

GAHC010106222024



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

Case No. : WP(C)/3055/2024

PRABHAT CHANDRA NATH AND 40 ORS
SON OF LATE JURAMANI RAM NATH, RESIDENT OF RADHA GOBINDA
BARUAH ROAD, BYELANE-9(W), HOUSE NO.77, GEETANAGAR, DISTRICT-
KAMRUP(M), PIN-781024, ASSAM.

2: REKHA MAZUMDAR
RESIDENT OF H. NO. 6
BISHNU PATH
MATHURA NAGAR
DISPUR SACHIVALAYA
KAMRUP (M)
GHY-781006
P.S- DISPUR.

3: DR. AMARENDRA BALLAV DEVCHOUDHURY
RESIDENT OF LANKESWAR
JALUKBARI
ALAKANANDA PATH
OPP. BRO ADG HQ
GUWAHATI-781014
PS- JALUKBARI.

4: BIDHHAN KUMAR DAS
RESIDENT OF FLAT NO. 3D
AASTHA HEIGHT
IN FRONT OF GOVT. PRESS
BAMUNIMAIDAM
GUWAHATI-781021
PS- CHANDMARI.

5: GURU PRASAD SARMA
RESIDENT OF BRINDAVAN APARTMENT
A-BLOCK
GANESHMANDIR ROAD

BYELANE 6
NEW GUWAHATI
NOONMATI
GUWAHATI
P.S- NOONMATI.

6: HAREN CHANDRA BURAGOHAIN
RESIDENT OF KAHILIPARA
BHAGADUTTAPUR
H/NO. 22
OPTIMISTIC INSTITUTE
GUWAHATI-19
P.S.- DISPUR.

7: DILIP BARUAH
RESIDENT OF BOIRAGIMATH
NEAR PHE OFFICER'S COLONY
H/NO 485
DIGRUGARH-786003
PS- BAIRAGIMATH.

8: MD. NURUL ISLAM
RESIDENT OF DAMPUR
HAJO
DIST- KAMRUP
ASSAM
PS- HAJO.

9: DHWAJENDRA NATH DAS
RESIDENT OF BAKUL PATH
JALUKBARI
NH-37
GUWAHATI-14
PS-JALUKBARI.

10: KUTUB UDDIN AHMED
RESIDENT OF BORPARA
BONGAIGAON P.S- BONGAIGAON.

11: BHUBAN KRISHNA MISRA
RESIDENT OF H/NO. 97
SOUTH SARANIA ROAD
P.O- ULUBARI
GHY-781007
P.S- PALTAN BAZAR.

12: JIBAN SARKAR
RESIDENT OF BORPARA

BONGAIGAON
PS- BONGAIGAON.

13: DIP NARAYAN DEV CHOUDHURY
RESIDENT OF NOONMATI
GUWAHATI-781020
P.S- NOONMATI.

14: AMARANGSHU PATGIRI
RESIDENT OF ABHAYAPURI
DIST- BONGAIGAON
PS- ABHAYAPURI.

15: PRADIP TALUKDAR
RESIDENT OF PATHSALA
DIST- BAJALI
P.S- PATHSALA.

16: MAN MOHAN SHARMA
RESIDENT OF DAKHALA SATRAPARA
P.O- BIJAYNAGAR
PIN-781122
DIST- KAMRUP
PS- BIJAYNAGAR.

17: PRABIR RANJAN SHOME
RESIDENT OF H/NO. 35
2ND BYELANE
BHASKAR NAGAR
ZOO ROAD TINIALI
GUWAHATI-21
PS- GEETANAGAR.

18: SANTANU SINHA
RESIDENT OF BORPARA
BONGAIGAON
PS- BONGAIGAON.

19: BHAGAWAN DUTTA
RESIDENT OF VILL- PANARA
P.O- DAGAON
DIST- KAMRUP
P.S- RANGIA.

20: MD. CHAMNUR ALI
RESIDENT OF NATBOMA
PACHALI
HATIGAON

GHY-30
P.S.- DISPUR.

21: PRASANTA BARUAH
RESIDENT OF SANTOSI MAA ROAD
CHIRING CHAPORI
H/NO. 201
DIBRUGARH-786001
PS- DIBRUGARH.

22: BASANTA SARMA
RESIDENT OF BHAGADUTTAPUR
K.K. NAGAR
H./NO-56
KAHILIPARA
PO- KAHILIPARA
P.S- DISPUR.

23: DINESH MALI
RESIDENT OF BIRPARA
P.O- BIRPARA
P.S- BOKO
DIST- KAMRUP.

24: DHARANI TALUKDAR
RESIDENT OF VILLAGE - KUMARIKATA
P.O- KUMARIKATA
DIST- NALBARI
ASSAM
PIN NO.781360.

25: MD. GIAS UDDIN MIR
RESIDENT OF VILLAGE - DAKHINGAON
P.O- KAHILIPARA
DIST- KAMRUP(M)
ASSAM
PIN NO.781019.

26: SURJA MEDHI
RESIDENT OF NIJ BAHJANI
NALBARI
P.S- NALBARI.

27: ANIMA PAUL
RESIDENT OF BHASKAR NAGAR
SARADAMOYEE PATH
GHY-18
P.S.- BHASKAR NAGAR.

28: ANJALI DEVI
RESIDENT OF DHARAPUR CHARIALI
DHARAPUR
GUWAHATI-781017
P.S- DHARAPUR.

29: HALI RAM PHUKAN
RESIDENT OF BYE-LANE NO. 6/A
BANIPUR
DIBRUGARH-786003
P.S- BANIPUR.

30: NAGEN CHANDRA MALI
RESIDENT OF 3 NO. MATHGHARIA
HARIPUR
P.O. AND PS- NOONMATI
GUWAHATI-20.

31: KHARGESWAR KALITA
RESIDENT OF PIYALI PHUKAN NAGAR
NEAR LAKHI MANDIR
M.C. ROAD
H/NO-27
GHY-21
P.S- CHANDMARI.

32: KHIRA SAIKIA
RESIDENT OF NARENGI CHANDRAPUR
H/NO. 252
NEAR SHIV MANDIR
PANIKHAITI
GHY-26
PS- PANIKHAITI.

33: BABUL CHANDRA DUTTA
RESIDENT OF GOPAL NAGAR
SHIVPUR
P.O- NOONMATI
GHY-20
P.S- NOONMATI.

34: HEMANTA KUMAR SARMA
RESIDENT OF PRAGIYOTI NAGAR
BYE LANE-1
BEHARBARI
SONKUCHI PATH
H/NO. 38

GHY-29
PS- BASISTHA.

35: BINAY KUMAR DAS
RESIDENT OF KEDAR ROAD
BYE LANE-3
NEAR NAMGHAR
GHY 1
PS- BHARALUMUKH.

36: MAHENDRA RAJBONGSHI
RESIDENT OF GEETANAGAR
AMAYAPUR
H/NO. 43
P.O- NOONMATI
GUWAHATI-20
P.S- NOONMATI.

37: KALYAN BHATTACHARJEE
RESIDENT OF TARAPUR
SHIVBARI ROAD
JOGENDRA SARANI
PO- SILCHAR-3
DIST- CACHAR
PS- SILCHAR.

38: RAKESH KUMAR CHANDA
RESIDENT OF 2076 SHIVALIK PARK
NEAR JAGANNATH MANDIR
UTTAR KRISHNAPUR PART-LL
PO- SILCHAR-788006
PS- SILCHAR.

39: MD. BORHAN UDDIN
RESIDENT OF VILL- HILCHAR
P.S- SRIGAURI
DIST- KARIMGANJ
PIN-788806
PS- KARIMGANJ.

40: MAMONI BEGUM HAZARIKA
C/O- ALI HUSSAIN
RESIDENT OF P.O- BOIRAGIMATH
NEAR BOIRAGIMATH NATUNGAON MASZID
DIBRUGARH-3
P.S- DIBRUGARH.

41: MD. ABDUL HOQUE

RESIDENT OF VILL- SHERALIPUR
P.O- LAMAJUAR
DIST- KARIMGANJ
PIN-788701
PS- KARIMGAN

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT, DISPUR, GUWAHATI-781006,
ASSAM.

2:THE POLLUTION CONTROL BOARD
ASSAM
REPRESENTED BY ITS CHAIRMAN
BAMUNIMAIDAN
GUWAHATI-781021.

3:THE MEMBER SECRETARY
POLLUTION CONTROL BOARD
BAMUNIMAIDAN
GUWAHATI-781021

Advocate for the Petitioner : MR. S K DAS

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 14-06-2024

Heard Mr. S.K. Das, learned counsel for the petitioner as well as Ms. M. Kalita, learned standing counsel for the Forest Department representing respondent no.1 and Mr. S. Baruah, learned standing counsel for the Pollution Control Board (PCB in short) representing respondent nos.2 and 3.

2. Claiming to have a common cause, 47 petitioners have filed this writ petition, *inter-alia*, claiming that the respondent authorities should include the

name of the petitioners as beneficiaries in the Pollution Control Board, Assam (Employees) Retirement Benefit Scheme, 2024. The case of the petitioners is that they have superannuated from service under the PCB, Assam prior to 01.07.2023. After the retirement of the petitioners, the PCB (respondent no.2) has introduced a scheme "Pollution Control Board, Assam (Employees) Retirement Benefit Scheme-2024" ('2024 Scheme' in short). The said scheme is made applicable to every regular employees who have joined the respondent no.2 both on or before 01.07.2023 and retired after 01.07.2023, and who are willing to come under the scheme for which such employee was required to exercise option in writing within a month from the date of issuance of notice.

3. In this regard, the learned counsel for the petitioners has submitted that after filing of this writ petition they have received a copy of the said scheme for which it could not be filed along with the writ petition. The said cause is accepted.

4. The grievance of the petitioners is that as the scheme is made applicable on and from 01.07.2023, the petitioners have been discriminated against by the respondent authorities, as the respondents would be creating two sets of retired employees, one who have superannuated prior to 01.07.2023 and second set who were retiring after 01.07.2023, and only the later category would be getting retirement benefit.

5. The learned counsel for the petitioners has submitted that the respondent no.2 Board is an autonomous organization in the public sector and it

generates its own funds and they had an existing retirement scheme which is working successfully. It is further submitted that in the event the names of the petitioners are included in the new scheme, the petitioners are also ready and willing to return their respective retirement dues which they have already received. In this regard, it is also submitted that as per the current practice, the contribution of the petitioners to the extent of 12.5% was deducted from the then payable salary of the petitioners, which went into the corpus of the Contributory Provident Fund ('CPF' in short). It is submitted that the corpus created out of the contribution made by the petitioners towards CPF fund was kept in a separate fund and that money did not go to the Contributory Provident Fund of the petitioners. Accordingly, it is submitted that the petitioners cannot be said to have been paid the Provident Fund at the time of their retirement.

6. Accordingly, the learned counsel for the petitioners has submitted that the decision of the respondent authorities to exclude the petitioners is unreasonable and arbitrary and that the name of the petitioners would be included as beneficiaries under the scheme.

7. In support of the said contention of the petitioners reliance has been placed in the case of *D.S. Nakara v. Union of India and ors.*, (1983) 1 SCC 305 and *State of Jharkhand and ors. v. Jitendra Kr. Srivastava & Anr.* (2013) 12 SCC 210, as well as *Air India v. Nargesh Meerza & Ors.*, (1981) 4 SCC 335. The learned counsel for the petitioners has also submitted that the alternative prayer of the petitioners in this writ petition is that the petitioners can be directed to be paid pension amount from a part of the Corpus fund of Rs.30 crore, which has been transferred to the LIC out of the CPF Fund which is stated to be

contributed by the employees of the respondent no.2 Board.

8. The learned counsel for the petitioners has also submitted that the 2024 Scheme has been announced but the proceedings of the 106th Board meeting held on 02.03.2024, is yet to be approved in the subsequent Board meeting. Accordingly, it is submitted that the said 2024 Scheme can still be subject to any modification by the Board.

