

GAHC010121382012



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

Case No. : WP(C)/3143/2012

1. MANPATI DEKA and 5 ORS
SON OF LATE HARENDRA DEKA R/O SWARGAPUR, GANSHNAGAR
BASISTHA, GUWAHATI-29.
- 2: SRI KULENDRA PATOWARY
SON OF LATE UTSAV CHANDRA PATOWARY R/O JYOTINAGAR
CHANDMARI, GUWAHATI-21.
- 3: SMTI. MINAKSHI BARMAN
WIFE OF GANESH KHATANAR R/O RIVER RESEARCH STATION THANA
COLONY BASISTHA, GUWAHATI-29.
- 4: SMTI. DIPIKA CHOUDHURY
WIFE OF RABIN TALUKDAR R/O JYOTINAGAR
NEAR GUWAHATI COLLEGE, GUWAHATI-21.
- 5: SMTI. BINITA BUJAR BARUAH
W/O PHANIDHAR NATH R/O KAMAKHYA GATE
DURGA SAROBAR, GUWAHATI, ASSAM.
- 6: MD. HANIFUDDIN AHMED
SON OF LATE HUSSAIN ALI R/O RANGIA TOWN
WARD NO. 8, P.O. RANGIA, DIST. KAMRUP, ASSAM

--VERSUS --

1. THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION SECONDARY DEPARTMENT, DISPUR, GUWAHATI-6.
- 2: THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EDUCATION ELEMENTARY DEPARTMENT
DISPUR, GUWAHATI-6.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
FINANCE DEPARTMENT, DISPUR, GUWAHATI-6.

4:THE DIRECTOR OF SECONDARY EDUCATION, ASSAM, GUWAHATI-19.

5:THE INSPECTOR OF SCHOOLS,
KAMRUP DISTRICT CIRCLE, GUWAHATI, ASSAM

Advocate for the Petitioner : MR.I CHOUDHURY

Advocate for the Respondent : SC, EDU

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

04.01.2024

Heard Mr. I. Choudhury, learned Senior counsel assisted by Mr. S. Biswakarma, learned counsel for the petitioners. Also heard Mr. U. Sarma, learned counsel appearing for the respondents in Elementary Education Department and Mr. A. Chaliha, learned counsel appearing for the respondent in Finance Department.

The petitioners, by way of instituting the present proceeding, have prayed for release of their arrear salaries for the period with effect from August, 1995 to April, 2005.

The petitioners have projected that they were recruited to the post of Assistant Teachers in M.E. Schools in Guwahati Sub-Division in pursuance to the recommendations made by the Sub-Divisional Level Advisory Board in the year 1993-1994.

The petitioners were appointed on various dates in the year 1993 and 1994 and were continuing in their services. The petitioners were paid their salaries till July, 1995.

Some persons similarly situated like the present petitioners had approached this Court by filing WP(C) No.5286/2004 and this Court vide judgment and order dated 10.03.2011 had disposed of the said writ petition holding that the petitioners therein were entitled to the arrear salaries for the entire period of services rendered by them.

The present petitioners, accordingly, being similarly situated have approached this Court for similar relief.

It may be mentioned herein that the petitioners were adjusted against regular vacant posts with effect from 01.08.2000 and it is the contention of the petitioners that the State authorities having extracted services from them, they are entitled to the arrear salaries for the period in question. It is also projected in the writ petition that the petitioners were being paid their salaries after April 2005.

The judgment and order dated 10.03.2011 passed by this Court in WP(C) No.5286/2004 was carried upon to appeal by the State by way of instituting WA No.131/2018 (***The State of Assam & Anr. Vs. Mrs. Usha Rani Goswami and Ors***).

The said appeal was given a final consideration vide judgment and order dated 24.05.2023 and therein after considering the matter, the Division Bench of this Court concluded as follows:

“19. Here in the instant case, it is seen that the present respondents/writ petitioners were irregularly appointed against non-existent posts and accordingly, their services were

regularized vide order dated 05.03.2001 w.e.f. 01.08.2000, and their past services were considered for pensionary benefits. Apart from that, they were given regular time pay scale as per the existing Rules and were also adjusted in the vacant posts as per the notification.

20. *It is a fact that, as per the said notification, the present respondents/writ petitioners had undertaken not to claim any arrear salary as their initial appointment was regularized on 05.03.2001 w.e.f. 01.08.2000. Their services were regularized, in terms of the cabinet decision taken on 21.02.2000. Instead of removal for appointment against the nonexistent post without any advertisement and no selection process the Government was magnanimous in taking decision to hold their appointment as irregular and regularized them, of course with undertaking from them for no back wages. The writ petitioners/present respondents instead of being content with regularization and adjustment against the vacant posts, come up with a highly belated claim for back wages towards past services, which they gave after having been irregularly appointed on posts which were not in existence.*

21. *In WP(C)172/2017, along with batch of other 9 cases, the issue raised was for getting pension under old Rules, after regularization of service. The petitioners in those cases were appointed on various posts but appointment after 1st day of February' 2005, was relevant. They were not allowed the pensionary benefits under the old Rules, 1969, and the learned Single Bench of this Court asked the Department to give the pensionary benefits under provisions of the Assam Services (Pension) Rules, 1969, to persons similarly situated, considering the past service prior to regularization. In number of subsequent cases this Court held the regularization of service to be prospective, and the period of services rendered from initial appointment would be counted for pensionary benefits only. Earlier also similar issue was there before this Court in WP(C)597/2002, and against the order dated 13.05.2004, the State preferred W.A. 145/2009, which was decided against the State on 24.03.2010 and SLP(Civil)19351-19360/2010 of the State before Supreme Court was dismissed on 02.08.2010. In that case, the past service was counted for the purpose of pension only.*

22. *In the instant writ appeal, the present respondents/writ petitioners were not only regularized but also were adjusted in posts lying vacant in various schools and were also given the regular time pay scale along with the pensionary benefits, as applicable and being so, their regularization of service had a prospective effect of gaining entry into the cadre and getting regular scale of pay.*

23. *In view of the above observations, we find that the learned Single Judge ought not to have allowed the claim of the respondents for arrear salary. There are sufficient and justifiable grounds to interfere in the Judgment & Order dated 10.03.2011, passed in WP(C)No.5286/2004 as well as order dated 16.05.2017 passed in Review Petition No.81/16, and accordingly, the same are reversed and set aside.*

The conclusions as reached by the Division Bench of this Court vide order dated 24.05.2023 passed in WA No.131/2018 (***The State of Assam & Anr. Vs. Mrs. Usha Rani Goswami and Ors***), also covers the contentions raised by the petitioners in the present proceedings and accordingly, the conclusions also squarely apply to the issues arising in the present proceedings.

Accordingly, in view of the decision rendered vide order dated 24.05.2023 passed in WA No.131/2018, the prayer of the present petitioners for release of arrear salaries cannot be acceded to and the contentions raised therein have to be deemed to be without merit.

The writ petition accordingly, stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant