

GAHC010315042019



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

Case No. : WP(C)/531/2020

ON THE DEATH OF MANTU LAL DEY AND 9 ORS.
HIS WIDOW NAMELY SADHANA DEY WIFE OF LATE MANTU LAL DEY,
VILL. SOUTH TOKRER CHARA, PT-IV, P.O. GOLAKGANJ, PS- GOLAKGANJ,
DIST.- DHUBRI, ASSAM.

2: DHANI RAM ROY
S/O- LT. GANDHA RAM ROY
VILL. SOUTH TOKRER CHARA
PT-II
P.O. GOLAKGANJ
PS- GOLAKGANJ
DIST- DHUBRI
ASSAM.

3: TARANI KANTO ROY (EXPIRED)
REP. BY HIS WIDOW NIRMALA ROY
AGE- 64 YEARS
W/O- TARANI KANTA ROY
R K MISSION ROAD
WORD NO-15
PO- BIDYAPARA
PS- DHUBRI
DIST.- DHUBRI
ASSAM.

4: PROFULLA KR ROY
S/O- LT. MAYCHAND ROY
VILL. BARUNDANGA
PS- GOLAKGANJ
DIST- DHUBRI
ASSAM.

5: PROTAP CH ROY (EXPIRED)
REP. BY HIS WIDOW NAMELY

JAY SHREE ROY
AGED ABOUT 64 YEARS
W/O- LT. PROTAP CH ROY
VILL. BISANDAJ
PT-I
PO- BISANDAI
PS- GOLAKGANJ
DIST.- DHUBRI
ASSAM.

6: NABAB ALI SK
S/O- LT. AZGAR ALI
VILL. KISMAT HASDAHA
PT-II
PO- KISMAT HASDAHA
PS- DHUBRI
DIST.- DHUBRI
ASSAM.

7: YUSUF ALI SK
S/O- LT. MAZIBAR RAHMAN
VILL.- FUL KUMARI
PS- GAURIPUR
DIST- DHUBRI
ASSAM.

8: ARJUN CH BRAHMA
S/O- BABU RAM BRAHMA
VIL.- BASHBARI
P.O- KAZIGAON
DIST.- KOKRAJHAR
VID-SAPT GRAM
ASSAM.

9: ON THE DEATH OF ABDUL MAZID SK
HIS WIDOW NAMELY HASINA BIBI
W/O LT. ABDUL MAZID
VILL. JHAGRARPAPAR
PART-IV
P.O. JHAGRARPAPAR
P.S. DHURBI
DIST- DHUBRI
ASSAM

10: ABUL BASAR RAFIQUUL ISLAM
S/O- MAFIZ UDDIN AHMED
VILL. AND P.O- LAKHIMARI
PS- GOLAKGANJ

DIST- DHUBRI
ASSAM

VERSUS

THE STATE OF ASSAM AND 9 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GHY-06.

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY.-06.

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY.-19.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
PIN- 783330.

5:THE DY. INSPECTOR OF SCHOOLS
DHUBRI
ASSAM
PIN- 783330.

6:THE DY. INSPECTOR OF SCHOOLS
GOSSAIGAON
DIST.- KOKRAJHAR
ASSAM.

7:THE TREASURY OFFICER
DHUBRI
ASSAM
PIN- 783330.

8:THE BLOCK ELEMENTARY EDUCATION OFFICER
GAURIPUR
DHUBRI
DIST- DHUBRI
ASSAM.

9:THE BLOCK ELEMENTARY EDUCATION OFFICER
GOLAKGANJ
DIST.- DHUBRI
ASSAM.

10:THE BLOCK ELEMENTARY EDUCATION OFFICER
AGOMONI
DIST.- DHUBRI
ASSAM

Advocate for the Petitioner : MR. J AHMED

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

22.02.2023

Heard Mr. J. Ahmed, the learned counsel for the petitioners and Mr. N. J. Khataniar, the learned counsel appearing on behalf of the respondent Nos.1, 3, 4, 5, 6 & 8 as well as Mr. R. Borpujari, the learned counsel appearing on behalf of the respondent Nos.2 & 7.

2. The case of the petitioners is that they are teachers in their respective L.P. Schools and they have also been deputed to work as CRCC by the Government and thereafter they were released from CRCC and again joined their respective schools and retired from their services.

3. The grievance of the petitioners herein is that the petitioners being belonging to the vacation department have not been given the entitlement to leave encashment to the extent of 300 days which have otherwise been given to the employees of non-vacation department.

4. The learned counsel for the petitioners have drawn the attention of this Court to a judgment of the Coordinate Bench of this Court in the case of ***Khagendra Nath Deka & Others vs. State of Assam & Others***, reported in

(2011) 5 GLT 9 wherein the Coordinate Bench of this Court has specifically dealt with the said issue.

5. I have perused the said judgment and the reasoning in the said judgment appears from the paragraph Nos.27 to 29 which is reproduced herein below:-

“27) In the above context, while it is important to bear in mind the resources of the State, it cannot be overlooked that recommendation was made by an expert body like Anomaly Committee, for raising the limit of earned leave benefits to 300 days to make it at par with the non-vacation department employees and this recommendation has been accepted by the State Govt., as can be seen from the Notification dated 19.2.2011. Therefore, it is apparent that financial stringency has not be considered to be a relevant factor by the State Govt. for accepting the recommendation of the Pay Anomaly Committee. The only thing is that encashment of earned leave benefit for 300 days has been extended w.e.f. 1.1.20 11.

28) In order to answer as to whether the maximum permissible days should be at par with non-vacation department employees, it would useful to examine once again the Govt. Notification of 19.7.1978. In the said Notification, no distinction is made of employees of the vacation and non-vacation department and the benefit of cash equivalent of unutilized leave credit, was given to all categories of State Govt. employees. Whether the examples cited by the petitioners, of benefits being granted to the retired ME school teachers and High Court employees (both vacation department employees) are on the basis of the said Govt. Notification dated 19.7.1978, is not clearly discernible. But in the absence o f any other documents which permits leave encashment benefits to the State Govt. employees (barring the Notification dated 19.7.1978), it would be fair to assume that employees in the vacation department were

also conferred similar benefits at par with their brothers in the non-vacation department and that is how the benefits was granted to them, in the cases of vacation establishment employees, cited by the petitioners.

29) That apart, since encashment benefits to retired employees of the vacation department is limited to 300 days, the cash outflow from the State coffer is not unlimited. When vacation is availed by employees of a vacation department, they shall not be entitled to any leave encashment benefit for the availed vacation. But that does not mean that when the earned leave at the permissible rate of 10 days are in the credit of the retiring vacation department employee, there is no reasonable basis for restricting the leave encashment benefits to any lesser days, than what is available to a non-vacation department employee."

6. On the basis of the said reasoning, the Coordinate Bench of this Court held that there were enough justification to allow the writ petition thereby setting aside and quashing the Office Memorandum dated 21.08.2000 and the Office Memorandum dated 11.12.2006. This Court further directed the respondents to take into account the earned leave in the credit of the petitioners and to grant them the leave encashment benefit to the extent of permissible days at the relevant time for the employees in the non-vacation department. Further to that, taking into account that the petitioners therein had retired from service long back, the respondents were further directed to carry out the necessary exercise to grant the leave encashment benefit to the petitioners expeditiously and preferably within a period six months from the date of the said judgment.

7. Taking into account the facts as well as the issue involved in the instant case being similar to the case involved in the case of ***Khagendra***

Nath Deka (supra), this Court is also of the opinion that the law as laid down by the Coordinate Bench of this Court in the said judgment has to be applied to the facts of the instant case.

8. Accordingly, this Court therefore directs the respondent authorities to verify the entitlement of the petitioners in respect to their earned leave encashment benefit by taking into account that the petitioners being in the vacation department would also be entitled to the upper limit of 300 days on account of leave encashment benefit as have been allowed to the non-vacation department.

9. The said verification, computation and disbursement shall be carried out within a period of 3 (three) months from the date a certified copy of the instant order is served upon the Director of Elementary Education Department.

10. Before concluding, this Court would also like to take note of that in the instant writ petition, there are ten petitioners who are claiming their individual right to leave encashment and as such it cannot be a common cause of action. However, it is seen from the writ petition that the court fee of only one person has been paid.

11. The learned counsel for the petitioners undertakes to submit the deficit court fee within 7 (seven) days from today.

12. On the basis of the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant