

GAHC010021812015



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

Case No. : WP(C)/5761/2015

MANJU BEGUM
W/O LT. ABDUL KADER, R/O HASILAPARA, W/NO.13, P.O. and P.S.
GOALPARA, DIST- GOALPARA, ASSAM, PIN-783101

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, URBAN DEVEL. DEPTT.,
DISPUR, GHY-6

2:THE DIRECTOR
URBAN DEVEL. DEPTT.
GOVT. OF ASSAM

3:THE GOALPARA MUNICIPAL BOARD
REP. BY ITS CHAIRMAN
O/O THE MUNICIPAL BOARD
GOLAPARA
ASSAM
PIN-783101

4:THE EXECUTIVE OFFICER
GOALPARA MUNICIPAL BOARD
GOLAPARA
ASSAM
PIN-78310

Advocate for the Petitioner : MR.M PHUKAN

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/1942/2017

ELIZA BEGUM
W/O A.B. MUKARRAM ALI ALIPARA
WARD NO. 4
SWARAJ ROAD
GOALPARA
ASSAM PIN - 783101

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
MUNICIPAL and ADMINISTRATION DEPARTMENT
DISPUR
GUWAHATI -6.

2:GOALPARA MUNICIPAL BOARD

REP. BY ITS CHAIRMAN
GOALPARA
ASSAM
3:THE EXECUTIVE OFFICER

GOALPARA MUNICIPAL BOARD
GOALPARA
ASSAM

Advocate for : MR.M P SARMA
Advocate for : MR.D SAIKIA R-2 appearing for THE STATE OF ASSAM and 2 ORS.

Linked Case : WP(C)/6425/2015

JAGADISH CH. ROY and 9 ORS.
S/O LT. UTTAM CH. ROY
MILAN NAGAR
WARD NO. 15
P.O. BALADMARI PIN - 783121
P.S. and DIST. GOALPARA
ASSAM.

2: FAZILA BEGUM

W/O LT. AMANUDDIN AHMED
BHATIPARA
W/NO. 11
P.O. GOALPARA
PIN - 783101
P.S and DIST. GOALPARA
ASSAM.

3: PRABHABATI DAS
W/O LT. GANESH DAS
NEW GOALPARA BIHU FIELD W/NO. 17
P.O. BALADMARI
PIN - 783121
P.S. and DIST. GOALPARA
ASSAM.

4: GIRI BALA DAS

W/O SRI SUBADH CH. DAS TILAPARA
WARD NO. 8
P.O. GOALPARA
PIN - 783101
P.S. and DIST. GOALPARA
ASSAM.

5: SMTI. TRIPTI PATHAK
W/O LT. DAMODAR PATHAK BAMUNPARA
W/O NO. 6
P.O. GOALPARA
PIN - 783101
P.S. and DIST. GOALPARA
ASSAM.

6: MUNIA SHEIKH
S/O LT. USMAN ALI MOILA PUTA BAZAR
W/NO. 19
P.O. BALADMARI PIN- 783121
P.S. and DIST. GOALPARA
ASSAM.

7: NAIM ALI
S/O LT. AKKESH ALI MOILA PUTA BAZAR
W/NO. 19
P.O. BALADMARI
PIN - 783121
P.S. and DIST. GOALPARA
ASSAM.

8: KAMOR ALI
S/O LT. HAMID SHEIKH W/NO. 19
P.O. BALADMAIR
PIN - 783121
P.S. and DIST. GOALPARA
ASSAM.

9: RANJITA HAJONG

W/O LT. ARJUN HAJONG
PUB-PAHARTOLI
W/NO. 2
P.O. GOALPARA
PIN - 783101
P.S. and DIST. GOALPARA
ASSAM.

10: TAHERA HUSSAIN
W/O LT. MOKHTAR HUSSAIN AMBARI
WARD NO. 4
P.O. GOALPARA
PIN - 783101
P.S. and DIST. GOALPARA
ASSAM.
VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE CHIEF SECRETARY
GOVT. OF ASSAM
DISPUR
GUWAHATI-6.

2:THE PRINCIPAL SECRETARY TO THE
GOVT. OF ASSAM
URBAN DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. FO ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI - 781006
ASSAM.

4:THE DIRECTOR MUNICIPAL ADMINISTRATION
ASSMA
DISPUR
GUWAHATI -6.

5:THE GOALPARA MUNICIPAL BOARD

REP. BY ITS CHAIRMAN
GOALPARA
DIST. GOALPARA
ASSAM
PIN - 783101.
6:THE EXECUTIVE OFFICER

GOALAPRA MUNICIPAL BOARD
DIST. GOALAPRA
ASSAM PIN- 783101
7:THE DEPUTY COMMISSIONER

GOALPARA
DIST. GOALPARA
ASSAM
PIN - 783101.

Advocate for : MR.A CHETRY
Advocate for : GA
ASSAMR1
2-7 appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/2163/2009

BINOD CH. KALITA AND ORS.
S/O LT. SIBA KANTA KALITA
SANITARY INSPECTOR RETD R/O NEW GOALPARA
P.O.AND DIST GOALPARA.

2: AKASHMOY DAS PURAKAYASTHA
S/O LATE RATINDRA DAS
EURAKAYASTHA HEAD PLUMBERRETD
R/O ASHOK NAGAR
P.O.-and DIST- GOALPARA

3: SRI DIPANDRA DAS
S/O LATE KUMUDESWAR DAS
R/O WARD NO. 6
GOALPARA TOWN
P.O. and DIST- GOALPARA
ASSAM
PIN-783001.

4: MUSTT. SALEHA KHATOON
W/O LATE ABDUSH SHATTAR

RETD. TAX COLLECTOR OF GOALPARA MUNICIPAL BOARD
R/O GOALPARA
DIST- GOALPARA

5: MANIK SEIKH
S/O LATE ABIMUDDIN SEIKH
TRACTOR DRIVER RETD
R/O GOALPARA
DIST- GOALPARA
VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE SECY. TO THE GOVT.OF ASSAM
MUNICIPAL AND ADMINISTRATION DEPTT
DISPUR
GHY-6

2:GOALPARA MUNICIPAL BOARD

REPRESENTED BY ITS CHAIRMAN
GOALPARA ASSAM
3:THE EXECUTIVE OFFICER
GOALPARA MUNICIPAL BOARD
GOALPARAASSAM

Advocate for : MR.U K NAIR

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND ORS

Linked Case : WP(C)/4702/2014

SMTI MORJINA BEGUM
W/O- LT. SHARIF HUSSAIN
R/O- NEW BAKURPARA
P.O.
P.S. and DIST.- GOALPARA
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
MUNICIPAL ADMINISTRATION DEPTT.
DIPSUR
GHY- 6.

2:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.

DISPUR

GHY- 6.

3:THE DIRECTOR
MUNICIPAL ADMINISTRATION DEPTT.

DISPUR

GHY- 6.

4:THE DY. COMMISSIONER
GOALPARA

DIST.- GOALPARA

ASSAM.

5:THE EXECUTIVE OFFICER
GOALPARA MUNICIPALITY

GOALPARA

ASSAM.

6:THE MUNICIPAL BOARD
GOALPARA

REP. BY ITS CHAIRMAN / CHAIRPERSON

DIST.- GOALPARA

ASSAM.

Advocate for : MR. M K BORAH

Advocate for : MS.L SHARMAR-5and6 appearing for THE STATE OF ASSAM AND
5 ORS

Linked Case : WP(C)/4756/2016

AKTARA BANU
W/O- LT. HADI HUSSAIN
R/O- HATIPARA
AZAD ROAD TINIALI
WARD NO. 10
DIST.- GOALPARA
ASSAM- 783101.

VERSUS

THE STATE OF ASSAM AND 2 ORS
THROUGH THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
MUNICIPAL ADMINISTRATION DEPTT.
DISPUR
GHY- 6.

2:THE CHAIRMAN
GOALPARA MUNICIPAL BOARD
P.O.

P.S. and DIST.- GOALPARA
ASSAM.

3:THE EXECUTIVE OFFICER
GOALPARA MUNICIPAL BOARD
P.O.

P.S. and DIST.- GOALPARA
ASSAM.

Advocate for : MS.S KANUNGOE
Advocate for : MR.D SAIKIA Sr.Adv.R-2 appearing for THE STATE OF ASSAM
AND 2 ORS

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

11-08-2023

Heard Mr. S. Chamaria, learned counsel for the petitioner in WP(C) No.5761/2015, Mr. I.H. Saikia, learned counsel for the petitioner in WP(C) No.4756/2016 and Mr. M.P, Sarma, learned counsel for the petitioner in WP(C) No.2163/2009, WP(C) No.4702/2014, WP(C) No.6425/2015 & WP(C) No.1942/2017. Also heard Mr. M. Islam, learned counsel for the Goalpara Municipal Board and Mr. P. Nayak, learned Standing Counsel, Finance Department.

2. These writ petitions have been filed seeking directions from this Court for grant of benefits of arrear salaries, death-cum-retirement benefit, leave encashment and other pensionary benefits in respect of the petitioners who were former employees of Goalpara Municipal Board. Some of the petitioners are family members of Farmer employees. In the year 1996, when the Goalpara

Municipal Board passed an order directing temporary stoppage of disbursement of pensionary benefits in favour of the ex-employees of the Board the same was challenged by the Goalpara Municipal Employees Association by filing Civil Rule no.6261/1996 and this Court vide judgment and order dated 01.06.1999 allowed Civil Rule No. 6261 of 1996 by holding that the pensionary benefits be given to the retired employees of the Board as per the Assam Services (Pension) Rules, 1969. Because of non-compliance of the order dated 01.06.1999, passed in Civil Rule No. 6261/1996, Contempt Case No.144 of 2000 was filed and the same was closed on 29/8/2001 directing the Vice Chairman, Goalpara Municipal Board, Goalpara to release pension of the petitioners within a period of 6 (six months) from the date of the order. Subsequently, another Contempt Petition being Contempt Cas(C) No.293 of 2002 was filed, which was also disposed of by order dated 16.02 2004, whereby the Chairman of the Municipal Board was ordered to ensure that the dues of the petitioners be paid in instalments from time to time out of the funds which the said authority may receive or may be able to generate. Learned counsels for the parties submit that although certain amounts have been released every year, however, a substantial amount is yet to be released and the amounts which are released are also not uniform in respect of the petitioners every year. Consequently, the petitioners have approached this Court with prayers as mentioned above.

3. Notices in the matter were issued to the respondents as far back as on 21/9/2015. Thereafter, several orders have been passed. In response, the respondents have also filed their counter affidavits. The Goalpara Municipal Board has taken a stand that in view of the poor income of the Municipal Board, which is generated by collection of taxes and fines etc, the amounts as required to be released could not be released. It is submitted by the learned Counsel for

the Goalpara Municipal Board that every year a proposal is sent to the Government for release of necessary funds including funds for pension. Although funds under other heads are released, the sufficient funds in regard to the payment of pensions have not been released as yet. Learned Government Advocate submits that the directions passed in Civil Rule no.6261/1996 and other Contempt Petition were towards the Goalpara Municipal Board to release the funds in respect to the pensionary benefits due to the retired employees of the Board and therefore, the Goalpara Municipal Board is required to generate funds and release it. Mr. P. Nayak, learned Standing Counsel appearing for the Finance department, submits that as per the Finance Department since the petitioners are the employees of the Municipal Board, as per Section 50 of the Assam Municipal Act, 1956, it is responsibility of the Municipal Board to arrange for the funds and make necessary payments.

4. Learned counsels for the parties have been heard and pleadings in the records have been perused.

5. The provisions of Assam Municipal Act, 1956 has also been perused. Section 58 of the Municipal Act provides for constitution and custody of the municipal fund. Under Section 59 of the said Act the Municipal Board may also raise loan or fund. Section 60 of the Act lays down the manner in which the funds are to be utilised. Under Section 60(1)(b) of the Act, such funds shall also be used for payment of salaries to the employees as well as pension, gratuity, leave allowance as may be required by the conditions of service.

6. Under such circumstances, it is clear that the Municipal Board is required to release the funds as directed by this Court towards arrears salaries, pensionary benefits of the petitioners. From perusal of the provisions of Act of 1956, it is seen that the Municipalities are constituted under Section 4 of the Act

and under Section 10 of the Act, the Municipal Boards are created. The various sections of the Act and the spirit of the Act clearly makes it abundantly clear that the Government has deep and pervasive control over the Municipalities constituted and their functioning. Under such circumstances, the manner in which the Municipalities are functioning, they are to be supervised, if required, by the appropriate department in the Government.

7. This Court by the earlier judgment and order passed in Civil Rule no.6261/1996 on 01.06.1999 had specifically held that the retired employees of the Board are entitled to pension under the said Rules. Although the Municipal Boards were directed to make the payment, the same has not been complied with entirely by raising a plea of poor collection of funds by the Municipal Board.

8. Under such circumstances, this Court finds it appropriate to direct the Municipal Board to submit a proposal to the competent department in the Government having supervision over the Municipal Administration, namely, Urban Development Department. The proposal will lay down the specific details in the manner in which the directions of this Court are required to be complied with. The Municipal Board will clearly reflect the amount already paid and the amount that is required to be paid. On such a proposal being furnished to the Urban Development Department, the Department will in consultation with all other relevant or necessary departments forward the said proposal to the Government for release of funds in order to clear the payments due to the petitioners by way of pensions, arrear salaries, death-cum-retirement benefits or otherwise mentioned in the scheme in order to ensure that the directions of this Court passed in abovementioned cases are complied with.

9. This proposal will be sent to the Urban Development Department within a period of 60 days from the date of receipt of a certified copy of this order. The

Urban Development Department will thereupon forward the said proposal and workout the scheme so as to clear the pensions, arrear salaries, death-cum-retirement benefits and other related benefits as directed by this Court. The exercise by the Urban Development will be completed within a period of 3 (three) months from the date of receipt of the proposal from the Municipal Administration Department. This order has been passed by this Court keeping in view of the fact that a coordinate Bench of this Court in Civil Rule no.6261/1996 by its judgment and order dated 01.06.1999 had specifically upheld the claim of the petitioners for grant of pensions and directed the Municipal Board for release of the pension. This order has never been appealed either by the Municipal Board or by the Urban Development or any other concerned Department of the State. Consequently, this order has attained finality. Once an order has been passed by this Court, the same requires urgent and immediate compliance. Accordingly, a scheme will be finalised by the Government and the required payment will have to be released. As such, in the peculiar facts and circumstances of the case, this Court considers it appropriate to pass the abovementioned order.

10. In terms of the above directions, the writ petition stands disposed of.

11. Till finalisation of such scheme, the Municipality will continue to pay the arrears salaries, pensionary benefits to the petitioners as has been done since the directions of this Court.

JUDGE

Comparing Assistant