

GAHC010124082024



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

Case No. : WA/321/2024

THE STATE OF ASSAM AND ANR.
REP BY THE SECRETARY TO THE GOVT OF ASSAM HIGHER EDUCATION
TECHNICAL DEPART, EMT DISPUR, GUWAHATI-06.

2: THE DIRECTOR OF TECHNICAL EDUCATION
ASSAM, KAHILIPARA
GUWAHATI-19

VERSUS

BHASKAR JYOTI SARMAH
SON OF JITENDRA NATH SARMAH, BHAGAWATIPARA, TITABAR, JORHAT-
785630.

2: BARNALI DAS
DAUGHTER OF LATE BIMAL KANTI DAS
SOUTH HAIBAR GAON
LMD ROAD, P.O.- HAIBARGAON
NAGAON- 782002.

3: DR. PARASA HAZARIKA
DAUGHTER OF ARUN CH. HAZARIKA
E-7, CSIR NEIST COLONY
PULIBOR
JORHAT- 785001.

4: MD. IMTIAZ ALAM
SON OF MAHAMMAD ALI
SUNDARBARI NEAR MASJID
HOUSE NO. 22
WARD NO. 2
ASSAM SISHU KALYAN ROAS
JALUKBARI
GUWAHATI- 781014.

5:ANGSHUMAN GOSWAMI
SON OF MANOJ KUMAR GOSWAMI
TULSI SHARMA PATH
NEAR JONAKI SANGHA SCHOOL
DHALAR SATRA JAIL ROAD
JORHAT- 785001.

6:DR. PRATIBHA BORAH
DAUGHTER OF LATE TULARAM BORAH
FLAT NO. 4A
DIAMOND PLAZA
MALOCUALI TINIALI
JORHAT- 785001

Advocate for the Petitioner : MR. A R TAHBILDAR,

Advocate for the Respondent : MR. S S GOSWAMI, MS. R DEKA

Linked Case : WA/344/2024

THE STATE OF ASSAM AND ANR.
REP BY SECRETARY TO THE GOVT OF ASSAM HIGHER EDUCATION
TECHNICAL DEPTT DISPUR GUWAHATI

2: The Director
HIGHER EDUCATION TECHNICAL DEPTT ASSAM

3: THE DIRECTOR
HIGHER EDUCATION (TECHNICAL) DEPTT.
ASSAM
KAHILIPARA
GUWAHATI- 19.
VERSUS

DIBYAJYOTI BORAH AND 4 ORS.
S/O KAMAL CHANDRA BORAH
VILLAGE- KHANGIA
P.S- PULIBOR
DISTRICT- JORHAT
ASSAM.

2:GOURI GAUTAOM BOTHAKUR
S/O BUDHINDRA NATH BORTHAKUR
VILL.- RAJORIA GAON
MALOU ALI

P.S. AND DIST.- JORHAT
ASSAM.

3:RUPAM JYOTI NATH
S/O LATE UTSHAV NATH
R/O BARPARA
BONGAIGAON
P.S. AND DIST.- BONGAIGAON
ASSAM.

4:JYOTISHMOY BORAH
S/O LATE DINA KANTA BORAH
R/O HATBOR
P.S.- JAKHALABANDHA
DIST.- NAGAON
ASSAM.

5:DHIRU BARMAN
W/O DIPANKAR MEDHI
R/O KAKOIJANA
BONGAIGAON
P.S.- ABHAYAPURI
DIST.- BONGAIGAON
ASSAM.

For petitioner(s)/appellant(s) : Mr. A. R. Tahbildar, Advocate

For respondent(s) : Mr. S. S. Goswami, Advocate
Ms. R. Deka, Advocate
Mr. S. Borthakur, Advocate
Mr. D. Gogoi, Advocate

-BEFORE-

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

25.11.2024

1. Heard Mr. A. R. Tahbildar, learned counsel appearing for the appellants. Also heard Mr. S. S. Goswami, Mr. S. Borthakur and Mr. D. Gogoi, learned counsel appearing for the respondents.

2. With the consent of the learned counsel appearing for the parties, these two

writ appeals have been finally heard at the admission stage itself.

3. In these appeals, the appellants have assailed the impugned judgment dated 16.05.2024, passed by the learned Single Judge in WP(C) Nos. 3770/2021, 5610/2022 and 1162/2023.

Vide the impugned judgment, the learned Single Judge has allowed the above-referred writ petitions preferred on behalf of the private respondents herein and has directed the appellants herein (respondents in the said writ petitions) to grant pay protection to the petitioners and consequently holding the writ petitioners to be eligible for the benefits under the Career Advancements Scheme from the date of their initial appointments. The learned Single has also issued a direction to comply with the order within a period of four months from the date of receipt of a certified copy of the order.

4. The writ petitioners/private respondents herein approached the writ court with the grievance that the State Government had illegally denied them pay protection and the benefits under the Career Advancement Scheme.

5. The brief facts necessary for adjudication of these appeals are that the respondents/writ petitioners are employed in the Jorhat Institute of Science and Technology in the district of Jorhat, and the Bineswar Brahma Engineering College in the district of Kokrajhar. The erstwhile Jorhat Science College in the district of Jorhat was converted to the Jorhat Institute of Science and Technology vide a notification dated 18.11.2008 issued by the Higher Education (Technical) Department, Government of Assam. For Jorhat Institute of Science and Technology and Bineswar Brahma Engineering College separate societies were formed in the year 2009 through Memorandum of Association. The said societies were registered under the Societies Registration Act, 1860 and Regulations were also framed thereunder.

It is to be noticed that the respective Governing Bodies of the said institutions had adopted most of the Rules and Regulations of the State Government along with

AICTE and UGC norms and guidelines. Later on, the Higher Education Department, Government of Assam, created various posts in both the societies vide notifications dated 20.08.2009 and 05.12.2009, respectively. Thereafter, advertisement was issued for filling up the posts of Lecturers in various disciplines and other sanctioned posts. The Selection Committee constituted as per the Regulations of the societies conducted the selections for the advertised posts and provided appointments to the writ petitioners/private respondents.

It appears that all the sanctioned posts were not filled in through the said selection process and, therefore, another advertisement was issued. But this time the advertisement was issued by the Assam Public Service Commission (APSC) and the recruitment process was also conducted by the APSC.

6. Later on the Government of Assam, vide notification dated 30.12.2016, dissolved the above-referred two societies and the administrative control of the said two institutions was taken over by the State of Assam.

7. However, the cause of action arose to the respondents herein when pay protection and other benefits under the Career Advancements Scheme were granted to the employees appointed through the APSC, though prior to dissolution of the society and taking over of the administrative control of the two societies, but such benefits were denied to the writ petitioners/respondents herein.

Aggrieved with such denial of pay protection and other benefits, the employees of the Jorhat Institute of Science and Technology and the Bineswar Brahma Engineering College approached this court by way of filing the above-referred writ petitions and the learned Single Judge, after taking into consideration the rival arguments of the learned counsel for the parties concerned, has allowed the writ petitions.

The relevant portions of the impugned judgment are extracted hereunder:

“20. There is no manner of doubt that both the educational institutions were at

the relevant point of time in Society mode. However, it would be relevant to examine the composition and functioning of such Society. The materials on record would show that the Governing Body of the Society was constituted by high officials of the Government of Assam and the Chairman was none other than the Chief Secretary of the State and all meetings of the Governing Body were to be presided by the Chief Secretary. The matters relating to appointment, duties and salaries were all to be done with prior approval of the Government. The posts for the respective Institutions run by the Society were created by the Higher Education Department vide Communications to the Accountant General, Assam. The recruitment in which the petitioners had participated and were selected were by duly constituted selection committee which were for Gazetted posts in the Government. The advertisements through which the petitioners could offer their candidatures and were subsequently appointed were issued by the Director of Technical Education and the appointments were also made by the said Department. Therefore, for all practical purpose, the Societies in question were under the absolute control of the Government. However, the said aspect may not be of much relevance for the purpose of determining the issue in the present case.

21. The case of discrimination has been sought to be established between the petitioners in these cases vis-à-vis certain other recruitees in the said establishment who were recruited through an advertisement by the APSC. It is however to be noted is that the process initiated through the APSC were of a period before taking over of the respective Societies by the Government. The crucial issue regarding the protection of pay cannot be connected or related to the agency through which the recruitments were done. After all, the Societies were admittedly not a private body but were wholly controlled by the Government and each and every functioning of the Society were to be done only with prior approval of the Government.

22. Therefore, while the benefit of pay protection has been given to the set of employees who were inducted through the APSC while the establishments were still under the Society, such benefits cannot be denied to the petitioners. It has been brought to the notice of this Court by a note prepared by the Principal regarding the gross difference of fixation of pay at the time when the establishments in question were taken over by the Government from the Society. The protection of pay is a basic right of an employee when he shifts from one Government Organization to another through proper channel. Further in the instant case, there was not even any change of the establishment and it was only a change of the management. As stated above, such change was only formal in nature as for all practical purposes, the erstwhile Societies were also wholly controlled and run by the Government.

23. Under the aforesaid facts and circumstances and the discussions made above, this Court is of the considered opinion that the differentiation of the petitioners vis-à-vis the candidates who were appointed through the APSC in the year 2014 which is much before the taking over of the establishment by the Government in the year 2016 is clearly discriminatory. In any case, the petitioners cannot be denied the benefits of protection of pay on such taking

over by the Government even if the aspect of discrimination is overlooked. In the considered opinion of this Court, claim for a pay protection can be independently adjudicated and in the instant case such right clearly appears to have been violated.

24. Consequently, the writ petitions are allowed by directing grant of pay protections and the consequential holding of the petitioners to be eligible for Career Advancements Scheme from the date of initial appointment is made out. Which is to be done expeditiously and in any case, within a period of 4 (four) months from the date of receipt of a certified copy of the order.”

8. Having heard the learned counsel appearing for the parties and after going through the material available on record, we do not find any good reason to interfere with the impugned judgment passed by the learned Single Judge, or to take a different view than the view as has been taken by the learned Single Judge.

9. The learned Single Judge has rightly observed that the Governing Bodies of the aforesaid societies were constituted by the high-up officials of the Government of Assam, while the Chief Secretary to the Government of Assam being the Chairman of the same. The advertised posts had been sanctioned by the State Government and the advertisement for the posts had been issued by the Director of Technical Education, Assam. The selections for the posts had been made by the societies through their respective screening committees and even the appointments were made by the Director of Technical Education, Assam, with the approval of the State Government. Looking to the above facts, it cannot be said that the learned Single Judge has committed any error in concluding that for all practical purpose the societies in question were under the absolute control of the Government.

The learned Single Judge has also rightly pointed out that the employees, to whom the benefit of pay protection and other benefits were extended only on the ground that they were selected by the APSC, were appointed during the existence of the respective societies, i.e. before taking over of the administrative control of the respective societies by the Government. The learned Single Judge has also rightly concluded that the societies were not private bodies but were under the absolute

control of the Government and, in such circumstances, the differentiation of the writ petitioners *vis-à-vis* the candidates appointed through the APSC in the year 2014, i.e., much before the taking over of the administrative control of the two institutions by the Government, is discriminatory and, therefore, the action of the State respondents in not extending pay protection and other benefits under the Career Advancements Scheme to the writ petitioners/respondents herein cannot be sustained.

10. In view of the above discussion, we do not find any merit in these appeals and the same are therefore dismissed.

However, there shall not be any order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant