

GAHC010186472022



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

Case No. : WA/373/2022

1.TINSUKIA MUNICIPAL BOARD,
TINSUKIA-786125, REPRESENTED BY THE CHAIRPERSON, ASSAM

2: THE CHIARPERSON,
TINSUKIA MUNICIPAL BOARD,
TINSUKIA-786125.

3: THE EXECUTIVE OFFICER,
TINSUKIA MUNICIPAL BOARD,
TINSUKIA-786125.

4: THE ACCOUNTANT,
TINSUKIA MUNICIPAL BOARD,
TINSUKIA-786125.

5: THE JUNIOR ACCOUNTANT,
TINSUKIA MUNICIPAL BOARD,
TINSUKIA-786125.

.....Appellants

-VERSUS-

1.ASHIM CHAKRABORTY,
S/O- SRI SACHINDRA CHAKRABORTY, JUNIOR ASSISTANT,
TINSUKIA MUNICIPAL BOARD,
DOA- 01-09-2001.

2:SMT. MOUSHUMI GOHAIN,
D/O- LATE RAJEN GOHAIN,
PEON WORKING AS JUNIOR ASSISTNT,
TINSUKIA MUNICIPAL BOARD,
DOA-01-09-2014.

3:GUNIN DUARAH,
S/O- LATE MITHARAM DUARAH,
JUNIOR ASSISTANT, TINSUKIA MUNICIPAL BOARD,
DOA-01-07-2003.

4:SMT. POLY KONWAR,
D/O- SRI ARUN KONWAR,
JUNIOR ASSISTANT, TINSUKIA MUNICIPAL BOARD,
DOA- 02-06-2010.

5:ABED KHAN,
S/O- LATE IKBAL KHAN,
JUNIOR ASSISTANT, TINSUKIA MUNICIPAL BOARD,
DOA- 02-06-2010.

6:JITU MORAN,
S/O- SRI DULAL MORAN,
JUNIOR ASSISTANT, TINSUKIA MUNICIPAL BOARD,
DOA-01-06-2003.

7:JOYDIP CHETIA,
S/O- LATE PRABHAT CHETIA,
TINSUKIA MUNICIPAL BOARD,
DOA-01-10-2007.

8:SANKAR RAM DAS,
S/O- MAHENDRA DAS,
DRIVER, TINSUKIA MUNICIPAL BOARD,
DOA- 08-01-2005.

9:DHIREN KALITA,
S/O- PHANIDHAR KALITA,
DRIVER, TINSUKIA MUNICIPAL BOARD,
DOA-08-01-2005.

10:KHAMIN BRAHMA,
S/O- KARDARPA BRAHMA,
DRAIN LABOUR, TINSUKIA MUNICIPAL BOARD,
DOA- 04-01-2009.

11:HARINANDAN RAM,
S/O- MOTI RAM,
DRAIN LABOUR, TINSUKIA MUNICIPAL BOARD,
DOA- 06-01-1999.

12:MANOJ RAM,
S/O- LATE RAJKUMAR RAM,
DRAIN LABOUR, TINSUKIA MUNICIPAL BOARD,

DOA- 07-01-2014.

13:SANTOSH RAM,
S/O- LATE CHALITAR RAM,
DRAIN LABOUR, TINSUKIA MUNICIPAL BOARD,
DOA-04-01-2001.

14:GANESH RAM,
S/O- LATE SUKHDEV RAM,
DRAIN LABOUR, TINSUKIA MUNICIPAL BOARD,
DOA- 03-10.2013 OFFICIAL ADDRESS OF ALL THE PETITIONERS- O/O-
TINSUKIA MUNICIPAL BOARD, TINSUKIA-786125, ASSAM

15:THE STATE OF ASSAM,
REPRESENTED BY THE PRINCIPAL SECRETARY,
URBAN DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-781006, KAMRUP(M), ASSAM.

16:THE COMMISSIONER AND SECRETARY,
GOVERNMENT OF ASSAM,
FINANCE DEPARTMENT,
DISPUR, GUWAHATI-781006
KAMRUP(M), ASSAM

17:THE DIRECTOR, MUNICIPAL ADMINISTRATION,
GUWAHATI, KAMRUP(M), ASSAM.

.....Respondents

– BEFORE –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE

For the Appellant(s) : Mr. D. Das, Senior Advocate assisted by Mr. R.B. Phookan, Advocate.

For the respondent(s) : Mr. D. Chakaraborty, Advocate for respondent Nos.1 to 14.
: Mr. N. Das, Government Advocate, Assam for respondent No.15.
: Mr. P. Nayak, Standing Counsel, Finance Department for respondent No.16.

Date of Hearing : 18.07.2024.

Date of Judgment : 22.07.2024.

JUDGMENT & ORDER (CAV)

[Vijay Bishnoi, CJ]

This writ appeal is filed by the appellants being aggrieved with the order dated 10.08.2022 passed by the learned Single Judge in WP(C) No.7162/2018, whereby the writ petition filed on behalf of the respondents Nos.1 to 14 herein [hereinafter to be referred as "the private respondents"]/writ petitioners came to be allowed and the appellant Nos.1, 2, 4 and 5 were directed to pay the scale of pay prescribed under the Sixth Pay Commission to the private respondents along with the arrear within a period of 5(five) months from the date of receipt of a certified copy of the order.

2. The brief facts of the case are that the private respondents, who are temporary employees working in the Tinsukia Municipal Board, have approached the Writ Court by filing the aforesaid writ petition with a prayer to issue direction to the appellants to pay them a higher scale of pay, in terms of the Sixth Pay Commission, w.e.f. 01.03.2017. The private respondents have contended before the learned Single Judge that the Chairperson of the Tinsukia Municipal Board, vide order dated 20.03.2017, has already ordered that the writ petitioners/private respondents herein will now be entitled to the scale of pay prescribed by the Sixth Pay Commission i.e. from 01.03.2017, but despite the same, the said benefit has not been granted to them.

3. The learned Single Judge has observed that though the Chairperson of the Tinsukia Municipal Board has already ordered for grant of benefit of the pay scale prescribed under the Sixth Pay Commission to the writ petitioners/private respondents herein, the same has not been granted to them in view of the letter dated 31.03.2017, written by the Executive Officer, Tinsukia Municipal Board, whereby he has advised the Chairperson to keep the said order in abeyance till receipt of an opinion from the Department of Finance (Economic Affairs) and the Director, Municipal Administration, Assam.

4. The learned Single Judge has observed that the Executive Officer, though advised for seeking guidance from the Director of Municipal Administration and the Department of Finance (Economic Affairs), Assam, no communication has been sent by the Executive Officer, Tinsukia Municipal Board to the Department of Finance and as such, the reason for keeping in abeyance the order of the Chairperson of the Tinsukia Municipal Board is not only arbitrary but also appears to be the means of delaying the rights of the writ petitioners/private respondents herein to enjoy the benefit which they are entitled to in terms of the order dated 20.03.2017 passed by the Chairperson, Tinsukia Municipal Board.

5. While observing as above, the learned Single Judge has set aside the letter dated 31.03.2017 written by the Executive Officer, Tinsukia Municipal Board and has directed the appellants to grant the benefit of scale of pay prescribed under the Sixth Pay Commission to the writ petitioners/private respondents herein.

6. Mr. D. Das, learned Senior Counsel assisted by Mr. R.B. Phookan, learned counsel for the appellants has argued that the learned Single Judge has grossly erred in allowing the writ petition by passing the impugned order dated

10.08.2022. Learned Senior Counsel for appellants has further submitted that as a matter of fact, the Chairman, Tinsukia Municipal Board has no jurisdiction to order to grant the benefit of pay scale prescribed under the Sixth Pay Commission to the temporary employees of the Tinsukia Municipal Board.

7. Referring to Section 37 of the Assam Municipal Act, 1956, it is argued that the said provision does not empower the Chairman of a Municipal Board to issue such type of orders. It is contended that any decision for granting a particular pay scale to the temporary employees of a Municipal Body is required to be taken by the said Municipal Board after getting concurrence from the State Government because it is the State Government who provides funds for disbursement of salaries to the employees of a Municipal Board.

8. Learned Senior Counsel for the appellants has further contended that the learned Single Judge has failed to take into consideration the fact that though the Chairperson of the Tinsukia Municipal Board vide order dated 20.03.2017 has ordered for granting benefit of pay scale prescribed under Sixth Pay Commission to the employees concerned, but on 01.04.2017, the Chairperson has passed another order, whereby the order dated 20.03.2017 has been stayed until further order. It is contended by Mr. Das, learned Senior Counsel that the subsequent order dated 01.04.2017 has never been recalled or modified and the stay of the order dated 20.03.2017 is still in currency.

Mr. Das has further argued that in its order dated 20.03.2017, the Chairperson has given a reference of the Resolution No.10 (Cha) in the 6th General Meeting of Tinsukia Municipal Board, held on 17.02.2017. However, the said Resolution never speaks about grant of benefit of pay-scale prescribed under the Sixth Pay Commission to the temporary employees of the Tinsukia

Municipal Board.

9. Learned Senior Counsel for the appellants has, therefore, argued that from any angle it is clear that the learned Single Judge has erred in allowing the writ petition filed by the private respondents herein and in directing the appellants to grant the benefit of pay scale prescribed under the Sixth Pay Commission to the temporary employees of the Tinsukia Municipal Board. It is, therefore, prayed that the impugned order dated 10.08.2022 be set aside.

10. Per contra, Mr. D. Chakraborty, learned counsel appearing for the private respondents has opposed the writ appeal and has supported the impugned order passed by the learned Single Judge.

11. It is contended by the learned counsel for the private respondents that once the Chairperson has ordered for grant of benefit of pay scale prescribed under the Sixth Pay Commission to the private respondents, it was unfair on the part of the Municipal Board to withhold the same without there being any justifiable reason. It is, therefore, submitted that the learned Single Judge has not committed any illegality in directing the appellants to grant the benefit of pay scale prescribed under the Sixth Pay Commission to the private respondents herein.

12. Learned counsel appearing for the respondent State as well as the Finance Department have submitted that the State Government has never recommended/approved the move of the Chairperson of the Tinsukia Municipal Board to grant the benefit of the Sixth Pay Commission to the temporary employees of the Tinsukia Municipal Board.

13. Heard the learned counsel appearing for the parties and perused the impugned order as well as the material available on record.

14. It is not disputed by the private respondents/writ petitioners that they are temporary employees working under the Tinsukia Municipal Board. However, this fact has not been taken note of by the learned Single Judge while deciding the writ petition though it was specifically pointed out in the affidavit-in-opposition filed on behalf of the Chairperson of the Tinsukia Municipal Board in response to the writ petition.

15. Be that as it may, before the Writ Court the claim of the private respondents/writ petitioners was solely based on the order dated 20.03.2017 passed by the then Chairperson of the Tinsukia Municipal Board, wherein it was ordered that the employees of the Tinsukia Municipal Board, who have been drawing monthly salary as per the scale of pay prescribed by the Fifth Pay Commission, will now be entitled to the scale of pay prescribed by the Sixth Pay Commission i.e. from 01.03.2017. It is further mentioned in the order that the same is ordered as decided vide Resolution No.10 (Cha) in the 6th General Meeting held on 17.02.2017. However, if we go through the said Resolution No.10 (Cha) taken in the 6th General Meeting of the Tinsukia Municipal Board held on 17.02.2017, it is clear that no such resolution of granting the benefit of pay scale prescribed by the Sixth Pay Commission to the employees of the Tinsukia Municipal Board was taken in the said meeting. It is pertinent to reproduce the relevant part of the minutes of the General Meeting held on 17.02.2017, a translated copy of which is annexed to the writ petition, which reads as under:

“In today’s meeting, there has been a discussion over the application for increase of monthly salaries of the Harijans, the Labourers and the Employees of the Office. They were earlier drawing their monthly salary as per Pre revised scale. When all the members wanted to know as to how much more would have to be paid if the monthly salary were to be increased, it was conveyed that if it

was to be given as per Labour Act, then Rs.59,000/- more would have to be paid and if it were be given as per Pre revised scale, then an amount of Rs. 5 lakhs more would have to be taken per month. In this context, the former President said that information is required to be taken as to whether the Dibrugarh, Sibasagar and Jorhat Municipal Board have been paying increased monthly salary or not. After having discussion, all the employees expressed their proposition that instead of regularizing all employees, increased monthly salary from 4th Grade onwards ought to be paid w.e.f. the month of March and it was also decided that such benefits should be subject to certain conditions and those employees who violate such conditions would be deprived of the benefits of increased monthly salary.

16. From a bare reading of above extract of the minutes of the 6th General Meeting of the Tinsukia Municipal Board, it is clear that no such decision for grant of benefit of pay scale prescribed by the Sixth Pay Commission to the temporary employees of the Tinsukia Municipal Board was taken in the said meeting. In such circumstances, it cannot be said that the order dated 20.03.2017 passed by the then Chairperson of the Tinsukia Municipal Board was based on any Resolution passed in the 6th General Meeting of the Tinsukia Municipal Board.

17. Apart from that, it is also clear from the record that the order dated 20.03.2017 of the Chairperson of the Tinsukia Municipal Board was stayed by passing of another order by the same authority on 01.04.2017 and the order dated 01.04.2017 has never been recalled or modified at any point of time. So, the situation now emerges is that in the General Meeting of the Tinsukia Municipal Board, no such decision of granting the benefit of pay scale prescribed by the Sixth Pay Commission has ever been taken. Secondly, the order dated 20.03.2017 passed by the Chairperson of extending the benefit of pay scale prescribed by the Sixth Pay Commission to its employees was stayed on 01.04.2017 and the said order dated 01.04.2017 has never been

recalled/cancelled or modified till date. The Chairperson/Chairman of a Municipal Board has no such power to extend the benefit of a particular pay scale to its employees without there being any decision by the Municipal Board with a proper approval and sanction from the State Government.

18. In view of the above fact situation, we are of the view that the learned Single Judge has erred in allowing the writ petition [WP(C) No.7162/2018] filed by the private respondents herein.

19. For the reasons discussed hereinabove, the impugned order dated 10.08.2022, passed by the learned Single Judge in WP(C) No.7162/2018, cannot be sustained and the same is, therefore, set aside. The instant writ appeal is, accordingly, allowed.

20. Resultantly, the writ petition [WP(C) No.7162/2018] filed on behalf of the private respondents stands dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant