

GAHC010243252022



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

Case No. : WP(C)/7667/2022

SHAHIDUR SHA KHANDAR AND 8 ORS.
S/O. KAHINUR SHA KHANDAR, R/O. VILL. BIDDAYPARA WARD NO.8, P.O.,
P.S. AND DIST. DUBRI, ASSAM.

2: FIROZSARKAR

S/O. GOLAP UDDIN SK.
R/O. VILL. NORTH GERAMARI PT-I(NOWDAGAON)
P.O. GERAMARI
P.S. GAURIPUR
DIST. DHUBRI
ASSAM.

3: RAHUL CHAKRABORTY
S/O. LATE BIRENCHARABORTY
R/O. BILASIPARA
WARD NO.8
P.O. HAKAMA
P.S. BILASIPARA
DIST. DHUBRI
ASSAM.

4: DANEZ ALI SHEIKH

S/O. NASHER ALI
R/O. BIRSHING PART-III
P.O.
P.S. FAKIRGANJ
DIST. DHUBRI
ASSAM.

5: SHANKAR SHA

S/O. LATE SHAMDEV SHA

R/O. VILL. AND P.O. GOLAKGANJ
DIST. DHUBRI
ASSAM.

6: MONUJCHUNGKRANG

S/O. RAMA KANTACHUNGKARANG
R/O. VILL. MUKALIPATHER
P.O. RATANPUR
P.S. JONAI
DIST. DHEMAJI
ASSAM.

7: RINKUBAISHYA

S/O. NABINBAISHYA
R/O. ABC SORBODAY PATH
HOUSE NO.10
GUWAHATI
DIST. KAMRUP(M).

8: MOHAN CHANDRA RABHA

S/O. GIRISH CH. RABHA
R/O. VILL. KOCHPARA
P.O. KINANGAON(BOKO)
DIST. KAMRUP
ASSAM.

9: DEBABRITA KR. DAS

S/O. LATE HEM KR. DAS
R/O. VILL. RUPSHI PART-I
P.O. RUPSHI
P.S. KAZIGAON
DIST. KOKRAJHAR
ASSAM

VERSUS

THE STATE OF ASSAM AND 19 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO GOVT. OF
ASSAM EDUCATION DEPARTMENT(ELEMENTARY), DISPUR, GUWAHATI-6.

2:THE MISSION DIRECTOR
SAMAGRASHIKSHA

ASSAM (ERSTWHILE AXOM SARBA SIKSHAW ABHIJAN MISSION)
KAHILIPARA

GUWAHATI-19.

3:THE DISTRICT MISSION CO-ORDINATOR

SAMAGRASHIKSHA
DHUBRI
P.O.
P.S. AND DIST. DHUBRI
ASSAM. PIN

4:THE DISTRICT MISSION CO-ORDINATOR

SAMAGRASHIKSHA
BAKSA
P.O.
P.S. AND DIST. BAKSA
ASSAM. PIN

5:THE DISTRICT MISSION CO-ORDINATOR

SAMAGRASHIKSHA
HAILAKANDI
P.O.
P.S. AND DIST. HAILAKANDI
ASSAM. PIN

6:THE DISTRICT MISSION CO-ORDINATOR

SAMAGRASHIKSHA
DIMA HASAO
P.O.
P.S. AND DIST. DIMA HASAO
ASSAM. PIN

7:THE DISTRICT MISSION CO-ORDINATOR

SAMAGRASHIKSHA
DHEMAJI
P.O.
P.S. AND DIST. DHEMAJI
ASSAM. PIN

8:THE DISTRICT MISSION CO-ORDINATOR

SAMAGRASHIKSHA
KAMRUP
P.O.
P.S. AND DIST. KAMRUP
ASSAM. PIN

9:THE DEPUTY COMMISSIONER

DHUBRI
P.O.
P.S. AND DIST. DHUBRI
ASSAM. PIN

10:THE DEPUTY COMMISSIONER
BAKSA
P.O.
P.S. AND DIST. BAKSA
ASSAM. PIN

11:THE DEPUTY COMMISSIONER
HAILAKANDI
P.O.
P.S. AND DIST. HAILAKANDI
ASSAM. PIN

12:THE DEPUTY COMMISSIONER
DIMA HASAO
P.O.
P.S. AND DIST. DIMA HASAO
ASSAM. PIN

13:THE DEPUTY COMMISSIONER
P.O.
P.S. AND DIST. DHEMAJI
ASSAM. PIN

14:THE DEPUTY COMMISSIONER
KAMRUP
P.O.
P.S. AND DIST. KAMRUP
ASSAM. PIN

15:BLOCK MISSION CO-ORDINATOR
P.O.
P.S. AND DIST. DHUBRI
ASSAM. PIN

16:BLOCK MISSION CO-ORDINATOR
P.O.
P.S. AND DIST. BAKSA
ASSAM. PIN

17:BLOCK MISSION CO-ORDINATOR
P.O.
P.S. AND DIST. HAILAKANDI
ASSAM. PIN

18:BLOCK MISSION CO-ORDINATOR
P.O.
P.S. AND DIST. DIMA HASAO
ASSAM. PIN

19:BLOCK MISSION CO-ORDINATOR
P.O.
P.S. AND DIST. DHEMAJI
ASSAM. PIN

20:BLOCK MISSION CO-ORDINATOR

P.O.
P.S. AND DIST. KAMRUP
ASSAM. PIN

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : SC, ELEM. EDU

Linked Case : WP(C)/7671/2022

FRANKLIN HUSSAIN AND 14 ORS.
S/O. MASTAFA HUSSAIN
R/O. A.M. CO. ROAD
P.O.
DIST. DHUBRI
ASSAM.

2: CHINMOY PATHOK
S/O. LT. PHULEN PATHAK
R/O. TAMULPUR
P.O.
DIST. BAKSA
ASSAM.

3: BIDYUT KANTI DUTTA
S/O. LATE VIVEKANANDA DUTTA
R/O. SOUTH HAILAKANDI
TOOL ROAD
P.O. AND DIST. HAILAKANDI
ASSAM.

4: GAURAB CHANDA
S/O. LATE BIJENDRA CHANDA
R/O. HAFLONG
DIST. DIMA HASAO
ASSAM.

5: PAUL NAMPUL
S/O. L.K. CHONGA NAMPUL
R/O. UMRONSO
DIST. DIMA HASAO
ASSAM.

6: INDRAJIT KR. ROY
S/O. LATE PURNA CHANDRA ROY
R/O. GAURIPUR
WARD NO.II
P.O. GAURIPUR
DIST. DHUBRI
ASSAM.

7: HEMJYOTI KALITA
S/O. NAGARJULI
R/O. VILL. AND P.O. SAHPUR
PEBIPOLA
DIST. BAKSA
ASSAM.

8: SAILANDHAR PEGU
S/O. LT. UPENDRA NATH PEGU
R/O. TANTARI
P.O. DIST. DHEMAJI
ASSAM.

9: JAHAR JOYTI KULI
S/O. DHANJAY KULI
R/O. TANTARI
P.O. KULAJAN
P.S. CHILAPATHAR
DIST. DHEMAJI
ASSAM.

10: PRABADH KR. BARMAN
S/O. GOLAK CHANDRA BARMAN
R/O. BOURI
P.S. DELHAR
DIST. NALBARI

ASSAM.

11: RANA DAS
S/O. HARISH DAS
R/O. WARD NO.
P.O. KHALILPUR
P.S
DIST. DHUBRI
ASSAM.

12: MOFIDUL ISLAM
S/O. KASMAT ALI SK.
R/O. SOUTH COLLEGE NAGAR
WARD NO.14
P.O. P.S. AND DIST. DHUBRI
ASSAM.

13: RAJIB PRODHANI
S/O. SHAHJAHAN ALI PRADHANI
R/O. MOTERJHAR
P.O. AND DIST. DHUBRI
ASSAM.

14: MIZANUR RAHMAN
S/O. LATE ABDUR RAHMAN
R/O. BORKANDA
P.O. BARKANDA
BILASIPARA
DIST. DHUBRI
ASSAM.

15: MANOJ KR. RAY
S/O. LATE PHATIK CH. RAY
R/O. VILL. GAIKHOWA
P.O. GOLAKGANJ
DIST. DHUBRI
ASSAM
VERSUS

THE STATE OF ASSAM AND 19 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EDUCATION DEPTT. (ELEMENTARY)
DISPUR
GUWAHATI-06.

2: THE MISSION DIRECTOR
SAMAGRA SHIKSHA

ASSAM (SAMAGRA SIKSHA ASSAM)
KAHILIPARA
GUWAHATI-19.
3:THE DISTRICT MISSION CO-ORDINATOR

SAMAGRASHIKSHA
DHUBRI
P.O.
P.S. AND DIST. DHUBRI
ASSAM. PIN

4:THE DISTRICT MISSION CO-ORDINATOR
SAMAGRASHIKSHA
BAKSA
P.O.
P.S. AND DIST. BAKSA
ASSAM. PIN

5:THE DISTRICT MISSION CO-ORDINATOR
SAMAGRASHIKSHA
HAILAKANDI
P.O.
P.S. AND DIST. HAILAKANDI
ASSAM. PIN

6:THE DISTRICT MISSION CO-ORDINATOR
SAMAGRASHIKSHA
DIMA HASAO
P.O.
P.S. AND DIST. DIMA HASAO
ASSAM. PIN

7:THE DISTRICT MISSION CO-ORDINATOR

SAMAGRASHIKSHA
DHEMAJI
P.O.
P.S. AND DIST. DHEMAJI
ASSAM. PIN

8:THE DISTRICT MISSION CO-ORDINATOR
SAMAGRASHIKSHA
KAMRUP
P.O.
P.S. AND DIST. KAMRUP
ASSAM. PIN

9:THE DEPUTY COMMISSIONER

DHUBRI
P.O.
P.S. AND DIST. DHUBRI
ASSAM. PIN
10:THE DEPUTY COMMISSIONER

BAKSA
P.O.
P.S. AND DIST. BAKSA
ASSAM. PIN
11:THE DEPUTY COMMISSIONER
HAILAKANDI
P.O.
P.S. AND DIST. HAILAKANDI
ASSAM. PIN
12:THE DEPUTY COMMISSIONER
DIMA HASAO
P.O.
P.S. AND DIST. DIMA HASAO
ASSAM. PIN
13:THE DEPUTY COMMISSIONER
P.O.
P.S. AND DIST. DHEMAJI
ASSAM. PIN
14:THE DEPUTY COMMISSIONER
KAMRUP
P.O.
P.S. AND DIST. KAMRUP
ASSAM. PIN
15:BLOCK MISSION CO-ORDINATOR
P.O.
P.S. AND DIST. DHUBRI
ASSAM. PIN
16:BLOCK MISSION CO-ORDINATOR
P.O.
P.S. AND DIST. BAKSA
ASSAM. PIN
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P.O.
P.S. AND DIST. HAILAKANDI
ASSAM. PIN
18:BLOCK MISSION CO-ORDINATOR
P.O.
P.S. AND DIST. DIMA HASAO
ASSAM. PIN
19:BLOCK MISSION CO-ORDINATOR
P.O.
P.S. AND DIST. DHEMAJI
ASSAM. PIN
20:BLOCK MISSION CO-ORDINATOR

P.O.
P.S. AND DIST. KAMRUP
ASSAM. PIN.

Advocate for : MR. U K NAIR
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 19 ORS.

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

06.02.2023

Heard Mr. U. K. Nair, the learned senior counsel assisted by Mr. N. Alam, the learned counsel for the petitioners and Mr. P. Nayak, the learned counsel appearing on behalf of Axom Sarba Shiksha Abhijan Mission and Ms. S. Baruah, the learned counsel appearing on behalf of the State respondents.

Both the writ petitions are taken up for disposal at the motion stage itself taking into account that the facts involved in both the writ petitions are similar in nature.

