

GAHC010268612019



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

Case No. : WP(C)/8580/2019

ANANDA RAM DAS AND 75 ORS.
S/O- LATE RAM CHARAN DAS, R/O- TARAPATI, P.O- GOSSAIHAT, DIST-
KAMRUP, ASSAM, PIN- 783360

2: MOHESH CHANDRA SARMA
S/O- MUKTA NANDAN SARMA

R/O- BARJALA
P.O- TANGLA

DISTRICT UDALGURI
ASSAM

PIN -

3: RUHUL AMIN
S/O- ABDUL MAZID
R/O- JARAMARI
P.O- BALISATRA
DISTRICT - NAGAON
ASSAM
PIN

4: JAWHER ALI MALLIK
S/O- LATE TUFAN ALI MALLIK

R/O- JAHURPAM
P.O JAHURAPAM
DISTRICT - BARPETA
ASSAM

PIN -

5: MAJEDA KHATUN

D/O- LATE KHOWAJUDDIN SK

VILLAGE - NORTH GERAMARI

P.O- ALAMGANJ

P.S- GAURIPUR

DISTRICT - DHUBRI

ASSAM

PIN

6: GADADHAR DAS

S/O- LATE GANGA NARAYAN DAS

R/O- BANIAKUCHI

P.O- LAUKHATA

DIST- BAKSA

ASSAM

7: SAHJAHAN ALI

S/O- LATE HASMAT HAFMATULLYA SK

VILLAGE - KALDOBA PART-I

P.O

P.S- AGOMANI

DISTRICT - DHUBRI

ASSAM

PIN -

8: AZAD ALI

S/O- LATE DARAZUDDIN SK.

VILLAGE - MADHU SOULMARI PART-II

P.O- MADHU SOULMARI

P.S- GAURIPUR

DISTRICT - DHUBRI

ASSAM

PIN -

9: PRANOTI RAY

W/O- SANKAR KUMAR BHAGOT

VILLAGE - JINKATA

P.O- MAHAMAYAHAT (HALAKURA)
P.S- HALAKURA
DISTRICT - DHUBRI
ASSAM

10: SUBODH CH. ROY
S/O- LATE SURENDRA CH. ROY

VILLAGE-BILASIPARA
WARD NO.3 (DIMATOLA)

P.O
P.S- BILALSIPARA

DISTRICT - DHUBRI
ASSAM

11: AYNAL HOQUE
S/O- LATE MAKRAM ALI SK.

VILLAGE - BANIAMARI PART-III

P.O- MAKRIJHORA
P.S- MOHAMAYA

DISTRICT - DHUBRI
ASSAM

12: HIRENDRA ROY
S/O- KHAGENDRA ROY

VILLAGE - NIDANI

DISTRICT- DHUBRI
ASSAM

13: AMZAD ALI
S/O- KACHEM SK
VILL- MADHYAPARA
P.O- PATIAGAON
DIST- DHUBRI
ASSAM

14: JITIMONI GOGOI

C/O- UPEN GOGOI
R/O- CHUNARI
DIST- SIVASAGAR
ASSAM

15: JINA MOHAN
D/O- BENUDHAR MOHAN

R/O- CHUNARI BLOCK

DISTRICT -SIVASAGAR
ASSAM

PIN -

16: BIVARANI CHANGMAI
W/O- DEBA PRASAD MOHAN

VILLAGE - JAGALI CARAIHABI GAON
CHURANI BLOCK

DISTRICT -SIVASAGAR (CHARAIDAU)
ASSAM

PIN -

17: SONTARA GOGOI
S/O- PURNAKANTA GOGOI

VILLAGE - DOLAKAKHARIA

SAPEKATI BLOCK

DISTRICT -SIVASAGAR
ASSAM

18: LOCHAN CH. BORAH
S/O- HITESWAR BORAH

VILLAGE - ROTOWA
P.O- MONABARI
DISTRICT -BISWANATH
ASSAM

19: SIMANTA SAIKIA
S/O- SRI BADAN SAIKIA

VILLAGE - NIZ BAGHMARI

P.O- BAGHMARI

DISTRICT -BISWANATH
ASSAM

PIN -

20: RUNU KOCH DUTTA
W/O- DILIP DUTTA

VILLAGE - PUDUNANI KHAT GAON

P.O- BAHADUR CHUCK

DISTRICT -LAKHIMPUR
ASSAM

PIN -

21: BINU MAHANTA
W/O- JIBEN MAHANTA

VILLAGE - NO.1 SUMDAR

P.O- TITLAGRAH

DISTRICT -CHARAIDAU
ASSAM

PIN -

22: NALINI TANTI
W/O- BIRA TANTI

VILLAGE - BATANI
P.O- NAOJAN

DISTRICT - GOLAGHAT
ASSAM

23: MUSHPIQUR RAHMAN CHAUDHURY
S/O- MAINUL HAQUE CHAUDHURY

VILLAGE - SHARIO NAGAR

P.O- KARNAMADHU

DISTRICT - KARIMGANJ
ASSAM

24: SARBA DAS
D/O- RABINDRA KR. DAS

VILLAGE - MANIKPUR

P.O- MANIKPUR

DISTRICT - KARIMGANJ
ASSAM

25: ABDUS SOMAD
S/O- ABDUL GOFUR

VILLAGE - TIKARAPARA

P.O- DUTTAGRAM

DISTRICT - KARIMGANJ
ASSAM

26: ABDUL HYE
S/O- MUKADDAR ALI

VILLAGE - NAYAGRAM

P.O- MULLAGANG BAZAR

DISTRICT - KARIMGANJ
ASSAM

27: MIRA DAS
D/O- ANIL CH. DAS

VILLAGE - LAKSHMI NAGAR

P.O- KADAMTALA

DISTRICT - KARIMGANJ
ASSAM

28: MUNINDRA BORAH
S/O- BHUBAN CH. BORAH

VILLAGE NO.2 CHRISTIAN BASTI

P.O- RANGA CHAKUA

DISTRICT- SONITPUR
ASSAM

29: NASIRUDDIN LASKAR
S/O- MASABBIR ALI

VILLAGE - BHURIKANDI PART-I

P.O- HATIKHAL BAZAR

DISTRICT - CACHAR
ASSAM

30: GOGEN CH. SAIKIA
S/O- BAPURAM SAIKIA

VILLAGE - BORBIL GAON

DISTRICT- MAJULI
ASSAM

31: PRAFULLA BORGOHAIN
S/O- RUPA NATH BORGOHAIN

VILLAGE - NOPAM GOHAIGAON

P.O- BAILONG GAON

DISTRICT - JORHAT
ASSAM

32: RUKIA KHATUN
D/O- ABDUL JABBAR

VILLAGE - DHAKUA
P.O- DHAKUA
DISTRICT - BARPETA
ASSAM

33: PROTIMA DUTTA
D/O- RAM CH. HAZARIKA

VILLAGE - PANITOLA

DISTRICT - DIBRUGARH
ASSAM

PIN -

34: ANU BORGOHAIN
C/O- BILAKANTA BORGOHAIN

P.O- OINAMORA

DISTRICT - JORHAT
ASSAM

35: PUTUL DUTTA
S/O- KHIRESWAR DUTTA

VILLAGE NO.1 BALAJAN

P.O- MACHKHOWA

DISTRICT - DHEMAJI
ASSAM

36: RUNU KUCH
D/O- PUNYESWAR KUCH

VILLAGE - PADUMANI

P.O- BAHADUR CHUK

DISTRICT - LAKHIMPUR
ASSAM

37: JUNMONI DUTTA
D/O- DAMBARCE DUTTA

VILLAGE - MACHKHOWA

P.O- PUB - MACHKHOWA

DISTRICT - DHEMAJI
ASSAM

38: NIMALATA DUTTA
D/O- JITEN BHUYAN

VILLAGE - HARMOTI

P.O- HARMOTI

DISTRICT - LAKHIMPUR
ASSAM

39: KALPANA SAIKIA
D/O- LATE BHUDHAR SAIKIA

VILLAGE - KACHUA

P.O- CHAPARMUKH

DISTRICT - NAGAON

40: BINU PRAVA BAISHYA (KALITA)

