



GAHC010108222021

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

Case No. : WP(C)/3816/2021

RAMEN KR SARMA AND 41 ORS
SON OF LT BRINDESWAR SARMARESIDENT OF VILL-BALITARA,P.O-
BALITARA, DIST.- NALBARI, PIN- 781349, ASSAM.

2: BIPIN CHUTIA
YEARSSON OF LT. JAYRAM CHUTIA
RESIDENT OF VILL-CHOWKHAM
P.O- CHABATI
DIST.- LAKHIMPUR
PIN- 787051
ASSAM.

3: PHULEN DAS
SON OF LT. BHUDHAR DAS
RESIDENT OF VILL-TIHU TOWN
P.O- TIHU
DIST.- NALBARI
PIN- 781371
ASSAM.

4: NABANITA PACHANI
DAUGHTER OF LT. ROHIT PACHANI
RESIDENT OF VILL-TAKLIGAR
P.O- TEOK
DIST.- JORHAT
PIN- 785112
ASSAM.

5: DEBENDRA GOGOI
SON OF LT. LANKESWAR GOGOI
RESIDENT OF VILL-DIGHALI
P.O- DHAKUAKHANA
DIST.- LAKHIMPUR
PIN- 787077



ASSAM.

6: TARULATA DEVI
DAUGHTER OF KIRAN CH. SARMA
RESIDENT OF VILL-BAKARGHAR
P.O- TENGABARI
DIST.-UDALGURI
PIN- 784525
ASSAM

7: KUSHAL HAZARIKA
SON OF TILOK HAZARIKA
RESIDENT OF VILL-RANGATHALI
BAGICHA
P.O- KALAIGAON
DIST.- UDALGURI
ASSAM.

8: PRANAB KR. NATH
SON OF LT. K.K. NATH
RESIDENT OF VILL-ANADHOWAPARA
P.O- PANERI
DIST.- UDALGURI
PIN NO. 784523
ASSAM.

9: BUL NATH

SON OF LT. THAGIRAM NATH
RESIDENT OF VILL- SONAIPATI
P.O- RANGASHI
DIST.- MAJULI
PIN NO. 785106
ASSAM.

10: KAMALESH SARMA
SON OF LT. BHADRA KT. SARMA
RESIDENT OF VILL- BARAZARA
P.O- BARAZARA
DIST.- NALBARI
PIN NO. 781334
ASSAM.

11: DIPUL TALUKDAR
SON OF LT. PRAHLAD TALUKDAR
RESIDENT OF VILL- ADABARI
P.O- ADABARI
DIST.-BAKSA



PIN NO. 781372
ASSAM.

12: MAINUR ALI

SON OF LT. NIYAMAT ALI
RESIDENT OF VILL- AMANI
P.O- AMANI
DIST.-NALBARI
PIN NO. 781306
ASSAM.

13: DIPA RANI MEDHI
DAUGHTER LT. TANKESWAR MEDHI
RESIDENT OF VILL-DAKSHIN BIDYA NAGAR
P.O- SINGARI
DIST.-WEST KARBI ANGLONG
PIN- 782435
ASSAM.

14: DIL PRASHAD GAUTOM
SON OF DILLI RAM GAUTOM
RESIDENT OF VILL-NIKACHI
P.O-NIKACHI
DIST.-BAKSA
PIN- 781372
ASSAM.

15: PANKAJ KR. BARUAH
SON OF LT. BHADRA KANTA BARUAH
RESIDENT OF VILL-MAHURA CHOKI
P.O- MAHURA CHOKI
DIST.-DARRANGI
PIN- 784145
ASSAM

16: INDRANI MEDHI
DAUGHTER LT. ATUL CH. MEDHI
RESIDENT OF VILL-MALIKUCHI
P.O- BIDYAPUR
DIST.- NALBARI
PIN- 781335
ASSAM.

17: DIP KUMAR CHAKRABARTY
SON OF LT. BHARAT CHANDRA CHAKRABARTY
RESIDENT OF VILL-BANGAON
P.O-BANGAON



DIST.- NALBARI
PIN- 781303
ASSAM.

18: SOM NATH NEPAL

SON OF LT RAGHU NATH NEPAL
RESIDENT OF VILL-GOLIA
P.O- PANI BHARAL
DIST.-SONITPUR
PIN- 784176
ASSAM.

19: DHRUBLAL GIMIRE
SON OF DHANAPATI GIMIRE
RESIDENT OF VILL-NIKACHI
P.O- NIKACHI
DIST.-BAKSA
PIN- 781372
ASSAM.

20: RUBINA DEVI
DAUGHTER NARKANTA NATH
RESIDENT OF VILL-FUZDARIPOTI
P.O- TUKTUKI
DIST.-NAGAON
PIN- 782123
ASSAM.

21: CHASINDRA GOSWAMI
SON OF LT. UPENDRA NARAYAN GOSWAMI
RESIDENT OF VILL- BECHIMARI
P.O- KAITHALKUCHI
DIST.-NALBARI
PIN- 781370
ASSAM

22: RUHUL AMIN AHMED
SON OF LT. FAIZUDDIN
RESIDENT OF VILL-DHING GAON
P.O- DAGAON
DIST.-NAGAON
PIN- 782124
ASSAM.

23: IKRAMUL HUSSAIN
SON OF LT. MUSLEM UDDIN ALI
RESIDENT OF VILL-BARCHAPARI



P.O- GAROIMARI PATHAR
DIST.- MORIGAON
PIN- 782126
ASSAM.

24: KUSHUM TALUKDAR

DAUGHTER LT. KABI TALUKDAR
RESIDENT OF VILL-GAMARIMURI
P.O- GAMARIMURI
DIST.- NALBARI
PIN- 731306
ASSAM.

25: DWIJEN TALUKDAR

SON OF LT. BHADRA TALUKDAR
RESIDENT OF VILL-JAGARA
P.O- JAGARA
DIST.- NALBARI
PIN- 781330
ASSAM.

26: JAKIR HUSSAIN

SON OF LT. NURMAHAMMAD ALI
RESIDENT OF VILL-RAMPUR
P.O- RAMPUR
DIST.- NALBARI
PIN- 781312
ASSAM.

27: BHIMLAL GHIMIRE

SON OF BISHNULAL GHIMIRE
RESIDENT OF VILL-DHANSHRIPUR
P.O- DIHIRA
DIST.- BAKSA
PIN- 781371
ASSAM.

28: DWIJEN MISRA

SON OF LT. JIBESWAR MISRA
RESIDENT OF VILL-AMANI
P.O- AMANI
DIST.- NALBARI
PIN- 781306
ASSAM.



29: MANOMATI DEKA

DAUGHTER LT. KHARGESWAR DEKA
RESIDENT OF VILL-JAYMANGLA
P.O- BARZARA
DIST.- NALBARI
PIN- 781334
ASSAM.

30: ASHOK BARAL

SON OF INDRA BARAL
RESIDENT OF VILL-NIKACHI
P.O- NIKACHI
DIST.-BAKSA
PIN- 781372
ASSAM.

31: APARUPA GOGOI

DAUGHTER LT. NANDA CH. GOGOI
RESIDENT OF VILL-DHANDULI NAGAON
P.O- TENGAPUKHURI
DIST.- SARAIDEW
PIN- 786686
ASSAM.

32: HEMONTA KR. BORA

SON OF LT. SADANANDA BORA
RESIDENT OF VILL- KARCHOWA
P.O- KARCHOWA
DIST.- SIVSAGAR
PIN- 785684
ASSAM.

33: NASIUR HUSSAIN

SON OF LT. ANISUR RAHMAN
RESIDENT OF VILL-SANTAK
P.O- SANTAK
DIST.- SIVSAGAR
PIN- 785687
ASSAM.

34: SUBHASH CH. GOSWAMI

SON OF LT. BHAGABAN GOSWAMI
RESIDENT OF VILL-ODALBAKRA
P.O- ODALBAKRA DIST.- KAMRUP(M)
PIN-781034



ASSAM

35: ABDUL MANNAN CHOUDHURY
SON OF MAKSED ALI
RESIDENT OF VILL-GUMA
P.O- PHULBARI
DIST.-BARPETA
PIN- 781302
ASSAM.

36: RAMESH CH. SAIKIA
SON OF LT. ARUN CH. SAIKIA
VILL-GARMUR SATRA
P.O- GARMUR SATRA
DIST.-MAJULI
PIN- 785104
ASSAM.

37: KUTUBUDDIN AHMED
SON OF LT. FANIR ALI
RESIDENT OF VILL. MADHAPUR
P.O. MAROWA
DIST. NALBARI
PIN- 78134
ASSAM.

38: RAMEN SARMA
SON OF SAMINDRA NATH SARMA
RESIDENT OF VILL-KHATA RUPIABATHAN
P.O- CHAMATA
DIST.- NALBARI
PIN-781306
ASSAM.

39: BIDISHA BHAGABATI
DAUGHTER OF LT SATISH CH BHAGABATI
RESIDENT OF VILL-KAITHALKUCHI
P.O- KAITHALKUCHI
DIST.- NALBARI
PIN- 781370
ASSAM.

40: ALAKESH BAISHYA
SON OF LT. UMESH CH BAISHYA
RESIDENT OF VILL-BATCHAR
P.O. BATCHAR
DIST.- NALBARI
PIN- 781303



ASSAM.

41: REKHA BARTHAKUR
DAUGHTER OF LT. NILA NATH BARTHAKUR
RESIDENT OF VILL-T.T.J
P.O- GHANGANI
DIST.- JORHAT
PIN- 785683
ASSAM.

42: UTPAL KR. SARMA
SON OF LT. PRABODH SARMA
RESIDENT OF VILL-BHABANIPUR
P.O. BHABANIPUR
DIST.- BAJALI
PIN-781318
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, ASSAM, GUWAHATI-781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
KAHILIPARA
ASSAM
GUWAHATI-781019.

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE DEPARTMENT
DISPUR-781006
ASSAM

Advocate for the Petitioner : MR B CHOUDHURY

Advocate for the Respondent : SC, SEC. EDU.



**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date : 17-11-2021

Heard Mr. B Choudhury, learned counsel for the petitioners. Also heard Mr. R Mazumdar, learned counsel for the respondents no. 1 and 2 being the authorities under the Secondary Education Department, Government of Assam and Mr. A Chaliha, learned counsel for the respondent no. 3 being the authorities under the Finance Department, Government of Assam.

2. Without going into the details of the factual narration made in this writ petition, we take note that the present petitioners are Lecturers in various Junior Colleges in the State of Assam and the services of teaching staff of such Junior Colleges were provincialised under the Assam Junior College (Provincialisation) Act, 1996 (in short, the Act of 1996). But in doing so, these petitioners who claims to be similarly situated, were left out and they happen to be called dropped teachers.

3. A cabinet memorandum under Rule 17 of the Assam Rules of Executive Business was circulated on the subject regularization of services of dropped teachers in 53 (fifty three) Junior Colleges in Assam and the petitioners herein are also included in the list of such dropped teachers in respect of the 53 (fifty three) Junior Colleges.

4. The cabinet memorandum has raised a proposal which is extracted as below:

“11. In view of above and in consideration of all aspects it has been decided that the teachers (Lecturer) who were appointed before the College came under deficit Grant-in-aid and also received Government concurrence (subsequently provincialised under the Assam Junior College Provincialisation Act, 2012) shall be regularized on the following conditions:

(i) Equal nos of personal posts shall be created.

(ii) The regularization shall be prospective i.e. from the date of issue of of regularization order after creation of personal posts.

(iii) The post stand abolished as soon as the incumbent relinquish the post for either reason.

(iv) In case of regularization against 2nd post, there has to be more than 50 students in the concerned subject, in each class.

(v) In case of regularization against 1st post, there has to be least 15 students in the concerned subject, in each class."

5. Accordingly, the approval of the cabinet was sought for regularizing the Lecturers of the 53 (fifty three) Junior Colleges, who were appointed prior to the respective Colleges being approved under the deficit-grants-in-aid. It is stated that the State Cabinet in its meeting held on 28.02.2016 had approved the proposal contained in the cabinet memorandum referred above.

6. Upon the cabinet having approved the proposal, the office memorandum dated 02.03.2016 was issued by the Principal Secretary to the Government of Assam in the Secondary Education Department and in the office memorandum of the Principal Secretary the terms of regularization of the Lecturers who were appointed prior to 01.02.2001 in respect of 48 (forty eight) Junior Colleges and 29.11.2010 in respect of 5 (five) Junior Colleges were specified, which again is peri-materia to what was provided in paragraph 11 of the cabinet memorandum.

7. Accordingly, it is a policy decision of the Government of Assam in the Secondary Education Department to regularize the service of such Lecturers as indicated above. It is an admitted position that the present petitioners are also included in the list of Lectures whose respective cases for regularization were approved by the cabinet as indicated.

8. But subsequent thereto there is an undated notification under the signature of the Commissioner and Secretary to the Government of Assam in the Secondary Education Department. By the said notification, the Commissioner and Secretary again takes up the issue of regularizing the services of dropped teachers of the Junior Colleges, which as noted above, had already been decided by the State Cabinet in its meeting of 28.02.2016.

9. The purport of the notification is that the Commissioner and Secretary is of the view



that the category of teachers whose regularization was approved by the State Cabinet would now be subjected to be provincialised under the Assam Secondary Education (provincialisation of Services of teachers and Re-organization of Education Institutions) Act, 2017 (in short, the Act of 2017).

10. We are unable to find anything on record as to why the Commissioner and Secretary was of such view. It is to be noted that a cabinet decision cannot be deviated or overturned by the Commissioner and Secretary through a notification.

11. In the hierarchy of the authorities under the Constitution of India, the State Cabinet finds its place much higher than the Commissioner and Secretary to the Government of Assam in the Secondary Education Department and any decision of the State Cabinet is binding on the Commissioner and Secretary and under the scheme of the Constitution, the Commissioner and Secretary has no jurisdiction of its own to deviate from a cabinet decision and take a different view. It is also noted that the claim of the petitioners is for regularization in services being dropped teachers when the other similarly situated teachers were provincialised under the Act of 1996 whereas the Act of 2017 is for provincializing the services of the teaching and non-teaching staff of the Venture Educational Institutions. As the respective Junior Colleges had been provincialised under the Act of 1996, it cannot be understood that they still retain the status of a Venture Education Institute so as to be subjected to the provisions of the Act of 2017.

12. From both points of view, the undated notification of the Commissioner and Secretary to the Government of Assam in the Secondary Education Department which finds place at page-120, Annexure-L, to the writ petition is unsustainable in law. Accordingly, the same is set aside as there is already a cabinet decision dated 28.02.2016 for regularizing the services of the petitioners and for the purpose the office memorandum dated 02.03.2016 had been issued by the Principal Secretary to the Government of Assam in the Secondary Education Department. The respondents are now directed to carry forward and bring the said process to its logical end at the earliest.

13. We have taken note that in the meantime some of the petitioners are approaching the date of retirement in the month of December, 2021.



14. From such point of view, the requirement of bringing the process to its logical end be done positively within November, 2021 so that, if any benefits accrue to the petitioners, even the person who would retire by December, 2021, may have the benefit of regularization, at least for a few days prior to their retirement.

15. We have also taken note that apprehensions are being raised by the respondents regarding the information relating to the petitioners being not captured in the DISE Code for the given year. The same by itself would be irrelevant inasmuch the information to be captured in the DISE Code for the given year is a requirement under the provisions of the Act of 2017, whereas in the instant case, the regularization of petitioners would be pursuant to the cabinet decision of 2016 which was made even before the enactment of the Act of 2017.

16. All further notifications of the similar nature like the undated notification of the Commissioner and Secretary which has been interfered also stands set aside.

17. Writ petition stands allowed as indicated above.

JUDGE

Comparing Assistant