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

Case No. : WA/331/2023

PRANJIT SARMA
S/O LATE KANAK CH. SARMA
R/O VILL- BHAWANIPUR NAHATI, DIST. BARPETA, ASSAM,PIN - 781352.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
HIGHER EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL

HAFLONG
REP. BY ITS PRINCIPAL SECRETARY
DIMA HASAO
ASSAM.

3:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI -19.

4:THE ADDITIONAL DIRECTOR OF EDUCATION
HILLS
ASSAM HAFLONG.

5:THE PRINCIPAL

MAIBANG DEGREE COLLEGE
MAIBANG

DIMA HASAO
ASSAM. PIN-788819

Advocate for the Petitioner : MR G SARMA, MR S DEKA,MR. K R PATGIRI

Advocate for the Respondent : SC, NCHAC, D JAIN (R-5),MR. C SHARMA (R-5),MR R M DAS (R-5),SC, HIGHER EDUCATION

Linked Case : WA/240/2023

JUNU DEVI
D/O- LT. KAMAL SARMA
VILL.- BAHARI
P.O. and DIST.- BARPETA.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GHY- 6
ASSAM

2:THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL
HAFLONG
DIMA HASAO
ASSAM
REP. BY ITS PRINCIPAL SECRETARY.

3:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY- 19.

4:THE ADDL. DIRECTOR OF EDUCATION HILLS
ASSAM
HAFLONG.

5:THE PRINCIPAL
MAIBONG DEGREE COLLEGE
MAIBONG

DIMA HASAO
ASSAM.

Advocate for : MR. M K CHOUDHURY
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WA/329/2023

ARUP KUMAR DEKA
S/O- SRI DHARANIDHAR DEKA
VILL.- KARDAIGURI P.O.- KARDAIGURI
DIST.- BARPETA
ASSAM
PIN-

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
GUWAHATI- 781006
ASSAM.

2:THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL
HAFLONG
DIMA HASAO
ASSAM
REP. BY ITS PRINCIPAL SECRETARY.

3:THE DIRECTOR
HIGHER EDUCATION DEPTT.
KAHILIPARA
GUWAHATI- 781019
ASSAM.

4:THE ADDITIONAL DIRECTOR OF EDUCATION HILLS
ASSAM
HAFLONG.

5:THE PRINCIPAL
MAIBONG DEGREE COLLEGE
MAIBONG
DIMA HASAO
ASSAM.

Advocate for : DR R C BORPATRA GOHAIN
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WA/376/2023

TAPAS JYOTI BARMAN
S/O LATE SUDARSHAN BARMAN VILLAGE DARMIKHAL
DIST CACHAR
ASSAM. 788116

VERSUS

THE STATE OF ASSAM AND 4 ORS. H
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GHY.-06.

2:THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL

HAFLONG
REP. BY ITS PRINCIPAL SECRETARY
DIMA HASAO
ASSAM.

3:THE DIRECTOR

HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY.-19.

4:THE ADDL. DIRECTOR

EDUCATION HILLS
ASSAM
HAFLONG.

5:THE PRINCIPAL

MAIBANG DEGREE COLLEGE
MAIBANG
DIMA HASAO

ASSAM.-788819

Advocate for : MR. K R PATGIRI
Advocate for : SC
N C HILLS appearing for THE STATE OF ASSAM AND 4 ORS. H

BEFORE

HON'BLE THE CHIEF JUSTICE ASHUTOSH KUMAR

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellants: Mr RC Borpatragohain, Sr. Advocate
Mr MK Choudhury, Sr. Advocate
Mrs S Borpatragohain, Advocate
Mr G Sarma, Advocate

For the Respondents: Mr K Gogoi, Govt. Advocate,
Mr S Das, SC, Higher Education,
Ms P Chakraborty, SC, Dima Hasao

Date on which the Judgment was Reserved:23.07.2026

Date of the pronouncement of
Judgment : 31.07.2026
Whether the pronouncement
is the operative part of the
Judgment : NA.

Whether the full
Judgment has been pronounced: Yes.

JUDGMENT & ORDER (CAV)

(A.D. Choudhury, J)

1. These intra-court appeals arise out of common judgment and order dated 12.05.2023 passed in WPC No. 4730/2016, WP(C) No. 4803/2016 & WP(C) No. 4489/2017, whereby the learned Single Judge dismissed the writ petitions instituted by appellants questioning Office Memorandum dated 10.07.2015 issued by the Higher Education Department, Government of Assam. The consequential Communication dated 29-03-2016 issued by the Additional Director of Higher Education, Hills, Assam, directing maintenance of status quo in respect of annual increments and review of placement in Senior Scale on the ground that the appellants had not acquired the qualifications prescribed under the applicable UGC norms.