D/O- LATE ALIRAM BAISHYA

VILLAGE - BANGALMUR
P.O- KALAG
DISTRICT - NALBARI
ASSAM

41: BHARATI DAS
D/O- LATE GEMESWAR DAS

VILLAGE - KACHUA

P.O- CHAPARMUKH

DISTRICT - NAGAON
ASSAM

42: MUHI KANTA SAIKIA
S/O- LATE BASASTA SAIKIA

VILLAGE - BALOMIA GAON

P.O- PHULPANICHIGA

DISTRICT - SIVASAGAR
ASSAM

43: BIPUL KR. CHETRI
S/O- LATE HASTA BAHADUR CHETRY

VILLAGE - AUGURI NEPALI GAON

P.O- AUGURI MISSING GAON

DISTRICT - JORHAT
ASSAM

44: LAKHI DHAR NATH
S/O- LATE JANGKESWAR NATH

P.O- GASHPARK

VILLAGE - GASHPARK

DISTRICT - NAGAON
ASSAM

45: RUHIT BORA
S/O- LATE MOHAN CH. BORA

VILLAGE - KACHUA

P.O- CHAPARMUKH
DISTRICT - NAGAON
ASSAM

46: RATUL NATH
S/O- LATE NARENDRA NATH

VILLAGE - GASHPARA
P.O- GASHPARA
DISTRICT - NAGAON
ASSAM

47: TAPAN DAS
S/O- LATE BROJENDRA DAS

VILLAGE - JAMUHANDAL

P.O- PODUMPUKHURI

DISTRICT - HOJAI
ASSAM

48: ATUL CH. DAS
S/O- SRI LALIT MOHAN DAS

VILLAGE NO.1 BHETAGAON

P.O- BIJNI
DISTRICT - CHIRANG
ASSAM

49: REKHA DUTTA
D/O- LATE BUNARAM DUTTA

VILLAGE - SHANTIPUR NO.7

P.O- SHANTIPUR NO.7

DISTRICT - TINSUKIA
ASSAM

50: MD. ALTAF HUSSAIN
S/O- LATE SABEK ALI

VILLAGE - DALAITOLA

P.O- SANIADI
DISTRICT - KAMRUP (RURAL) ASSAM

51: MINA PRAVA DAS
D/O- LATE CHANDIRAM DAS

VILLAGE - AZARA
P.O- AZARA

DISTRICT - KAMRUP (ASSAM)

52: MONOWARA BEGUM
C/O- ABDULAR RAHMAN

R/O- NALBARI
RAJNAGAR

DISTRICT - NAGAON
ASSAM

53: ALI AKBAR AHMED
S/O- HUSSAIN ALI

VILLAGE - KHardhara

P.O- KHARDHARA

DISTRICT - BARPETA
ASSAM

54: AFAZUDDIN AHMED
S/O- ABDUL KHALEQUE

VILLAGE - SONARIBALI

P.O- SHAMOGURI

DISTRICT - NAGAON
ASSAM

55: ABUBAKKAR SIDDIQUE
S/O- LATE RAMJAN ALI

VILLAGE - BHAURADIA

P.O- TUPAMARI

DISTRICT - KAMRUP (RURAL)
ASSAM

56: HASHIM ALI
S/O- LATE ABDUL HANIF

VILLAGE - MOIDOMIA

P.O- MOIDOMIA

DISTRICT - LAKHIMPUR
ASSAM

57: ABDUL MATIN
S/O- LATE ABDUR HASHIM

VILLAGE - BHERBHERI

P.O- DHUPGURI
P.S- BATADRAVA

DISTRICT - NAGAON
ASSAM

58: MD. SAIFUL ISLAM
C/O- YURAB ALI

VILLAGE - JAMUGURI

P.O- HATIZUZUA
BLOCK - JURIA

DISTRICT - ASSAM

59: KRISHNA RAM DAS
S/O- LATE RAMCHARAN DAS

VILLAGE - TARAPATI

P.O- GOSAIHAT

DISTRICT - KAMRUP (RURAL)
ASSAM

60: JITEN SARMA
S/O- LATE HARICHARAN SARMA

VILLAGE - RAMPUR

P.O- AMRANGA

DISTRICT - KAMRUP (RURAL) ASSAM

61: CHABIN BORO
S/O- LATE CHANGARAM BORO

VILLAGE - BALIJURI

P.O- BAKULIPARA

DISTRICT - KAMRUP (RURAL) ASSAM

62: PHANIDHAR BORAH
S/O- GOJAT CH. BORAH

VILLAGE - UTTAR ROWNAGARH

P.O- AMBAGAN

DISTRICT - UDALGURI

63: SOVA MANDAL
S/O- JOYLAL MANDAL

VILLAGE - UDALGURI BAZAR

P.O- UDALGURI

DISTRICT - UDALGURI

64: GANESWAR NATH
S/O- SANTI RAM NATH

VILLAGE - DHOPGURI

P.O- DHOPGURI

DISTRICT - UDALGURI

65: KULAN SARMA
S/O- TOPESWAR SARMA

VILLAGE - SONAPANI

P.O- KACHUBIL

DISTRICT - UDALGURI

66: ATUL CH. DAS
S/O- MOHAN DAS

VILLAGE NO.1 BHATAGAON

P.O- BIJNI.
DISTRICT - CHIRANG

67: NIRANJAN ROY
S/O- LATE KARENDRA ROY

VILLAGE - THANADAR PARA

P.O- K/BHAT GAON

P.S- KOKRAJHAR

DISTRICT - KOKRAJHAR

68: KHANJANA ROY
W/O- TARKESWAR ROY

VILLAGE NO.1 HATIGAON

P.O- NO.1 HATIGAON

P.S- KACHU GAON

DISTRICT - KOKRAJHAR
BTC

69: PRADIP BRAHMA
S/O- LATE CHANDRADHAR BRAHMA

GOSSAIGAON RAJAPARA WARD NO.3
P.O
P.S- GOSSAIGAON

DISTRICT - KOKRAJHAR
(BTAD)

70: FULESWARI NARJARI
W/O- SUKUMAR KOCH

KOKRAJHAR RUPATAL NAGAR

WARD NO.3
P.O
P.S- KOKRAJHAR

DISTRICT -KOKRAJHAR
BTAD

71: MAMONI BRAHMA
W/O- JANA KANTA MOCHAHARY

VILLAGE - BORO BATARMARI

P.O- TITAGURI

DISTRICT - KOKRAJHAR
BTAD

72: PRAMANANDA ROY

S/O- SWARBESWAR ROY

VILLAGE - KAMARGAON

P.O- BOROBAZAR

DISTRICT - CHIRANG
BTAD

73: NAMITA SARKAR
W/O- BHAGIROD ROY

VILLAGE - MOISA PART-I

P.O- BELGURI
P.S- AGOMANI

DISTRICT - DHUBRI
ASSAM

74: AKHILES ROY
S/O LATE SURENDRA CH. ROY

VILLAGE - DIMATOLA
WARD NO.3

P.O- BILASIPARA

P.S BILASIPARA

DISTRICT - DHUBRI
ASSAM

PIN -

75: AMRIT KR. RAY
S/O- LATE KERENDRA ROY

VILLAGE - MOLANDUBI

P.O- RANIGANJ

P.S- SAPATGANJ

DISTRICT - DHUBRI
ASSAM

76: MANIRAM BASUMATARY

S/O- LATE RABINDRA BASUMATARY

VILLAGE - NILAIJHARA

P.O- SATYAPUR

P.S GOSSAIGAON

DISTRICT - KOKRAJHAR
BTAD

PIN - 783360

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM, DISPUR,
GUWAHATI - 781006

2:THE COMMISSIONER AND SECRETARY
THE GOVERNMENT OF ASSAM
DEPARTMENT OF ELEMENTARY EDUCATION
DISPUR
GUWAHATI - 781006

3:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI - 781006

4:THE DIRECTOR
NON-FORMAL
ADULT EDUCATION

CHRISTIAN BASTI
GUWAHATI - 781005

5:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI - 781019

6:THE DIRECTOR OF ELEMENTARY EDUCATION
BODOLAND TERRITORIAL AREA DEVELOPMENT COUNCIL (BTAD)
KOKRAJHAR - 783370
ASSA

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 28-03-2023

Heard Mr. M. Sarma, learned counsel for the petitioners as well as Mr. G. Bokolial, learned Govt. Advocate appearing for the respondent no.1 and Mr. A. Phukan, learned standing counsel for the respondent nos.2, 4 and 5 as well as Mr. P. Nayak, learned standing counsel for the respondent nos.3 and 6.

2. In this writ petition it is claimed that the petitioners were appointed as instructors in the year 1983-1984 under non-formal educational projects. In course of time, the petitioners were appointed as Supervisors under the said scheme in the year 1992-1993. However, as the said scheme came to an end on 31.03.2001, the services of the petitioners were terminated w.e.f. 31.03.2001. In that regard, formal orders of termination were issued on 15.03.2001.

3. The petitioners and similarly situated several others persons had approached this Court from time to time with prayer to direct the authorities for considering their re-absorption in service. It is not in dispute that several orders were passed by this Court in different writ petitions, thereby directing the State Govt. authorities to consider the claim of the petitioners in accordance with the then prevailing policies.

4. It is projected that in connection with WP(C) 2319/2001, the Director

of Elementary Education Assam, by filing an affidavit-in-opposition, has stated that the retrenched Supervisors were asked to appear before a Special Screening Committee constituted by the Govt. and accordingly, the names of 195 Supervisors were selected for their re-absorption. During the said process, this Court in a *suo-moto* proceeding registered as WP(C) 1457/2010 considered the issue relating to appointment and by order dated 05.03.2010, passed in the said writ petition, restrained the State respondents in carrying out fresh recruitment of LP/UP schools in the State of Assam. The proceedings was taken up in a writ appeal and thereafter the matter was taken up to the Supreme Court of India and the Supreme Court of India, by order dated 08.02.2012 passed in SLP(C)No.4340/2012, lifted the ban in the recruitment process. It is projected that even thereafter the appointments were not made and then another writ petition, being WP(C) No.243/2015 was filed before this Court and by order dated 21.05.2019 this Court directed the respondent authorities to convene a joint sitting and submit a decision about the absorption of the petitioners as Elementary School teachers.

5. The Commissioner and Secretary to the Govt. of Assam, Elementary Education Department by a speaking order dated 19.07.2019, which is impugned in this writ petition had mentioned therein that the matter was discussed with the Finance Department relating to the appointment of 195 Supervisors and as in the meantime the Assam Right of Children to Free and Compulsory Education Act, 2009 came into force from 27.08.2009 and rules thereunder was framed on 03.11.2011. Moreover, the minimum qualifications for a person to be eligible for appointment as teachers at Elementary level (LP/UP) schools was framed by the NCTE, amongst others, prescribing the professional

qualification as well as requirement of passing TET examination, it was held that the absorption of petitioners as Elementary School teachers in terms of judgment and order dated 25.07.2007 passed in WP(C) 2694/2001 was no longer possible. Accordingly the claim of the petitioners was rejected.

6. Accordingly by filing this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for a direction upon the respondent authorities to appoint the petitioners in terms of the said judgment and order dated 25.07.2007 passed by this Court in WP(C)2694/2001 and to quash the impugned communication dated 19.07.2019, issued by the respondent no.2.

7. The learned counsel for the petitioners has referred to the materials available on record and it is submitted that the petitioners had rendered their service for about 17-18 years from the year 1983-84 till 31.03.2001 and therefore, the respondent authorities be directed to absorb the petitioners for any teaching and/or non-teaching post. It is further submitted that the respondent authorities were required to consider the claim of the petitioners for absorption in terms of the qualification which existed and the norms which are available for appointment as prevailing in the year 2006.

8. The learned counsel for the petitioners has submitted that the cut-off mark of the year 2006 was taken from the fact that the competent authority has passed a speaking order in this regard on 08.11.2006 and in that regard, an affidavit-in-opposition was filed by the Joint Secretary Education (Elementary)

on 09.01.2007, in connection with WP(C) 2319/2001.

9. It is submitted that even if the Court is inclined to take up a view that the petitioners are required to have the prescribed qualifications including TET for their re-absorption as teachers in the Elementary Education Department, it would still be appropriate to direct the respondent authorities to consider the absorption of the petitioners in any non-teaching post.

10. Per contra, the learned counsel for the respondent nos.3 and 6 has submitted that as the scheme of prescribed non-formal education had terminated on 31.03.2001, the appointments made to the petitioners were co-terminous with the end of the scheme. Accordingly, it is submitted that it was not possible to absorb the petitioners in any teaching and non-teaching posts in any Elementary Schools.

11. In view of the changed circumstances, now the NCTE norms has been made mandatory and it is prescribed by NCTE that the teaching staff should be TET qualified. Accordingly, it is submitted that it was not possible to implement any scheme for the absorption of the petitioners and to consider the claims of the petitioners in terms of order dated 25.07.2007 passed by this Court in WP(C) 2694/2001.

12. A similar stand is taken by the learned counsel for the Elementary Education department and in this regard, he has referred to the affidavit-in-opposition filed by the respondent no.2.

13. On the consideration of the materials in its entirety, the Court finds that it is undisputed that the petitioners form a part of retrenched Supervisors under the erstwhile non-formal education are person, whose names appear in the list of 195 retrenched Supervisors who were sought to be re-absorbed by the authorities in view of the recommendation made by the High Power Committee constituted by the Government as per the order dated 01.09.2003 passed by this Court in WP(C) 1571/1998 and order dated 25.07.2007 passed in WP(C) 2694/2001. At the relevant time the respondent authorities had shown their concern to the issue raised by the petitioners and not only a list of 195 retrenched Supervisors was prepared for the purpose of re-absorption, but this Court was also moved so as to enable the respondent authorities to appoint the petitioners and other similarly situated persons.

14. It is also not in dispute that the petitioners were appointed under Non-formal education scheme which has come to an end on 31.03.2001 and that the service of the petitioners were retrenched w.e.f. 31.03.2001 by virtue of orders which were passed on 15.03.2001.

15. For the purpose of engaging teaching staff for the LP/UP schools for which the Elementary Education Department, the current requirement as prescribed under the NCTE is that the teaching staff must have the basic educational qualification as well as professional qualification prescribed for certain subjects but above all it is a mandatory requirement that a candidate must have passed TET, which was made mandate for appointment of teachers subsequent to enactment to Assam Right of Children to Free and Compulsory Education Act, 2009. It is well settled that the norms laid down in the NCTE

cannot be relaxed. Therefore, notwithstanding that at one point of time the respondent authorities were making an effort to absorb the petitioners in teaching course, in view of the prescription which was given by the NCTE, the Court does not find that any illegality was committed by the Elementary Education Department in passing a speaking order dated 19.07.2019.

16. At this stage, the learned counsel for the petitioner submits that the cases of the petitioners be compassionately considered for their absorption in the non-teaching post in view of the fact that the petitioners have rendered about 17 years of service in the Elementary Education Department and that they have been moving this Court for their rights since year 2001 and have spent 22 years in litigating for their rights.

17. Considering the above submission, the Court is inclined to provide that the respondents in the event the petitioners apply for any vacant and advertised post, the Elementary Education Department shall entertain the application of the petitioners for appointment in the non-teaching post under their establishments and that the competent respondent authorities shall consider the prayer of the petitioners on case-to-case basis for considering the exemption of their age bar. If such an application is made by the petitioners the competent authorities of the respondents shall consider the same in accordance with law. The petitioners shall have the liberty to participate in the selection process as and when vacancies arises, subject to fulfilling other conditions.

18. This aforesaid observation of the Court shall not be construed as if any essential qualifications has been relaxed.

19. The writ petition stands disposed of with observations as indicated above.

JUDGE

Comparing Assistant