Level Committee considered the cases of the appellants and held them entitled for compassionate appointment and, thereafter, orders of appointment were issued in the year 2008 onwards. Manifestly, thus, the appellants were born into government service much after coming into force of the New Pension Scheme and, hence, they are not entitled to claim benefits of the Old Pension Scheme.

7. In view of the above discussion, we are of the opinion that the order passed

by the learned Single Bench *ex facie* does not suffer from any infirmity warranting interference in this intra-court appeal, which is dismissed as being devoid of merit.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant