



GAHC010108222021

Page No.# 1/12



**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 SARMA RESIDENT 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: DIPARANI 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 BARTHAHAKUR  
DAUGHTER OF LT. NILA NATH BARTHAHAKUR  
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 2<sup>nd</sup> post, there has to be more than 50 students in the concerned subject, in each class.*

*(v) In case of regularization against 1<sup>st</sup> 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**