

GAHC010200402022



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

Case No. : WP(C)/6832/2022

ISLAMUDDIN AHMED AND 12 ORS
S/O MD. TAHER ALI, R/O VILL- BATSOR, P.O.-BETSOR, P.S.-BELSOR, DIST-
NALBARI, ASSAM, PRESENTLY WORKING AS CHOWKIDER, CASUAL
EMPLOYEE IN THE BARKHETRI ICDS PROJECT, NALBARI

2: SAYEDUR RAHMAN
S/O LATE HAIDAR ALI
R/O VILL- BALSOR
P.O.-BELSOR
P.S.-BETSOR
DIST- NALBARI
ASSAM
PRESENTLY WORKING AS CHOWKIDER
CASUAL IN THE OFFICE OF THE DSWO
NALBARI

3: SAJIBUR RAHMAN BARBHUIYA
S/O AZIR UDDIN BORBHUYAN
R/O VILL-MAHERPUR
P.O.-MAHERPUR
DIST-CACHAR
ASSAM
WORKING AS SWEEPER (CASUAL) IN THE OFFICE OF THE D.P.O.
CACHAR

4: NARAYAN CHANDRA BARUAH
S/O LATE KANDARA BARUA
R/O VILL- KANLORA
P.O.-BARGHUR
P.S.-KOLONI
DIST- NAGAON
ASSAM
PRESENTLY WORKING AS NIGHT CHOWKIDAR
CASUAL IN THE OFFICE OF THE D.S.W.O.

5: DULAN SUKLABAIDYA
S/O LATE NANDA SUKLABAIDYA
R/O VILL-JOYPUR
NATUN BAZAR
P.O.-JOYPUR
RAJBAZAR
DIST-CACHAR
ASSAM
PRESENTLY WORKING AS NIGHT CHOWKIDER (CASUAL EMPLOYEE) IN
THE OFFICE OF THE RAJABAZAR I.C.D.S. PROJECT
CACHAR
ASSAM

6: SMTI SARASWTI RABIDAS
W/O LATE LASMAN RABIDAS
R/O VILL-PAILAPUR
P.O.-PAILAPUR
P.S.-LAKHIPUR
DIST- CACHAR
ASSAM
PRESENTLY WORKING AS SWEEPER (CASUAL EMPLOYEE) IN THE
OFFICE OF THE LAKHIPUR I.C.D.S. PROJECT
CACHAR
ASSAM

7: JAKIR HUSSAIN
S/O LATE ABDUL SATTAR
R/O VILL-SRIKONA
P.O.-SRIKONA
P.S.-SILCHAR
DIST-CACHAR
ASSAM
PRESENTLY WORKING AS NIGHT CHOWKIDER
(CASUAL) IN THE OFFICE OF THE SALCHAPARA I.C.D.S PROJECT
CACHAR
ASSAM

8: BIRESWAR KALITA
S/O LATE MEGHO RAM KALITA
R/O VILL- UDAYPUR
P.O.-JONAI
P.S.-JONAI
DIST- DHEMAJI
ASSAM
PRESENTLY WORKING AS CASUAL EMPLOYEE IN THE MORKONG
I.C.D.S. PROJECT
DHEMAJI

9: RAJKUMAR CHETRI
S/O LATE MAN BAHADUR CHETRI
R/O VILL- CHANDMARI
P.O.-TEZPUR
WARD NO. 19
P.S.-LALMATI
DIST- SONITPUR
ASSAM
PRESENTLY WORKING AS LOWER DIVISION ASSISTANT-CUM TYPIST
(CASUAL) IN THE OFFICE OF THE NAWBAICHA I.C.D.S. PROJECT
LAKHIMPUR

10: JAGANNATH BAYAN
S/O LATE BAHADUR BAYAN
R/O VILL-CHAMARIA
P.O.-CHAMARIA
P.S.-BOKO
DIST-KAMRUP
ASSAM
PRESENTLY WORKIN AS GRADE-IV CHOWKIDAR IN THE OFFICE OF THE
I.C.D.S. PROJECT
CHAMARIA

11: MD. ABUL HUSSAIN SARKAR
S/O LATE AZIZ ALI
R/O VILL-BARKALIAZAR
P.O.-BIYASPARA
P.S.-CHIPAJHAR
DIST-DARRANG
ASSAM
PRESENTLY WORKING AS CHOWKIDAR UNDER THE BALWADI CENTRE
MANGALDOI

12: SATYABAN DAS
S/O LATE NAGEN DAS
R/O CHAMARIA SATRA
P.O.-CHAMARIA
P.S.-BOKO
DIST- KAMRUP
ASSAM WORKING AS GRADE-IV (CHOWKIDER) UNDER THE CHAMARIA
I.C.D.S. PROJECT

13: JIBESWAR GOGOI
S/O LATE DHANESWAR GOGOI
R/O VILL-NA LOLHOW
P.O.-NAOBOISHA
P.S.-LAKHIMPUR

DIST-LAKHIMPUR
ASSAM
WORKING AS GRADE-IV NIGHT CHOWKIDE

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWHATI-781006, P.O.-ASSAM SACHIVALAYA, P.S.-
DISPUR, DIST- KAMRUP (M), ASSAM

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
SOCIAL WELFARE DEPARTMENT
ASSAM SECRETARIAT
DISPUR
P.O.-ASSAM SACHIVALAYA
P.S.-DISPUR
GUWAHATI-781006
DIST- KAMRUP (M)
ASSAM

3:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
ASSAM SECRETARIAT
DISPUR
P.O.-ASSAM SACHIVALAYA
P.S.-DISPUR
GUWAHATI-781006
DIST- KAMRUP (M)
ASSAM

4:THE DIRECTOR
SOCIAL WELFARE AND PROBATION
ASSAM
M.G. ROAD
UZANBAZAR
GUWAHATI-781001
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. CHARAN DEKA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 19-12-2023

Heard Mr. C. Deka, learned counsel appearing for the petitioners. Also heard Mr. J.K. Goswami, learned Additional Senior Government Advocate, Assam, appearing for respondent nos. 1, 2 and 4 as well as Mr. P. Nayak, learned Standing Counsel, Finance Department, Assam, appearing for respondent No. 3.

From the case projected in the writ petition, it appears that the 13 petitioners herein were all engaged as Casual Workers some 25 to 40 years back. Out of the 13 petitioners, 11 of them are serving as Grade-IV casual employees whereas, 2 are working as Grade-III casual employees. They are presently drawing consolidated wage of Rs. 9,000/- per month. After the decision of the Division Bench of this Court, rendered in the case of ***State of Assam Vs. Sri Upen Das & Ors. (WA 45/2014)***, notification dated 03.10.2019 was issued by the Finance Department providing for payment of "minimum of the Pay Scale" of Rs. 15,900/- with DA and Medical Allowances to the Casual employees. The Government of Assam, through the Finance Department, had also issued Notification dated 09.10.2017 directing all the Administrative Departments to forward the lists of casual employees within 31.10.2017. Accordingly, list of casual workers was forwarded by the different administrative departments. Upon receipt of the proposals/lists from the various departments, the Finance Department had approved the lists of 13,821 casual workers for payment of "minimum of the Pay Scale". However, the cases of the 13 petitioners herein could not be considered as there was a delay in forwarding the names by the Administrative Department, i.e. the Social Welfare and Probation Department. The stand of the Finance Department is that by the time the requisite particulars of these candidates reached the Finance Department, the "sunset clause" had come into play w.e.f. 16.09.2021, as a result of which, no further list of casual employees could be

processed by the Finance Department.

Mr. C. Deka, learned counsel for the writ petitioners submits that the names of the present petitioners had figured in the original list of casual employees prepared by the Social Welfare Department, containing 48 names in total, which was also forwarded to the Finance Department on 07.07.2021, i.e. before the "sunset clause" came into play. However, the Finance Department had called for certain clarifications from the Social Welfare Department with regard to the petitioners. There was undue delay in furnishing such clarifications/information, as a result of which, the petitioners were left out from being considered for extending the benefit of the "minimum of the Pay Scale", which was already extended to a large number of similarly situated casual employees. Contending that it is a clear case of discrimination being meted out to the petitioners for no fault of their own, Mr. Deka submits that if there was delay on the part of the departmental authorities in furnishing the necessary information pertaining to the petitioners, the petitioners cannot be held responsible for the same.

From the counter-affidavit filed by the Finance Department, the stand of the departmental authorities is apparent, which is available in paragraph 8 thereof and the same is reproduced herein-below for ready reference:-

"As regards the instant proposal, Social Welfare Department submitted their proposal in the year 2021 in File No. SWD.167/2021 but without the prescribed checklist. Vide endorsement dated 04.10.2021, Social Welfare Department was first requested to re-submit the proposal along with all information as per Finance Department's letter No. FEC (II) 4/2014/356 dated 09.10.2017 along with proper justification for submission of proposal since it was submitted after a gap of so many years. It may be stated that the Social Welfare Department submitted their proposal along with Checklist/annexures vide File No. SWD. 167/2021 dated 03.01.2022 for minimum of the pay scale of 45 numbers of such incumbents. The proposal was received after sunset clause was incorporated by the Finance Department vide letter dated 16.09.2021."

Mr. P. Nayak, learned Standing Counsel, Finance Department, submits that the Finance Department has been receiving a large number of additional lists of casual

workers even after processing the final list prepared and submitted by the departments and, therefore, it was not possible for the authorities in the Finance Department to continue to accept such additional lists. The learned Standing Counsel, Finance Department, however, submits in his usual fairness that although the list containing the names of the writ petitioners had been forwarded to the Finance Department before the "sunset clause" came into play, their names were left out only because the additional information sought for from the department of Social Welfare got delayed.

Similar is the stand of Mr. J.K. Goswami, learned Additional Senior Government Advocate, Assam.

After considering the pleadings of the respondent authorities and after going through the materials available on record, what transpires is that there is no dispute about the fact that the writ petitioners herein are working as casual workers under various administrative departments of the Government of Assam and they are also entitled to the benefit of "minimum of the Pay Scale" as per the direction passed by the Division Bench of this Court in the case of **Upen Das** (supra). Accordingly, their cases were duly processed by the departmental authorities. However, it appears that due to some communication gap and/or delay in furnishing additional information, as called for by the Finance Department, the petitioners were deprived of receiving the benefit of "minimum of the Pay Scale", which was extended to several other similarly situated casual employees. Having worked for more than 25 to 40 years as casual employees and being entitled to the benefit of "minimum of the Pay Scale", as applicable to casual workers as per the judgment of the Division Bench rendered in the case of **Upen Das** (supra), the petitioners cannot be deprived of the benefit of such "minimum of the Pay Scale" merely because there was some delay on the part of the department of Social Welfare in furnishing the additional information, as sought for by the Finance Department. It is not the case of the respondent authorities that the petitioners are not entitled to receive the benefit of "minimum of the Pay Scale".

Moreover, as has been noted above, it appears that the names of the writ petitioners were forwarded before the onset of the "sunset clause". Even otherwise, introducing the "sunset clause" is a matter of governance and a measure of internal administration adopted by the Finance Department. Therefore, the same cannot take away the rights that might have accrued in favour of the writ petitioners under the Constitution and the laws framed there-under.

Situated thus, this Court is of the unhesitant opinion that the petitioners cannot be denied the benefit of "minimum of the Pay Scale" merely on the ground that there was delay in furnishing additional information by the Administrative Department. Whether the claim of the petitioners to receive the benefit of "minimum of the Pay Scale" is valid or not is entirely a different matter, which will obviously be subject to proper scrutiny by the concerned departmental authorities by applying the same standard as was applied in the cases of other similarly situated casual employees.

For the reasons stated hereinabove, this writ petition succeeds and is hereby allowed. The respondent authorities are directed to consider the cases of the 13 writ petitioners herein for granting the benefit of "minimum of the Pay Scale" with effect from the date on which other similarly situated casual workers have been given the benefit.

The aforesaid exercise be carried out and completed as expeditiously as possible, but not later than 90 (ninety) days from the date of receipt of a certified copy of this order. It is made clear that this order will remain confined only to the 13 writ petitioners, who are before this Court.

With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant