

GAHC010151012018



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

Case No. : WP(C)/4633/2018

GHATFUL BANIA AND 10 ORS.
S/O. LT. MANESWAR BANIA, VILL. MAZDIA, P.S. NALBARI, DIST.
NALBARI, ASSAM.

2: KAMAL SARMA
S/O. LT. REBATI SARMA
VILL. PANIGAON (GARAMARA)
P.S. BELSOR
DIST. NALBARI
ASSAM.

3: MD. MAZNUR ALI

S/O. LT. JABER ALI
VILL. CHAMATA
P.S. BELSOR
DIST. NALBARI
ASSAM.

4: MD. MAHSEN ALI

S/O. MOHAN ALI
VILL. BARAMA ROAD
P.S. NALBARI
DIST. NALBARI
ASSAM.

5: HARI CHANDRA BRAHMA
S/O. LT. SANI RAM BRAHMA
VILL. KEHERUA
P.O. KHETIKUCHI
P.S. GHOPRAPAR
DIST. NALBARI
ASSAM.

6: ANIL DAS
S/O. LT. MAHENDRA DAS
VILL. MADHAPUR
P.O. ALLIA
DIST. NALBARI
ASSAM.

7: ROBIN BEZBARUA
S/O. SRI DEBEN BEZBARUA
VILL. BARKHALA
P.S. NALBARI
DIST. NALBARI
ASSAM.

8: SRI RANJIT BRAMAN
S/O. LT. KARUNA BARMAN
VILL. B.K. ROAD
P.S. NALBARI
DIST. NALBARI
ASSAM.

9: GOBINDA DEKA

S/O. HITESWAR DEKA
VILL. BAMUNKUCHI
P.S. BARPETA
DIST. BARPETA
ASSAM.

10: BABUL BEZBARUAH

S/O. LT. KAMALA KANTA BEZBARUAH
VILL. BORAJHAL
P.S. GHAGRPAR
DIST. NALBARI
ASSAM.

11: ROBINDRA KUMAR DEKA

S/O. LT. BHARAT CH. DEKA
VILL. MAHKHALI
P.S. BELSOR
DIST. NALBARI
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE LEGAL REMEMBRANCER AND SECY. TO THE JUDICIAL
DEPTT., GOVT. OF ASSAM, DISPUR, GHY.-06.

2:DISTRICT AND SESSIONS JUDGE

NALBARI
DIST. NALBARI
ASSAM.

3:CHIEF JUDICIAL MAGISTRATE

NALBARI DISTRICT
NALBARI
ASSAM.

4:PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM

MAIDAMGAON
GUWAHAT

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioners : Shri J. Sharma, Advocate

Advocates for the respondents : Shri R. Dhar, State Counsel,
Shri H.K. Das, SC, GHC.
Shri R.K. Talukdar, SC, AG, Assam.

Date of hearing : 29.07.2024

Date of judgment : 29.07.2024

Heard Shri J. Sharma, learned counsel for the petitioners. Also heard Shri R. Dhar, learned State Counsel, Shri H.K. Das, learned Standing Counsel, GHC and Shri R.K. Talukdar, learned SC, AG, Assam.

2. The petitioners who are 11 in numbers have joined together in this petition filed under Article 226 of the Constitution of India with a common grievance. It is projected that the petitioners were appointed in various posts of Grade-IV in the Establishment of the Chief Judicial Magistrate, Nalbari. The Government of Assam had issued a communication dated 18.12.2010 for grant of 3% advance increment to certain employees of the State w.e.f. 01.04.2023 and the petitioners were accordingly granted the benefit of the said communication. The petitioners are aggrieved by the action of the State respondents in purporting to withdraw and recover the benefits granted and has also prayed for continuation of the said benefits.

3. Shri Sharma, the learned counsel for the petitioners has submitted that the petitioners were entitled to get the benefit of the communication dated 18.12.2010 and were accordingly granted such benefits. He submits that stoppage of such benefits and the decision to recover the amount which have already been paid would be absolutely harsh, more so, when the petitioners are all of the Grade-IV category. The learned counsel has however informed that when this writ petition was moved on 17.07.2018, there was an interim order not to make any recovery from the salaries of the petitioners and accordingly the said recovery has been stopped.

4. Shri Dhar, the learned State Counsel has however submitted that though it is not in dispute regarding the issuance of the communication dated 18.12.2010, the same however did not cover the categories of the posts held by the petitioners. He submits that it was only on an erroneous presumption that

those benefits were granted to the petitioners. However, the said mistake was noticed in the year 2018 when certain communications were made with the Office of the AG, Assam and accordingly the rectification measure was taken. He submits that the petitioners were not entitled in law to the aforesaid benefits which were meant for different categories of employees.

5. Shri Das, the learned Standing Counsel, Gauhati High Court by endorsing the submissions of the learned State Counsel has submitted that a bare reading of the 11 numbers of categories of employees in the communication dated 18.12.2010 would clarify that the 11 numbers of categories of posts did not cover the posts held by the petitioners. He clarifies that the petitioners are in the posts of Process Servers, Peons and Drivers which are not part of the aforesaid communication. It is submitted that when the petitioners were not entitled in law to the benefits under such notifications, no fault can be attributed to the respondents to make recovery and to stop further conferment of further benefits including the payments. The learned Standing Counsel has also fairly submitted that so far as the recovery order is concerned, apart from the order of stay by this Court, the Hon'ble Supreme Court in a catena of decisions including the one of ***State of Punjab & Ors. Vs. Rafiq Masih*** reported in ***(2015) 4 SCC 334*** has laid down the guidelines to be followed and this Court may pass appropriate orders on the recovery aspect. He however submits that once the error has been detected, further grant of benefit would not be in accordance with law.

6. Shri Talukdar, the learned counsel for the AG, Assam endorses the submissions of his colleagues appearing for the respondents.

7. The rival submissions have been duly considered.

8. The controversy revolves around the communication dated 18.12.2010 on the basis of which certain benefits namely 3% of advance increment was granted to the petitioners, w.e.f. 01.04.2003. A bare perusal of the said communication would however reveal that the posts to which such benefits would be granted were identified. The said identification extends to 11 numbers of posts with a further stipulation that the benefits is also to be extended to other common category post in the ministerial cadre other than those to whom higher pay scale is recommended by the Commission. The identification of the posts and the further stipulation makes it amply clear that such benefits were meant only for Ministerial Cadre whereas the posts in which the petitioners are serving are of Grade-IV. It becomes apparent that the benefit of notification were given to the petitioners by an erroneous construction of the said communication dated 18.12.2010 which however came to the notice in the year 2018 and accordingly, the impugned action was taken.

9. The impugned action *per se* cannot be held to be suffering from any legal infirmity. At the same time, this Court cannot be oblivious of the fact that the petitioners belong to the lowest grade, namely Grade-IV of the cadre. This Court is also guided by the principles laid down by the Hon'ble Supreme Court in a catena of decisions in this aspect including the case of **Rafiq Masih** (supra) wherein for the lower grade employees, recovery has been discouraged. This Court has also noted that the petitioners did not have any role in conferring the benefits.

10. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the interest of justice would be served and the equities would be balanced by directing that the pay of petitioners are to be re-fixed as on 01.04.2003 by reducing the amount equivalent to 3% advance increment

and thereafter consequential fixation of pay is to be made. However, there shall not be any recovery from the pay in terms of the law laid down by the Hon'ble Supreme Court of India.

11. At this stage, Shri Sharma, the learned counsel for the petitioners has prayed for consideration of the case of the petitioners for grant of MACPS. It is needless to state that grant of MACPS have to be done if the petitioners are otherwise found eligible in terms of the existing norms.

JUDGE

Comparing Assistant