2. While dismissing the writ petitions, the learned Single Judge held that State Government had adopted the UGC regulations prescribing NET/SLET/Phd. as an essential qualification for appointment of lecturers; that appellants had accepted the benefit being brought under deficit system of grant-in-aid pursuant to the communication dated 29.09.2001 together with the conditions incorporated therein; that acquisition of prescribed qualification constituted a condition governing entitlement to higher service benefits; and that confirmation of service or release of annual increments by the authorities could neither amount to waiver of applicable norms nor create any estoppel against the State.

3. Consequently, the learned Single Judge declined to interfere with the impugned communication. However, taking note of the long period of service rendered by the appellants, an equitable observation was made that if approached, the Government may sympathetically consider granting them reasonable time to acquire the prescribed qualification.

4. Assailing the judgment under appeal, Mr M. K. Choudhury and Mr R. C.

Barpatragohai, learned Senior Advocates, appearing for the appellants, submit that the learned Single Judge failed to appreciate the true nature of the controversy.

5. According to them, the appellants possessed the qualifications prescribed on the date of their appointments as Lecturers in the year 2000-2001. Their appointments were subsequently approved when Maibang Degree College was brought under the deficit system of grant-in-aid with effect from 01.04.2001. Thereafter, their services were confirmed by the competent authority; annual increments were regularly released; some of the appellants were granted placement in Senior Scale; and the Departmental Promotional Committee also considered their cases.

It is therefore contended that the respondent authorities themselves consistently treated the appellants as eligible for the service benefits attached to the post held by them and, after permitting them to continue in service for more than two decades, could not deprive them of such benefits by relying upon executive instructions issued subsequently.

6. It was further argued that the Office Memorandum dated 10.07.2015 substantially deals with issues relating to seniority, UGC pay and promotional benefits and does not authorise stoppage of annual increments.

7. According to the learned Senior counsels, the impugned notification proceeds upon an erroneous understanding of Government policy and retrospectively alters the service conditions applicable to the appellants.

8. In addition, it is argued that there was no formal adoption of UGC regulation and, therefore, the State of Assam cannot deprive the appellants of the increment for want of UGC prescribed qualification.

9. Per contra, Mr K. Gogoi, learned Standing Counsel, Higher Education Department, supports the judgment under appeal and submits that the learned Single Judge has rightly declined to interfere.

10. It is contended that the obligation to acquire NET/ SLET/Phd. did not originate either

from the Office Memorandum dated 10.07.2015 or even from the Office Memorandum issued during the year 2004.

Rather, the Government of Assam had already adopted the UGC norms by issuing an Office Memorandum dated 13.01.2000 prescribing NET/SLET/Phd. as an essential qualification for appointment of lecturers. This policy was further operationalised by Government Communication dated 01.06.2000 directing that candidates appointed as lecturers in government-deficit colleges after implementation of UGC norms would be required to acquire NET/ SLET/Phd.

11. The learned standing counsel further submits that the appellants were fully aware of the said requirement inasmuch as the Principal of Maibang Degree College, by communication dated 12.11.2003 addressed to the Additional Director of Education, specifically identified the present appellants by name as lecturers required to acquire NET/ SLET/ Phd., while simultaneously seeking exemption only in respect of those lecturers who had entered service prior to implementation of the Government policy.

12. It is therefore submitted that the impugned and subsequent Office Memorandum merely reiterated an already existing policy and the erroneous release of increments or confirmation of service cannot create an enforceable right contrary to the governing norms.

13. Having bestowed our anxious consideration to the rival submissions and upon careful examination of the pleadings, the documents/ Office Memorandums brought on record and the policy decisions governing recruitment and service conditions of lecturers in deficit colleges, we are of the opinion that the conclusions arrived at by the learned Single Judge do not warrant interference.

14. The controversy, in our considered opinion, is required to be appreciated in its proper factual and chronological perspective.

15. The argument advanced on behalf of the appellants proceeds on the assumption that the requirement of acquiring NET/ SLET/PhD was introduced only by subsequent

executive instruction after they had entered service and therefore could not be enforced against them retrospectively.

16. The contemporaneous records, however, tell a different story.

17. It is not in dispute that the appellants were appointed during the year 2000-2001 when Maibang Degree College was at a venture stage.

Equally undisputed is the fact that the appointments were purely temporary, on a consolidated remuneration of Rs 1,500/- per month. The appointment orders clearly stipulated that the appointments were liable to be terminated without notice and that continuance in service would depend upon satisfactory performance.

18. Thus, the appellants did not enter service carrying an unconditional right to continue or claim every service benefit available to regularly appointed lecturers.

19. More particularly, even before the appellant entered service, the Government had already taken a policy decision regarding appointment of lecturers in deficit colleges.

By communication dated 01.06.2000 issued by the Higher Education Department, the Director of Higher Education was informed that in view of the UGC norms, persons appointed as lecturers in Non-government Deficit Colleges after implementation of the said policy would be required to clear NET/ SLET/PhD and until such qualification was acquired, their appointments would remain subject to the said condition.

20. This communication was issued prior to the appointments of the appellants. Consequently, the submission that the obligation to acquire NET/SLET/PhD was introduced after their appointments cannot be accepted.

21. The subsequent event also lent considerable support to the respondents.

22. By communication dated 29.09.2001, Maibang Degree College was brought under the deficit system of grant-in-aid with effect from 01.04.2001. While granting

provisional approval to the appointments of lecturers against sanctioned posts, the competent authorities specifically stipulated that all lecturers would be required to fulfil the conditions prescribed by the UGC for obtaining the next higher scale under the UGC scheme, failing which such higher scale would not be admissible during their service career.

23. The appellants accepted the benefit of the said order and continued under the deficit system. Having accepted the benefit flowing from the very order under which the appointments came to be approved, the conditions attached thereto cannot subsequently be ignored while claiming financial progression.

24. There is another contemporaneous document which in our opinion has considerable value.

The communication dated 12.11.2003 issued by the Principal of Maibang Degree College to the Additional Director of Education specifically refers to the Government communication dated 01.06.2000 and records that 11 lecturers appointed after implementation of Government order were required to clear NET/SLET. The names of the present appellants specifically appear in the said list.

In the very same communication, another category consisting of lecturers appointed prior to implementation of the Government policy was separately identified, and exemption was sought only in respect of that category.

First of all, significantly, the appellants do not find place in the exempted category.

The contemporaneous understanding of the college administration, therefore, was that appellants were governed by the requirement of acquiring NET, SLET and PhD. In contrast, only those appointed prior to implementation of the Government policy were entitled to seek exemption.

25. There is nothing on record to indicate that the appellants ever questioned such categorisation or challenged the applicability of the said requirement at the relevant point of time.

This conduct assumes considerable significance while examining the plea that the condition was subsequently imposed upon them.

26. The Office Memoranda dated 22.06.2004 and 26.07.2004, in our considered opinion, do not create any fresh obligation.

27. They merely regulate the consequences flowing from the policy already in existence by providing that lecturers appointed after the prescribed cut-off date would not be entitled to annual increments or placement in Senior Scale unless they acquired the prescribed qualification. Likewise, Office Memorandum dated 10.07.2015 substantially deals with seniority, UGC pay scale and promotional benefits and reiterates the necessity of fulfilling prescribed UGC norms.

Viewed in the backdrop of the earlier policy decisions, neither the Office Memorandum of 2004 nor that of 2015 can be regarded as introducing a fresh condition affecting the appellants for the first time.

28. Considerable emphasis has been laid down on behalf of the appellants upon the fact that respondent authorities themselves confirmed their services, released annual increments and, in some cases, granted placement in the senior scale.

29. These facts are not disputed.

At the same time, no material has been brought to our notice indicating that competent authority had ever consciously relaxed or exempted the appellants from the requirement of acquiring the prescribed qualification.

Mere omission to enforce the governing policy with due promptitude or erroneous extension of certain financial benefits by itself cannot mature into a legally enforceable right contrary to the policy governing the field. Continuance in service and entitlement to financial progression do not necessarily stand on the same footing. Confirmation undoubtedly secures continuity of employment. It does not automatically obliterate independent conditions governing eligibility for financial progression under the UGC scheme adopted by the State Government.

30. For all the aforesaid reasons, we are in agreement with the ultimate conclusion reached by the learned Single Judge that the appellants have failed to establish any enforceable legal right warranting interference with the impugned actions of the respondent authorities.

31. Our concurrence primarily rests upon the contemporaneous record commencing from the Government communication dated 01.06.2000, the conditions incorporated in Communication dated 29.09.2001, the specific categorisation of the appellants in Communication dated 12.11.2003, and the subsequent policy decision consistently reiterating the same requirement.

32. At the same time, we cannot overlook the peculiar equities arising in the present case.

The appellants have continued in service for more than two decades under appointments approved by the respondent authorities themselves, and the authorities also contributed to the present situation by permitting them to continue and by extending various service benefits over a considerable period before taking the impugned decision.

Though these circumstances cannot confer a legal right contrary to the governing policy, they do deserve consideration for affording a reasonable opportunity to acquire the prescribed qualification.

33. We are therefore of the opinion that while affirming the judgment under appeal and dismissing these appeals, it would be appropriate to direct the State Government to examine whether, consistently with the applicable UGC regulation and governing policy framework, a reasonable period may be granted to the appellants to acquire the prescribed qualification.

34. Accordingly, it is directed that if individual representations are submitted within four weeks from today, the competent authorities shall consider the same objectively and pass a reasoned decision in accordance with law within a period of six weeks

thereafter.

35. However, it is made clear that this observation is purely equitable in nature and shall neither be construed as recognising any legal right in favour of the appellants, nor as requiring to grant any relaxation not otherwise permissible under the Government statutory or regulatory framework.

JUDGE **CHIEF JUSTICE**

Comparing Assistant