9. The learned standing counsel for the respondent nos.2 and 3 has submitted that the said 2024 Scheme is made applicable on and from 01.07.2023 and it would cover employees who had joined the Board before 01.07.2023 and/ or retired after 01.07.2023. It is submitted that the said scheme was not given a retrospective effect and therefore, the said scheme cannot be made applicable to the petitioners who had retired on different dates at different offices of the respondent no.2, much prior to 01.07.2023.

10. It is also submitted that there would be a problem of logistics to make calculation for each and every petitioners about their CPF contribution, and then calculate the retirement benefits that would accrue to the petitioners. It is also submitted that some of the petitioners have superannuated several years ago and it will not be possible for giving retrospective effect to the retirement benefit 2024 Scheme.

11. Considered the submissions made at the Bar and materials available on record including the Pollution Control Board, Assam (Employees) Retirement Benefit Scheme -2024.

12. At the outset, it may be stated that the learned counsel for the petitioners has placed reliance on the decision of the Supreme Court of India in the case of *Jitendra Kumar Srivastava (supra)* as well as in the case of *D.S. Nakara (supra)*. The said cases were cited to support his submissions that the pension and gratuity cannot be considered to be a bounty given the State and that they are earned by long, continuous, faithful and unblemished service.

13. Accordingly, it has been projected that as pension including provident fund is a claimable right of the petitioners, the reason of financial constraints, if any, by the respondent no.2 cannot be a good ground for not extending the pensionary benefits and CPF to the petitioners. In this case, the petitioners have not been able to demonstrate that they had accrued a right for CPF prior to their respective retirement, which was not paid and therefore, the petitioners have failed to show that there was any discrimination towards them as they have retired before the said 2024 Scheme had come into force.

14. As the said 2024 Scheme had not been given retrospective effect, the Court is of the considered opinion that as regards the date on and from which a particular scheme would be made applicable is an executive decision of the respondent authorities, it would not be appropriate for the Court to provide a date on and from which the benefit of the 2024 Scheme should be given to a superannuated employee. These are financial decision which should be left open for the competent authorities to decide. In this regard the Court is of the considered opinion that it would not be open to the Court to examine the said 2024 Scheme or to hold that the petitioners have been discriminated because

the said Scheme is made prospective from 01.07.2013.

15. The Court is also of the considered opinion that when a scheme has come into force after their retirement, the petitioners cannot claim that any of their legal or fundamental rights have been violated. Therefore, the Court does not find this to be a fit case for issuance of notice of motion as the retirement benefit of 2024 Scheme, has admittedly come into force after the petitioners have retired.

16. The learned counsel for the petitioners has also placed reliance on the decision of the Supreme Court of India in the case of *Air India (supra)* to project that two sets of employees who were otherwise circumstanced is impermissible.

17. On a perusal of the 2024 Scheme, it is noticed that the scheme is made applicable for the employees who have joined the respondent no.2 Board on or before 01.07.2023 and retired after 01.07.2023. As the decision is prospective in nature which was given effect to on and from 01.07.2023, although approval of the Board was granted in 106th Board meeting held on 02.03.2024, would not make the scheme discriminating for those who had superannuated prior to 01.07.2023. Therefore, it is not the case where two sets of employees who had joined or retired after 01.07.2023 had been discriminated. It cannot be said that if the scheme is made effective from a particular date, it is not intelligible differentia or that it had no rational nexus to the object sought to be achieved.

18. Similarly, the alternative claim made by the petitioners that CPF benefit be ordered to be granted from the existing corpus funds of Rs.30 crore which

had been transferred to LIC, the Court finds that the same is also a part of the policy decision of the respondent no.2 as to how to utilize the corpus. As the said corpus is a part of CPF contributions, it would not be open to the Court to hold that a particular amount of money from the said corpus be distributed amongst those employees of the Board who had superannuated prior to 01.07.2023.

19. Accordingly, in light of the discussion above, the Court does not find this to be a fit case for issuance of notice of motion. Accordingly, this writ petition stands dismissed at the motion stage without issuance of notice on the respondents.

20. The copy of the 2024 Scheme as produced by the learned counsel for the petitioners is returned.

JUDGE

Comparing Assistant