

GAHC010201512022



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

Case No. : WP(C)/6596/2022

SMTI. CHARU KALITA AND 5 ORS

D/O LATE NAGENDRA KALITA, R/O VILL-HAZARIKAPARA, P.S.-SIPAJHAR,
DIST-DARRANG, ASSAM, PIN-784145

2: RABIN DEY

S/O LATE SUKHAN RANJAN DEY

R/O WARD NO. 5

MANGALDAI

P.O. AND P.S.-MANGALDAI

DIST-DARRANG

ASSAM

PIN-784125

3: PREMESWAR DEKA

R/O VILL-BHANGIACHUBA

P.O.-HAZARIKAPARA

P.S.-SIPAJHAR

DIST-DARRANG

ASSAM

PIN-784145

4: PARAMESH CH. NATH

S/O LATE DHARMA KANTA NATH

R/O VILL-DAKSHIN CHUBURI

P.O. AND P.S.-SIPAJHAR

DIST-DARRANG

ASSAM

PIN-784145

5: KIRITI BORA

S/O MAHESWAR BORA

R/O VILL-BORTHAKARABARI

P.O.-RANGAMATI

P.S.-DIST-DARRANG

ASSAM

PIN-784529

6: MD. IYAR MAHAMMAD

S/O LATE HOBIBAR RAHMAN

R/O VILL-DUARIAPARA

P.O.-CHENGALIAJHAR
DIST-DARRANG
ASSAM
PIN-78414

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, ELEMENTARY
EDUCATION, DEPARTMENT, ASSAM, DISPUR, GUWAHATI-781006
2:THE COMMISSIONER AND SECRETARY
GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-781006
3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
PIN-781019
4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DARRANG
AT MANGALDAI
P.O.-MANGALDAI
DIST-DARRANG
ASSAM
PIN-78412

Advocate for the Petitioner : MR. S CHAUHAN

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

27.01.2023

Heard Mr. S Chauhan, learned counsel for the petitioners and Mr. A Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 3 & 4. Also heard Mr. B Gogoi, learned Standing counsel, Finance Department, Assam for the respondent No. 2.

2. For proper adjudication of this case, the Director of Education, BTC as well as the District Elementary Education Officer, Udalguri are impleaded as party respondent Nos. 5 &

6 in the present proceeding.

3. By individual orders dated 16.02.1989, the District Elementary Education Officer (DEEO), Darrang, Mangaldai appointed the petitioner Nos. 1, 2 & 5 as Lower Division Assistant (LDA) cum Typist and posted them in the Office of the District Elementary Education Officer, Darrang, Mangaldoi. Further, by orders dated 16.02.1989 and 20.06.1989, the said DEEO, Darrang, Mangaldai appointed the petitioner Nos. 4 & 6 as LDA cum Typist and posted them in the Office of the Deputy Inspector of Schools, Mangaldai and the Office of the Deputy Inspector of Schools, Udalguri respectively.

4. All the petitioners were appointed in the scale of pay of Rs. 470/- -Rs. 800/- per month and other allowances as admissible in the Rules of the State Government.

5. The Finance Department of the State of Assam vide communication dated 06.12.1990 published the Assam Services (Revision of Pay) Rules, 1990 giving its effect from 01.01.1989, a statutory Rule under Article 309 of the Constitution of India.

6. Rule 6 of the said 1990 Rules relates to application of the revised scale of pay, which stipulates as follows-

“Save as otherwise provided in these rules, a Government servant who is in service on the 31st December, 1988 or who may have been appointed on or after the 1st January, 1989 shall draw pay in the revised scale applicable to the post/service which he has been holding or to which he may have been appointed, as the case may be, provided that a Government servant who is in service on the 31st December, 1988, or who enters service on or after the 1st January, 1989 but before the date of publication of these rules, may, at his option, continue to draw pay in the existing scale, until the date on which he earns his next or any subsequent increment(s) in the existing scale or until he vacates his post or ceases to draw pay in that scale.”

7. Rule 11 of the said 1990 Rules relates to fixation of pay in the revised scale in respect of a Government servant appointed on or after the 1st January, 1989 but before the date of publication of these rules, which stipulates as follows-

“11.(1) Where a Government servant who had, on any occasion or occasions, officiated in a post prior to the 1st January, 1989 but was not holding the post on that date, becomes eligible to draw pay in the revised scale on his subsequent appointment to the post, his initial pay in that scale, on the date of his so becoming eligible shall be fixed under the Fundamental Rules provide that it shall not be less than the emolument admissible to him on the last such occasion and he shall count for increment in the stage of the revised scale at which his initial pay is fixed, the period during which he drew that emolument on any previous occasion.

11.(2) Where a Government servant entering service on or after the 1st January, 1989 but before the publication of these rules, retains the existing scale under Rule 6 and is brought over to the revised scale with effect from a date subsequent to the date of his appointment, his initial pay in the revised scale shall be fixed under the Fundamental Rules provided that it shall not be less than the emolument admissible to him in the existing scale on the date from which he is brought over to the revised scale and the period during which he drew that emolument shall be counted for increment in the stage of the revised scale at which his initial pay is fixed.

11.(3) If the emolument referred to in sub-rules (1) and (2) does not correspond to a stage in the revised scale and is intermediate between two stages, pay would be fixed at the higher of the two stages. ”

8. Petitioners stated that immediately after their date of appointments they have joined their services as LDA cum Typist in their respective places of posting within the month of February, 1989 itself.

9. According to the petitioners, as per the provisions of said 1990 Rules of the State Government, the scale of pay of such LDA cum Typist was fixed at Rs. 1165 per month, but inadvertently their scale of pay was fixed at Rs. 1065 per month, instead of Rs. 1165/- per month.

10. Being aggrieved, they submitted representations before the Director of Elementary

Education, Assam as well as before the District Elementary Education Officer, Darrang, Mangaldai, i.e., their joining authority.

11. After due verification, the District Elementary Education Officer, Darrang, Mangaldai vide communication No. DEA-150/2016/3069 dated 09.10.2018 forwarded the representations of the petitioners for re-fixation of their pay scale w.e.f. 01.01.1999 in terms of said 1990 Rules.

12. As the respondents herein till date did not consider their case for re-fixation of their salaries as per their entitlement and as provided in the said 1990 Rules, it is stated by them that they have suffered irreparable financial loss as they are paid lesser amount of salary compared to their counterparts who served as LDA cum Typist in their respective offices at the relevant point of time.

13. Petitioners are directed to submit fresh representations individually, before the Director of Education, BTC for redressal of their grievances regarding wrong fixation of their salaries at Rs. 1065/- per month w.e.f. 01.01.1989 instead of Rs. 1165/- per month as per the Assam Services (Revision of Pay) Rules, 1990, along with a certified copy of this order.

14. In the event of filing such representations by the petitioners individually as directed above, the Director of Education, BTC through the District Elementary Education Officer, Darrang, Mangaldoi and the District Elementary Education Officer, Udalguri, as the case may be, shall verify, determine and fix the pay scale of the petitioners as per their entitlement considering their appointments and the dates of joining in the month of February, 1989.

15. It is to be noted herein that earlier the Office of the Deputy Inspector of Schools, Udalguri was within the jurisdiction of the District Elementary Education Officer, Darrang and after the Udalguri district was brought under the BTC, it is now under the jurisdiction of the Department of Education, BTC.

16. On such verification of the appointment orders of the petitioners and on fixation of their salaries in terms of the said 1990 Rules, noted above, if those authorities find any wrong fixation of their salaries in the post of LDA cum Typist, those authorities shall submit their report before the Director of Education, BTC forthwith preferably within a

period of 2 months from the date of receipt of the representations of the petitioners as directed above.

17. Thereafter, the Director of Education, BTC shall submit the necessary recommendation to the Secretary to the Department of School (Elementary) Education, Assam, who in turn shall forward the same to the Finance Department of the State.

18. On receipt of such recommendation from the Secretary to the Department of School (Elementary) Education, Assam, the Finance Department of the State after due verification shall pass necessary order determining the scale of pay entitled by the petitioners in terms of the Assam Services (Revision of Pay) Rules, 1990 and if, on such determination of the Finance Department it is found that the petitioners are entitled for enhanced scale of pay in terms of the said 1990 Rules, the authorities concerned in the Finance Department shall give its concurrence of all such financial benefits to the petitioners as per their due entitlement.

19. The entire process, as noted above, shall be completed by the respondent authorities within a period of Six months from the date of receipt of individual representation of the petitioners to be submitted by them as directed above, intimating the petitioners about the outcome of the same.

20. With the above observation and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant