



GAHC010120102021

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

Case No. : WP(C)/3956/2021

PRABAL SARMA BORDOLOI AND 13 ORS.

S/O- LATE B.N. SARMA BORDOLOI, R/O- B-2, 3RD FLOOR, NISHA COURT,
BISHNURABHA PATH, P.O. BELTOLA, P.S. BASISTHA, DIST.- KAMRUP(M),
ASSAM- 781028.

2: JALEN BAISHYA

S/O- MR. AKSHAY KUMAR BAISHYA
R/O- BAKUAJARI
P.O. BAKUAJARI
DIST.- NALBARI
ASSAM- 781340.

3: DHANESWAR SUKAI

S/O- LATE MAGHUA SUKAI
R/O- DHUPGURI
P.O. DHUPGURI
P.S. KHETRI
DIST.- KAMRUP(M)
ASSAM
PIN- 782403.

4: GAUTAM BHARGAB

S/O- NABIN CHANDRA SARMA
R/O- VILL.- BALIKUCHI
P.S. BARBARI
DIST. NALBARI
ASSAM- 781351.

5: BISWAJIT HAZARIKA

S/O- LATE SARAT HAZARIKA
R/O- H/NO. 7
GANESH NAGAR
BISHNU PATH
P.S. BASISTHA CHARIALI



DIST.- KAMRUP(M)
ASSAM- 781029.

6: MONUJ SAIKIA
S/O- LILADHAR SAIKIA
R/O- VILL.- RANGAGORAH
N/H-37
P.O. RANGAGORAH
P.S. SAMAGURI
DIST.- NAGAON
ASSAM- 782140.

7: MUKUL GAYAN
S/O- LATE GHANA GAYAN
R/O- VILL.- PURANIGUDAM KALITA CHUK
P.O. BORAPANIGAON
P.S. SAMAGURI
DIST.- NAGAON
ASSAM.

8: PRASANTA BHUYAN
S/O- LATE KASIRAM BHUYAN
R/O- VILL. AND P.O. BORAPANIGAON
P.S. SAMAGURI
DIST. NAGAON
ASSAM- 782141.

9: RAMLAL HAZIRA
S/O- SHYAMLAL HAZIRA
R/O- VILL.- BORALIGAON
P.O. BORBHOGIYA
P.S. MISSA
DIST. NAGAON
ASSAM.

10: BAZLUL RASHID KHAN
S/O- WAZED ALI KHAN
R/O- VILL.- HATIJANA
P.O. JAISOTIPRA
DIST. BARPETA
ASSAM
PIN- 781316.

11: KESHAB PEGU
S/O- UMESWAR PEGU
R/O- VILL. TINI CHUKI MISSING GAON
P.O. KAKKATI
P.S. DERAGAON



DIST. GOLAGHAT
ASSAM- 785611.

12: RANJU SAIKIA DAS
S/O- BIJAY DAS
R/O- VILL.- GOHERPAM
P.O. PATBOUSHI
DIST. BARPETA
ASSAM- 781301.

13: MD. NUR ZAMAL
S/O- NURUL ISLAM
R/O- VILL.- SONARIBALIL
P.O. AND P.S. SAMAGURI
DIST. NAGAON
ASSAM- 782140.

14: DULU BORA
S/O- HEMO BORA
R/O- VILL. NABIL
P.O. UPPERLANGTHA
DIST. GOLAGHAT
ASSAM- 786602

VERSUS

THE STATE OF ASSAM AND 2 ORS.
TO BE REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
TOURISM DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DIPSUR
GUWAHATI-6.

3:THE PRINCIPAL
FOOD CRAFT INSTITUTE
SAMAGURI
P.O. RONGAGORAH
DIST. NAGAON
ASSAM- 782140



B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioners : Shri B.D. Das, Sr. Advocate
Shri M.H. Laskar, Advocate.

Advocates for the respondents : Shri S. Bora, SC, GMC, GDD & GMDA,
Shri R. Borpujari & Shri A. Chaliha, SC, Finance.
Shri C.K.S. Baruah, State Counsel.

Date of hearing : 02.04.2024 & 04.04.2024

Date of judgment : 04.04.2024

Fourteen numbers of petitioners have joined together in this petition, which has been filed in connection with a claim to get the benefit of the recommendations of the 7th Pay Commission, Government of Assam, which was notified on 17.03.2017 under the Assam Services, (Revision of Pay) Rules, 2017. It is the case of the petitioners that they were given their salaries in terms of the 6th Pay Commission, which were published in the year 2009.

2. The facts as projected in the petition is that the petitioners are working in various capacities in the Food Craft Institute, a society which was formed as per a Memorandum of Association in the year 2010. The details of the employment have been given in the form of a chart in paragraph 7 of the writ petition. It is

the case of the petitioners that under clause 4 of the Memorandum of Association of the Rules & Regulations of the Food Craft Institute, Membership has been defined, which consists of the following members:

- (a) Chairman - Principal Secretary Tourism, Government of Assam.
- (b) Two representative of the Central Government from Ministry of Tourism.
- (c) Three representatives of State Government from department of finance, department of tourism and department of education (technical),
- (d) Director, National Council for Hotel Management and Catering Technology, Pusa, New Delhi to be nominated by Central Government.
- (e) One member from Hotel and Restaurant Association of Assam (to be nominated by State Government.)
- (f) One member representing Federation of Hotel & Restaurant Associations of India (FHRAI) (to be nominated by the State Government.)
- (g) The Principal of the Institute- ex-officio.
- (h) The State Government may nominate not more than two experts to be members of the Society.

As per Rule 28, which deals with alterations, it is stipulated that for any alteration, extension or abridgement, prior approval of the State Government is necessary. A recruitment drive was accordingly made as per a meeting of the Board of Governors held on 16.03.2010, pursuant to which the petitioners were duly appointed in various services which have been indicated above.

3. It is the case of the petitioners that though they were given the benefit of the 6th Revision of Pay Commission and their salaries are also under the same recommendation, the benefits of the 7th Revision of Pay have not been given to them. In this connection, a communication was issued by the Principal of the Institute to the Chairman of the Institute, who holds the substantial position of the Principal Secretary to the Government of Assam, Tourism Department to give the benefit of the 7th ROP recommendation from the Finance Department. The aspect of forwarding a proposal for Pay Revision was also discussed. However, the benefits of the recommendation of the 7th Pay Commission have not been given to the petitioners and therefore the present writ petition.

4. I have heard Shri B.D. Das, learned Senior Counsel assisted by Shri M.H. Laskar, learned counsel for the petitioners. I have also heard Shri C.K.S. Baruah, learned State Counsel as well as Shri S. Bora, learned Standing Counsel, UDD. The Finance Department is represented by both Shri R. Borpujari and Shri A. Chaliha, learned Standing Counsel.

5. Shri Das, the learned Senior Counsel for the petitioners, has submitted that the petitioners, for all purposes are treated at par with the employees of various Polytechnics in the State of Assam and whereas such employees of various Polytechnics have been given the benefit of the 7th ROP, the petitioners have been left out. It is submitted that there does not appear to be any objection or dispute with regard to the claim made by the petitioners as their salaries were in terms of the recommendation of the 6th Pay Commission and benefits of the 6th Pay Commission were also given to them. The learned Senior

Counsel has also drawn the attention of this Court to the affidavit-in-opposition of the Tourism Department filed on 25.11.2021. In the said affidavit-in-opposition, a communication dated 05.02.2020 has been annexed as per which the Tourism Department has informed the Principal of the Institute that as per the Finance Department, the request has to be placed "*only at the outset of next mechanism for pay revision or any other mechanism adopted by Govt. from time to time*". The Note Sheet of the Finance Department which has been annexed has also been referred to in this regard.

6. The Senior Counsel for the petitioners accordingly submits that there being no dispute to the claim in principle, a direction may be issued by this Court to the Tourism Department to submit the proposal in accordance with law to the Finance Department for its consideration.

7. Shri C.K.S Baruah, learned State Counsel representing the Tourism Department submits that the claim of the petitioners is not disputed in principle. However, by referring to the earlier order of this Court in this petition, he has submitted that the maintainability of this writ petition against a society itself is questionable.

8. The learned Standing Counsel, Finance Department has referred to the affidavit-in-opposition filed on 02.08.2023. By drawing the attention of this Court to the averments made in paragraph 4, it is submitted that though the Tourism Department was asked to submit proposal, till the time of filing of the affidavit-in-opposition, no such proposal was submitted.

9. The rival submissions have been duly considered and the materials placed before this Court have been duly considered.

10. Though there is an observation in the order dated 23.08.2021 of this Court on the objection raised on behalf of the Finance Department on the aspect of maintainability of this writ petition which is primarily against the Society, this Court has noticed that the composition of the Society as well as the power to make alteration or change would indicate that it is wholly under the control of the Government and therefore, the objection regarding maintainability may not be sustained. The present view of this Court is also based on the fact that the claim made by the petitioners is not disputed in principle. It is also not disputed that the petitioners are to be treated at par with the employees of the Polytechnics in the State of Assam and whereas such employees of Polytechnics were given the benefits of the 7th Pay Commission, the petitioners have been left out.

11. From the materials on record, it appears that there is a communication gap with regard to submission of the proposal by the Administrative Department, i.e., the Tourism Department. The affidavit-in-opposition of the Finance Department dated 02.08.2023 states that till filing of such affidavit, the proposal was not submitted by the Tourism Department in the proper format. The learned Standing Counsel, Finance Department has clarified that the proposal can be made by the Administrative Department which would be taken into account at the time of consideration of the 8th Pay Commission as and when constituted.



12. Upon hearing the learned Counsel for the parties and on examination of the materials on record, this Court is of the considered opinion that appropriate directions are called for. Accordingly, it is directed that the Tourism Department, Government of Assam shall submit a proposal for giving the benefits of the 7th Pay Commission to the petitioners by the Finance Department which would be considered by the 8th Pay Commission which, as submitted is likely to be constituted this year. It is clarified that while the consideration is made by the 8th Pay Commission, the benefits which the petitioners are held to be entitled under the 7th Pay Commission would also be considered along with the benefits which would accrue under the 8th Pay Commission and be granted in accordance with law.

13. The petition accordingly stands disposed of.

JUDGE

Comparing Assistant