



GAHC010189402020

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

Case No. : WP(C)/252/2021

RANJIT KALITA AND 3 ORS.

S/O- LT. MATHURA KALITA, VILL- NIZ BAGHBOR, P.O. MANDIA, DIST.-
BARPETA, PIN- 781308

2: MAYNAL HAQUE

S/O- IMAN ALI
VILL- SIDHAN
P.O. SITULI
DIST.- BARPETA
PIN- 781308

3: SAMIR ALI

S/O- TAHUR UDDIN
VILL. NO. 1 MANDIA BORDOLONI
P.O. MANDIA
DIST.- BARPETA
PIN- 781308

4: AZIDUL RAHMAN

S/O- TAIJUDDIN AHMED
REPRESENTING HIS FATHER LT. TAIJUDDIN AHMED
VILL. NO. 1 MANDIA BORDOLONI
P.O. MANDIA
DIST.- BARPETA
PIN- 78130

VERSUS

THE STATE OF ASSAM AND 9 ORS.

REP. BY THE SECY. TO THE GOVT. OF ASSAM, LAND REVENUE (LR)
DEPTT., DISPUR, GHY-6

2: THE SECRETARY TO THE GOVT. OF ASSAM

DEPTT. OF FINANCE



DISPUR
GHY-6

3:THE DIRECTOR OF LAND RECORDS ETC.
RUPNAGAR
GHY-32
UZANBAZAR
GHY-1

4:THE DY. COMMISSIONER
BARPETA
PIN- 781301

5:THE CIRCLE OFFICER
BAGHBOR CIRCLE
MANDIA
P.O. MANDIA
DIST.- BARPETA
PIN- 781308

6:THE BLOCK DEVELOPMENT OFFICER
MANDIA BLOCK
P.O. MANDIA
DIST.- BARPETA
PIN- 781308

7:HARI DAS
S/O- NAGENDRA DAS
C/O- CIRCLE OFFICER
BAGHBOR
MANDIA
P.O. MANDIA BAZAR
DIST.- BARPETA
PIN- 781308

8:NAYEB ALI
S/O- BHASAN ALI
C/O- CIRCLE OFFICER
BAGHBOR
MANDIA
P.O. MANDIA BAZAR
DIST.- BARPETA
PIN- 781308

9:AKKAS ALI
S/O- KORPAN ALI
C/O- CIRCLE OFFICER
BAGHBOR



MANDIA
P.O. MANDIA BAZAR
DIST.- BARPETA
PIN- 781308

10:MEHBUBUR RAHMAN
S/O- SAWKAT ALI
R/O- MUSLIM PATTI BARPETA TOWN
P.O. AND DIST. BARPETA
PIN- 781301 AND OFFICE ADDRESS- HEAD CLERK IN THE OFFICE OF THE
BAGHBAR CIRCLE
MANDIA
C/O- CIRCLE OFFICER
BAGHBOR
REVENUE CIRCLE
MANDIA
P.O. MANDIA
DIST
BARPETA
PIN- 781308

Advocate for the Petitioner : MR. A ROSHID

Advocate for the Respondent : SC, REVENUE

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri AR Sikdar, Adv.

Advocate for the respondents : Shri R. Dhar, GA-Assam
Shri J. Handique, SC-Revenue
Shri P. Nayak, SC-Finance
Ms. J. Bora, P & RD
Shri R. Islam, R - 7 to 10

Date of hearing : **24.04.2024**

Date of Judgment : **24.04.2024**



JUDGMENT & ORDER

4 nos. of petitioners have joined together with a common cause of action. The claim raised is towards giving the minimum pay to them and they are also relying upon a notification dated 30.10.2019 of the Finance Department, Government of Assam.

2. The facts in brief as projected by the petitioners are that they were initially appointed as Pankha Puller in the Office of the Circle Officer, Baghbar and the Office of the Block Development Officer, Mandia and subsequently as Chainman and have been working since 1984. They were getting a minimum pay in lieu of service rendered. On 03.10.2019, a Circular was issued by the Finance Department of the State Government whereby a minimum wage was stipulated for persons who have been since 1995. It is the case of the petitioners that the Circle Officer, Mandia had issued a letter dated 13.11.2020 for revision of the pay to the prescribed rate. It is the projected case that while the respondent nos. 7, 8 and 9, who are similarly situated have been given the benefit of such Circular, the petitioners have been left out. The petitioners have accordingly approached this Court by means of this writ petition.

3. I have heard Shri AR Sikdar, learned counsel for the petitioners. I have also heard Shri R. Dhar, learned Additional Senior Government Advocate; Shri J. Handique, learned Standing Counsel, Revenue Department; Shri P. Nayak, learned Standing Counsel, Finance Department; Ms. J. Bora, learned counsel representing the Panchayat and Rural Development Department. Shri R. Islam, learned counsel is present for the respondent nos. 7, 8 and 9. Shri Islam also appears for the respondent no. 10, who was subsequently impleaded as party respondent in terms of an order passed by this Court.

4. Shri Sikdar, learned counsel for the petitioners has submitted that

induction of the petitioners in their services initially as Pankha Puller and subsequently as Chainman is similar to those of the respondent nos. 7, 8 and 9. While the aforesaid private respondent nos. 7, 8 and 9 have been given the benefit of the Government Circular by giving them the prescribed pay, for no reasons, the petitioners have been left out. The learned counsel has also submitted that there are extraneous reasons in which the respondent no. 10 is involved for which such deprivation has been made. It is reiterated that there is no difference at all so far as the services rendered by the respondent no. 7, 8 and 9 vis-à-vis those rendered by the petitioners.

5. The learned counsel for the petitioners has also referred to a communication dated 30.06.2017 issued by the Circle Officer, Baghbor Revenue Circle with which the statements for budget requirement have been annexed. It is submitted that the statement contain the names of the petitioners as well as the private respondents. Reference is also made to a communication dated 28.03.2022 issued by the Additional Deputy Commissioner (Revenue), Barpeta whereby the Circle Officer, Baghbor Revenue Circle and the Block Development Officer, Mandia were directed to make an enquiry in the matter of an application submitted by three of the petitioners. Shri Sikdar, learned counsel further submits that though the petitioners are working, they have not been allowed to sign the attendance register since 23.11.2019. He accordingly submits that appropriate directions be issued for giving the salaries to the petitioners at par with the respondent nos. 7, 8 and 9 at the prescribed rate.

6. *Per contra*, Shri Dhar, learned State Counsel has submitted that the factual projection itself made by the petitioners is itself incorrect. It is submitted that the petitioners are not found to be in service since 30.06.2017. In this connection, the learned State Counsel makes a specific reference to the

averments made in the affidavit-in-opposition filed by the Additional Deputy Commissioner, Barpeta who has been arrayed as the respondent no. 4. By drawing the attention of this Court to the averments made in paragraph 4 of the said affidavit-in-opposition filed on 14.12.2022, the learned State Counsel has submitted that though the petitioners were found to be working as wage earner / chainman till 30.06.2017, thereafter they were not found present in the Office. On the other hand, the respondent nos. 7, 8 and 9 were found to be working till date. The learned State Counsel accordingly submits that when the petitioners are not working at all, the question of examining the present claim will not arise.

7. With regard to the two documents placed reliance upon by the petitioners, the learned State Counsel submits that the budget statement annexed to the communication dated 30.06.2017 is only towards the requirement of the years 2016-17 and 2017-18 which was for one period and 2008-09 for another period and the said statements were prepared on 30.06.2017. Such statements would not vest any right on the petitioners or in any manner can be construed as conclusive evidence that the petitioners are in service.

8. As regards the other communication relied upon by the petitioners, namely, the letter dated 28.03.2022 the learned State Counsel submits that a bare reading of the said communication would reveal that the same was issued only upon an application by an applicant – Maynal Haque and two others and the application was forwarded to the Circle Officer, Baghbor and Block Development Officer, Mandia for making an enquiry. It is submitted that the said letter would not come to the aid of the petitioners. As regards the allegation that the petitioners have not been allowed to sign the attendance register, Shri Dhar, learned State Counsel submits that no complaint towards the aforesaid

aspect has ever been raised before any authorities and for the first time, the same has been raised in this writ petition.

9. Shri Islam, the learned counsel has appeared for both the private respondent nos. 7, 8 and 9 and also for the newly impleaded respondent no. 10 which has been indicated above. He has filed separate affidavits in this regard. As regards the private respondent nos. 7, 8 and 9, the learned counsel submits that the claim of the petitioners is to be dealt with by the official respondents and they will have no say in the matter. Further, appearing on behalf of the respondent no. 10, Shri Islam, the learned counsel has referred to the affidavit-in-opposition dated 03.10.2023 and has submitted that the allegations of extraneous consideration has been denied. He clarifies that the decision making authority is not the respondent no. 10 and therefore he will not have any role.

10. Shri Sikdar, learned counsel for the petitioners has submitted that the rejoinder affidavit has been filed in which the assertion by the respondent no. 4 that the petitioners are not in service has been denied.

11. The rival contentions have been duly considered and the materials placed before this Court have been carefully examined.

12. The claim made in this petition is seeking benefit of a notification dated 03.10.2019 whereby a minimum rate of pay has been prescribed. The claim is based on the assertion that the similarly situated respondent nos. 7, 8 and 9 have been given such benefits and petitioners have been left out. The aforesaid claim is a factual one and such claim can be adjudicated only when there is no denial to the factual proposition.

13. Juxtaposed, in the instant case, apart from there being no admission of such facts, to the contrary, such facts have been categorically denied. The

respondent no. 4 in his affidavit filed on 14.12.2020 has made a categorical statement in paragraph 4 that the petitioners are not working since 30.06.2017 unlike the respondent nos. 7, 8 and 9. Though the aforesaid factual proposition has been again denied by the petitioners in the rejoinder, the same would be a factual dispute which this Court in exercise of Article 226 of the Constitution of India is not in a position to adjudicate.

14. As regards the attempt of the petitioners to take aid of certain documents, this Court has examined the said aspect also. The budget statement which has been annexed as a part of Annexure – 9 which is a communication dated 30.06.2017 no doubt would show that the said statement for the years 2016-17, 2017-18 as well as 2008-09 contains the name of the petitioners. However, what is crucial to note is that the statement were prepared on 30.06.2017 which is a date specified in the affidavit from which the petitioners have been said not to be in service. As regards the communication dated 28.03.2022 by the Additional Deputy Commissioner, Barpeta this Court finds force in the submission of the learned State Counsel that the said communication is only a forwarding of the application by Maynal Haque and two others. In any case, the Additional Deputy Commissioner, Barpeta had subsequently filed an affidavit-in-opposition on 14.12.2022 in this case which is much after the communication dated 28.03.2022 and in the affidavit, a specific statement has been made that the petitioners are not found to be working since 30.06.2017.

15. In view of the aforesaid discussion, this Court is of the considered opinion that the dispute raised would not be within the ambit of adjudication by this Court in exercise of Article 226 of the Constitution of India and no relief can be granted.

16. Accordingly, the writ petition stands dismissed.



17. However, the petitioners would be at liberty to approach in the appropriate forum for raising their claim wherein the respective stands of the rival parties can be ascertained by adducing evidence.

JUDGE

Comparing Assistant