

GAHC010130482017



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

Case No. : WP(C)/3244/2017

SMT. BABY PATHAK HAZARIKA and 13 ORS.
W/O LATE JAYANTA HAZARIKA, JR. ASSISTANT, DRDA, KOKRAJHAR, PO-
KOKRAJHAR, DIST. KOKRAJHAR, ASSAM, PIN-783370

2: SMTI. ILAMONI KALITA
W/O SRI PABITRA BARUAH
JR. ASSTT.
DRDA
JORHAT
PO-TITABOR
DIST. JORHAT
ASSAM
PIN-785630

3: SRI DHANSING TERANG
S/O LATE LANGBIRIK TERANG
ACCOUNTANT
DRDA
DIPHU
PO-DIPHU
DIST. KARBI ANGLONG
ASSAM
PIN-783370

4: SRI MRINAL GOGOI
S/O MR. J. GOGOI
ASSTT. STATISTICAL OFFICER
DRDA
TINSUKIA
ASSAM
PIN-786145

5: SRI MUKTAR HUSSAIN
S/O LATE KHAIRAT ALI

DRIVER
DRDA
DARRANG
PO-MANGALDAI
DIST. DARRANG
ASSAM
PIN-784125

6: SRI BASUDEV DAS
S/O LATE GANAPATI DAS
SR. ASSTT.
DRDA
BARPETA
PO-BARPETA
DIST. BARPETA
ASSAM
PIN-781301

7: SRI RANJIT SINGH
S/O SRI SURESH SINGH
JR. ASSTT.
DRDA
KAMRUP RURAL
PO-AMINGAON
DIST. KAMRUP R
ASSAM
PIN-781019

8: SRI RATNESWAR DAIMARY
S/O LATE KAMALESWAR DAIMARY
STENOGRAPHER
DRDA
BAKSA
PO-BAKSA
DIST. BAKSA
BTAD
ASSAM
PIN-781318

9: MD. MAHBUB ALI
S/O LATE HANNUR ALI
SR. ASSTT.
DRDA
LAKHIMPUR
PO-LAKHIMPUR
DIST. LAKHIMPUR
ASSAM
PIN-787001

10: SRI RAHMAT ALI
S/O RAMJAN ALI
JR. ASSTT
DRDA
DIBRUGARH
PO-DIBRUGARH
DIST. DIBRUGARH
ASSAM
PIN-786003

11: SRI GAUTAM DAS
S/O LATE DINANATH DAS
JR. ASSTT.
DRDA
NALBARI
PO-NALBARI
DIST. NALBARI
ASSAM
PIN-781306

12: SRI AMARENDRA MALAKAR
S/O LATE JANARDAN MALAKAR
JR. ASSTT.
DRDA
KAMRUP METRO
PO-CHANDMARI
DIST. KAMRUP M
ASSAM
PIN-781003

13: SRI ANIL KR. NATH
S/O LATE JIBADHAN NATH
HEAD ASSTT.
DRDA
GOALPARA
ASSAM
PIN-783121

14: SRI PRADIP KR. DAS
S/O LATE PRABIR KR. DAS
ASSTT. STATISTICAL OFFICER
DRDA
KARIMGANJ
PO-KARIMGANJ
DIST. KARIMGANJ
ASSAM
PIN-78871

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-781006

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT and RURAL DEVELOPMNET DEPTT.
DISPUR
GUWAHATI-781006

3:THE COMMISSIONER OF
PANCHAYAT and RURAL DEVELOPMENT DEPTT.
JURIPAR
GUWAHATI-781006

4:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT and RURAL DEVELOPMENT DEPTT.
DISPUR
GUWAHATI-781006

5:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL A DEPTT.
DISPUR
GUWAHATI-78100

Advocate for the Petitioner : MR.D A KAIYUM

Advocate for the Respondent : SC, PNRD

BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

O R D E R

11.09.2023.

Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by learned counsel
Mr. N. Gautam, learned counsel for the petitioners. Also heard Mr. U. Sarmah,

learned counsel appearing on behalf of Mr. K. Konwar, learned Addl. Advocate General, Assam for the respondent Nos.2—4 and Mr. D. Bora, learned Govt. Advocate, Assam for respondent Nos.1 & 5.

This Writ Petition is filed by the petitioners who were working in different District Rural Development Agencies (DRDA for short) of the State of Assam. Pursuant to a decision taken at the appropriate level, the Government of Assam, Panchayat and Rural Development Department (in short the P. & R.D. Department) decided to wind up or abolish the DRDAs and to absorb the DRDA borne employees in the P. & R.D. Department of the Government. This decision was taken in the Cabinet of the State and the Governor of Assam was also pleased to accord approval to the said decision by notification dated 02.03.2016. Thereafter proposals for creation of posts which are approved for absorption of the DRDA borne employees with required pay protection was also forwarded to the competent authority in the Department by the notification dated 05.05.2016. The particulars in respect of the posts of the DRDA borne employees to be absorbed, were also detailed in the said proposal.

Pursuant to the said proposal, creation of 91 numbers of posts in the Zilla Parishad was approved by the Governor of Assam, as per the particulars enclosed. This was communicated through the notification dated 31.08.2016. By another communication dated 12.09.2016, the process for implementation of the absorption was also approved. Being thus situated, the petitioners were expecting orders to be passed for their due absorption. However, by the W.T. Message dated 22.09.2016, issued by the Joint Secretary, Government of Assam, P. and R.D. Department, the notification relating to absorption of the DRDA borne employees were kept in abeyance.

Being aggrieved, the present Writ Petition has been filed by the affected DRDA

borne employees who were sought to be absorbed, post the decision taken at the Government level.

Mr. K.N. Choudhury, learned Senior Counsel for the petitioners submits that this action of keeping the whole process in abeyance by an Administrative Department is contrary to the established canons of administration in as much as once a decision is taken by the Cabinet and approved by the Governor of the State, there is no occasion for the Administrative Department to put on hold the policy decision taken by the State. Such action reflects the high handedness of the authorities concerned, with utter disregard to the policy taken at the highest level of the State. Once policy decision is taken by the Cabinet of the State and duly approved by the Governor of the State, the Administrative Department is required to implement of the same without delay.

Notice in the matter was issued as far back as on 31.05.2017 and this Court was pleased to pass an interim order, in favour of the petitioners. The said order is extracted for ready reference:

“The petitioners are ministerial staff serving in different District Rural Development Agencies (DRDA for short) in Assam. They were hoping for their absorption in the Panchayat and Rural Development Department, in pursuant to the cabinet decision dated 27.02.2016 and the notification dated 02.03.2016 (Annexure-3).

Mr. K.N. Choudhury, the learned Sr. counsel submits that the Government had decided to dissolve the DRDAs in due course and to absorb the DRDA borne employees, against the sanctioned govt. posts. He further submits that in pursuant to the above decision, the names of 557 DRDA borne employees were shortlisted and the govt. posts in which they can be absorbed, have been identified under the communication dated 05.05.2016 (Annexure-4). The shortfall of 91 posts is proposed to be met, through creation of the additional required posts, as can be seen from the communication dated 31.08.2016 (Annexure-5).

However the entire process of winding up the DRDAs and absorption of the DRDA borne staff, is kept in abeyance under the impugned W.T. dated 22.09.2016 (Annexure-7), issued by the Government.

The learned Sr. counsel submits that when the notification of 02.03.2016 (Annexure-3) was issued in pursuant to a cabinet decision dated 27.02.2016, the Government should

have taken the process to its logical conclusion. No midway intervention should have been made in the process, particularly when, the posts for absorption of the DRDA borne employees, have already been identified/created.

In view of above, let Notice returnable in 4(four) weeks be issued. Ms. M. Bhattacharjee, the learned Addl. Sr. Govt. advocate accepts notice for all the 5 respondents. Extra copies be furnished to her.

In the interim, the 557 posts against which the DRDA borne employees are to be absorbed, as referred to in the communication(s) dated 05.05.2016 (Annexure-4) and the one dated 31.08.2016 (Annexure-5), should not be filled up, by others, until the returnable date."

The said interim order was extended from time to time.

No affidavit on behalf of the respondent Department has been filed, in spite of opportunities granted.

Today when the matter is called up, Mr. U. Sarmah, learned counsel on behalf of Mr. K. Konwar, learned Addl. Advocate General, Assam has placed before this Court a communication dated 29.07.2017, whereby it is communicated that the notification No.RDD.51/2011/Pt-I/367, dated 29th July, 2017, by which the Government had kept in abeyance the execution of the notifications pertaining to winding up of DRDAs and subsequent merger with Zilla Parishads, stood vacated.

By the said communication dated 29.07.2017, the Governor of Assam was pleased to accord permission to the officials who have been absorbed against sanctioned vacant Posts of Government of Assam by dint of the Notification issued vide No. RDD.51/2011/Pt-I/305, dated 12.09.2016, to work continuously at the respective DRDAs under 6th Scheduled Autonomous Councils and to draw the salary from the head of account where they have been absorbed until further order.

It is submitted by the learned counsel for the respondent Department that in view of the Notification dated 29.07.2007, issued by the P. & R.D. Department,

there is no grievance of the petitioners which require to be pursued any further in this Writ Petition. It is further submitted that the DRDA borne employees have already been absorbed in various posts of P. & R.D. Department.

Taking note of the notification dated 29.07.2017 and also taking on record the submissions made by the learned counsels for the respondents that the notification earlier issued by the P. & R.D. Department suspending the process of absorption of DRDA borne employees have been vacated, this Court is of the view that no further cause remains to be pursued in this Writ Petition. This Court is of the view that the Writ Petition can be closed by recording the submissions made by the learned counsel for the respondents, a copy of the Notification dated 29.07.2017, is retained in the case records.

Writ Petition is accordingly closed.

The interim order dated 31.05.2017, stands merged.

Liberty, however, is granted to the petitioners to approach this Court in the event the policy taken by the State, is not implemented in the meantime.

The Writ Petition is disposed of with the aforesaid direction.

JUDGE

Comparing Assistant