The petitioners in WP(C) No.7671/2022 are serving as Accounts Assistance-cum-Caretaker on contractual basis in Kasturba Gandhi Balika Vidyalaya (for short, KGBV) and the petitioners in WP(C) No.7667/2022 are working as Chowkidar, Grade-IV employees on contractual basis under Samagra Shiksha, Assam in KGBV. Both the sets of petitioners are employed on the basis of engagement agreement for a period of 11 months which are renewed from time to time. Clause 5 of the engagement agreement entered into between Assam Sarba Shiksha Abhijan Mission and the petitioners in both the sets of writ petitions are same. Taking into account its relevance, the same is quoted herein under:-

“5. That during the period of the agreement, The Second Party shall be governed by all rules, regulations and bye laws of Axom Sarba Siksha Abhijan Mission in force for the time being.”

Mr. P. Nayak, the learned counsel appearing on behalf of Axom Sarba Shiksha Abhijan Mission has placed before this Court Service Regulations and the Financial Regulations, 2003 of Axom Sarba Shiksha Abhijan Mission. He further placed reliance on General Conditions of the Service Regulations and more particularly to Clause 6 (p) which is reproduced herein below:

“A member of service engaged either on contract basis or on deputation/attachment shall be liable to be posted anywhere within the State of Assam or in any other department of Govt., corporate body, society in the affairs of which the Mission may be interested and in such cases, the member shall have no option against such posting or transfer.”

A perusal of the above quoted regulation would show that a member of service either on contractual basis or on deputation/attachment shall be liable to be posted anywhere within the State of Assam or in any other Department of Government, corporate body, society in the affairs of which the Mission may be interested and in such cases, the member shall have no option against such posting or transfer.

In the backdrop of the above, let this Court take into consideration the reason why the instant writ petitions have been filed by the two sets of writ petitioners. The petitioners herein, in both the writ petitions, are aggrieved by the order dated 03.11.2022 issued by the Mission Director, Samagra Shiksha, Assam whereby the petitioners have been transferred from KGBV to Netaji Subhash Chandra Bose Avasiya Vidyalaya (for short,

NSCBAV).

Mr. P. Nayak, the learned counsel appearing on behalf of Axom Sarba Shiksha Abhijan Mission submitted that the KGBVs were funded by the Government of India under the Ministry of Education as per the approval of the Project Approval Board (PAB) meeting with 90:10 fund sharing pattern of the Government of India and Government of Assam. In the 223rd meeting of the Project Approval Board to consider the Annual Work Plan and Budget (AWP&B), 2016-17 of Sarba Shiksha Abhijan Mission for the State of Assam, it was mentioned at Point No.6, Part b. IV that the State will further ensure that all staff engaged inside KGBVs will be female only. Further in the 11th Executive Committee which is the Apex decision making body of Samagra Shiksha in its meeting held on 24.08.2022 had directed to explore the possibility of the existing male staff of KGBVs being accommodated/transferred to other institutions like Adarsha Vidyalaya or other schemes etc. and post of KGBV being filled up with female candidates only. Thereupon the Government of India in its Project Approval Board Meeting to consider Annual Work Plan and Budget (AWP&B), Samagra Shiksha, Assam had sanctioned 10 numbers of new NSCBAVs in 10 blocks. Accordingly, initiatives have been taken for operationalisation of these NSCBAVs. It was mentioned that these NSCBAVs are institutions of same nature as KGBVs, only difference is that KGBVs are residential schools for girls whereas NSCBAVs are residential schools for boys. It was mentioned that in NSCBAVs most of the positions like Superintendent, Administrative Assistant, Peon, Chowkidar, Cook are to be filled up with male candidates. Accordingly, taking into account the said aspect of the matter, the impugned transfer order was issued on

03.11.2022. It was also mentioned that the objectives of the impugned action is to accommodate the long serving male staff of KGBVs in NSCBAVs for the continuance of their services with same remuneration in the light of the recent directions of the Central Government not to retain male staff in KGBVs.

The materials so placed by Mr. P. Nayak, the learned counsel during the course of hearing is kept on record and marked with the letter "X".

This Court, keeping in mind that the scope of judicial review in matters pertaining to transfer is very limited and in the instant cases, the reasons as available on record as well as Regulation 6 (p) of the Service Regulations as quoted herein above is of the opinion that these cases are not cases wherein this Court should exercise the powers of judicial review..

Accordingly, both the writ petitions, being devoid of merits, stand dismissed.

The interim order passed earlier stands vacated.

JUDGE

Comparing Assistant