

GAHC010161532022



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

Case No. : WP(C)/5318/2022

BHUPEN CH NATH AND 26 ORS
S/O GIRISH NATH, P/R VILL-DUBJENI, P.O. AND P.S.-CHHAYGAON, DIST-
KAMRUP (ASSAM), APPOINTED SCHOOL - CHAIKATA L.P. SCHOOL,
PRESENT SCHOOL - BISHNU RABHA M.E.S.

2: PABITRA MOHAN KALITA
S/O LATE HARKANTA KALITA
P/R- VILL-BARAKHAT
P.O. AND P.S.-CHHYAGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - GUMI M.E.S.
PRESENT SCHOOL - SATGAON AN M.E.S.

3: MANOJ KALITA
S/O RADHA CHARAN KALITA
P/R/ VILL-ALEGJARI
P.O. AND P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - CHAMPAK NAGAR GIRLS M.E.S.
PRESENT SCHOOL - BAMINIGAON HIGH SCHOOL

4: ROHIDAS KALITA
S/O LATE KANDARPA KALITA
P/R/ VILL - MATHPARA
P.O. AND P.S.-CHHYAGAON
DIST - KAMRUP (ASSAM)
APPOINTED SCHOOL - ALIKASH M.E.M.
PRESENT SCHOOL - GAMERIMURA M.V. SCHOOL

5: TARULATA NATH
D/O LATE NABIN CH. NATH
P/R VILL-PACHIMDHULI
P.O. AND P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)

APPOINTED SCHOOL - BALASIDHI AN M.E.S.
PRESENT SCHOOL - PANTAN HIGH SCHOOL

6: ABDUL AZIZ ALI KHAN
S/O MOHAMMAD ALI KHAN
P/R/ VILL-BIHAPARA
P.O. AND P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - HATISALA AN M.E.M.
PRESENT SCHOOL - HATIPARA MERGANDA L.P.S.

7: ABDUL MOBIN ALI
S/O LATE BORKAT ALI
P/R VILL-HATIPARA
KAMRUP
P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - HATIPARA MERGANDA L.P. SCHOOL

8: SAFIAR RAHMAN
S/O- P/R- VILL- GHORAMARA
P.S.-CHHAYGAON
DIST-KAMRUP(ASSAM)
APPOINTED SCHOOL - GHORAMARA M.E.M.

9: MONMIL HUSSAIN
S/O ALIMUDDIN AHMED
P/R VILL-JORSIMALU
P.O.-TAPAR PATHER
P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - DR. JAKIR HUSSAIN M.E.M.

10: SAFIUL HUSSAINN SAIKIA
S/O BILAYET HUSSAIN SAIKIA
P/R VILL-TAPAR PATHER
P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - DR. JAKIR HUSSAIN M.E.M.

11: RATAN KUMAR DAS
S/O PABITRA DAS
P/R/ VILL-GOROIMARI
P.O.-GOROIMARI
P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - GOROIMARI ADARSHA L.P. SCHOOL

12: ABDUL SABUR
S/O OSMAN ALI
P/R/ VILL-GOROIMARI
P.O.-GOROIMARI
P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - GOROIMARI AN GIRLS M.E.M.
PRESENT SCHOOL - GOROIMARI AN GIRLS HIGH SCHOOL

13: SATYA RAM DAS
S/O LATE NABIN CH
DAS
P/R VILL-SATRAPARA
P.O.-BIJOY NAGAR
P.S.-PALASHBARI
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - RANGAMATI L.P. SCHOOL

14: RUMI KALITA
W/O SATYRAM KALITA
P/R/ VILL-AMTOLA
P.O.-AMTOLA
P.S.-PALASHBARI
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - AMTOLA MODAL L.P. SCHOOL

15: JULHAS ALI
S/O LATE ASRAF ALI
P/R VILL-HATISALA
P.O.-GOROIMARI
P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - HATISALA LARUAJAN L.P. SCHOOL

16: ABIDUR RAHMAN
S/O LASKAR ALI
P/R/ VILL-HAHCHARI
P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - HAHCHARI L.P. SCHOOL

17: MD. RAHIZUDDIN AHMED
S/O MD. ABDUL MAKSHED
P/R/ VILL-JORSIMALU
P.O.-JORSIMALU
P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - JORSIMALU L.P. SCHOOL

18: AZMOL HAQUE CHOUDHURY
S/O HATEM CHOUDHURY
P/R VILL-GOROIMARI
P.O.-GOROIMARI
P.S.-CHHAYGAON
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - MAJGUMI L.P. SCHOOL

19: HASINA BHANU
W/O ABDUS SALAM
P/R/ VILL- 2 NO. KALAPANI
P.O.-BANIAPARA
P.S.-PALASHBARI
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - MOLLAHTARI L.P. SCHOOL

20: UDHAB ROY
S/O LAKSHIM ROY
P/R/ VILL-JARABARI
P.O.-BANIAPARA
P.S.-PALASHBARI
DIST-KAMRUP (ASSAM)
APPOINTED SCHOOL - BANIAPARA M.V.
PRESENT SCHOOL - BAMUNIGAON HIGH SCHOOL

21: BIREN THAKURIA
S/O LATE JANI RAM THAKURIA
P/R VILL-DEOCHAR
P.O.-PANERI
P.S.-BOKO
DIST-KAMRUP (ASSAM)

22: HAREN CHANDRA MEDHI
S/O PRABHAT MEDHI
P/R/ VILL-DHARBAM
P.O.-DHUPGURI
P.S.-KHETRI
DIST-KAMRUP (METRO)
ASSAM
APPOINTED SCHOOL - MALAYEBARI M.E.S.
PRESENT SCHOOL - DURUNG ADARSHA HIGHER SECONDARY SCHOOL

23: LALIT CH. DAS
S/O GOPAL DAS
P/R/ VILL-TETALIGURI
P.O.-GANDHI NAGAR
P.S.-SONAPUR

DIST-KAMRUP (METRO)
ASSAM
APPOINTED SCHOOL - DURUNG M.E. SCHOOL
PRESENT SCHOOL - DURUNG ADARSHA HIGHER SECONDARY SCHOOL

24: JAYANTA ORANG
S/O DHUNDA ORANG
P/R/ VILL-CHAKURA
P.O. AND P.S.-KHETRI
DIST-KAMRUP (M)
ASSAM
APPOINTED SCHOOL - KHETRI M.E. SCHOOL
PRESENT SCHOOL - DURUNG ADARSHA HIGHER SECONDARY SCHOOL

25: KANDARPA MEDHI
S/O ANANDA MEDHI
P/R/ VILL-CHAKURA
P.O.-GANDHI NAGAR
P.S.-KHETRI
DIST-KAMRUP (M)
ASSAM
APPOINTED SCHOOL - GUMORIA L.P. SCHOOL

26: GAGAN SALOI
S/O LATE PRABHAT CH. SALOI
P/R VILL-ALEGJARI
P.O.-CHAYGAON
DIST-KAMRUP
ASSAM
APPOINTED SCHOOL - MILANPUR L.P. SCHOOL
PRESENT SCHOOL - BALASIDDHI MAJPARA L.P. SCHOOL

27: KAMALESWAR MEDHI
S/O LATE DHARUNA RAM BAISHYA
P/R VILL-PACHARIA
P.O.-PACHARIA
P.S.-HAJO
DIST-KAMRUP (R)
ASSAM
APPOINTED SCHOOL - BAPUJI L.P. SCHOOL (PACHARIA)
PRESENT SCHOOL - PACHIM BAGTA L.P. SCHOOL (BAGTA)

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI-781006

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

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-78100

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

03.04.2023

Heard Mr. H. Das, the learned counsel for the petitioners and Mr. N. J. Khataniar, the learned counsel appearing on behalf of the Elementary Education Department. None appears on behalf of the Finance Department.

The case of the petitioners herein is that they were appointed against the newly created 7066 Operation Black Board (for short, 'OBB') posts pursuant to the order dated 08.03.2021 by the Government of Assam. Their appointments were for a period up to 31.03.2002. The petitioners, thereupon prior to the period ending, had filed writ petition seeking a direction for regularization of their services against the vacant sanctioned posts of the Assistant Teachers of Lower Primary/Middle Schools of Assam and for a direction not to terminate their services at the

end of March, 2002 pending regularization of their services.

The Coordinate Bench of this Court in the case of ***Nirmali Borah & Others and others vs. State of Assam & Others***, reported in ***2002 (1) GLT 462*** vide the judgment and order dated 08.04.2002 directed the Government of Assam to regularize the services of the writ petitioners who were appointed as teachers against the posts created under the OBB Scheme by adjusting/absorbing them in regularly sanctioned posts/vacancies of Assistant Teachers of Lower Primary/Middle Schools of Assam in a phase manner and not to terminate their services pending such regularization thereby allowing them to continue in service beyond 31.03.2002 by sanctioning retention of these temporary posts created under the OBB Scheme till completion of the process of such regularization.

The State, being aggrieved by the judgment and order dated 08.04.2021 (Nirmali ***Bora***) (supra), preferred an appeal before the Division Bench of this Court which was registered and numbered as WA No.376/2002. At the time of admission of the appeal, there was no stay to the directions so passed in the judgment and order dated 08.04.2002 (***Nirmali Borah***) (supra). The Division Bench of this Court vide the judgment and order dated 01.07.2008 dismissed the said writ appeal and directed implementation of the judgment and order dated 08.04.2021(***Nirmali Borah***) (supra) as expeditiously as possible preferably within a period of 6 (six) months. Thereupon, vide various orders, the petitioners were brought within the fold of Government service after 01.02.2005.

The case of the petitioners herein is that they are entitled to pension

in terms with the Assam Services (Pension) Rules, 1969 (for short, 'the Rules of 1969') and are not covered by the New Defined Contributory Pension Scheme, 2009.

Mr. N. J. Khataniar, the learned counsel appearing on behalf of the Elementary Education Department has drawn the attention of this Court to the judgment dated 31.03.2023 passed in ***Purnima Hore & Another vs. The State of Assam & Others*** wherein this Court had categorically held that the teachers coming with the fold of teachers appointed under the OBB and more particularly those teachers who were appointed pursuant to the creation of 7066 posts on 08.03.2021 would not be entitled to pension in terms with the Rules of 1969 as well also shall not be entitled to join the fund in terms with the General Provident Fund (Assam Service) Rules, 1937. It was also categorically held by this Court that these teachers would be governed by the New Pension Scheme applicable to the State Government employees of corresponding rank. It was further observed in the said judgment that the teachers coming within the category of teachers appointed under OBB Scheme and more particularly those teachers who were appointed pursuant to the creation of 7066 posts on 08.03.2021 would be entitled to the benefit of retirement gratuity and death gratuity on the same terms and conditions as are applicable to the employees covered by the Rules of 1969 in view of the Office Memorandum dated 01.02.2021.

Taking into account the said judgment dated 31.03.2023, this Court is of the opinion that the said judgment duly applies to the facts of the instant case, and consequently, this Court, therefore, disposes of the writ petition holding inter-alia that the petitioners herein would not be entitled

to pension in terms with the Rules of 1969 as well as also would not be entitled to join the fund in terms with the General Provident Fund (Assam Service) Rules, 1937. The petitioners herein would be governed by the New Pension Scheme applicable to the State Government employees of corresponding rank. Further to that, the petitioners herein would also be entitled to the benefit of retirement gratuity and death gratuity on the same terms and conditions as are applicable to the employees covered by the Rules of 1969 in view of the Office Memorandum dated 01.02.2021.

Accordingly, the instant petition stands disposed of.

JUDGE

Comparing Assistant