

GAHC010032462020



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

Case No. : WP(C) 938/2020

1:ANUPAM DAS AND 4 ORS.

S/O- TRIDIP RANJAN DAS, R/O- ARYA NAGAR, P.O. GOPINATH NAGAR,
DIST.- KAMRUP, ASSAM, PIN- 781016.

2: SAMARJIT DAS

S/O- SARAL KUMAR DAS

R/O- CHAPAR

P.O. CHAPAR

DIST- DHUBRI

ASSAM

PIN- 783371.

3: ATOWAR UL ISLAM

S/O- ABDUL MOMIN SK.

R/O- EIDGAH PATH

HOUSE NO. 12

P.O. DISPUR

SARUMOTORIA

DIST.- KAMRUP

ASSAM

PIN- 781006.

4: NABANITA DAS

D/O- LT. DIPAK KR. DAS

R/O- HOUSE NO. 16

SARVODAYA PATH

ABC

DIST.- KAMRUP

ASSAM

PIN- 781005.

5: BISWAJIT DAS

S/O- DHIREN DAS

R/O- PASCHIM BORAGAON

BAMUNPARA
DIST.- KAMRUP
ASSAM
PIN- 781035

VERSUS

1:THE STATE OF ASSAM AND 8 ORS.
REP. BY THE COMM. AND SECY., GOVT. OF ASSAM, HIGHER EDUCATION
DEPTT., DISPUR, GHY.- 06, ASSAM.

2:THE DY. SECY.
GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GHY.- 06.

3:THE DIRECTOR
HIGHER EDUCATION DEPTT.
KAHILIPARA
GHY.-19.

4:THE VICE-CHANCELLOR
COTTON UNIVERSITY
PANBAZAR
GHY.- 781001.

5:THE REGISTRAR
COTTON UNIVERSITY
PANBAZAR
GHY.-01.

6:COTTON UNIVERSITY
PANBAZAR
GHY.-01
REP. BY THE REGISTRAR.

7:HIMANISH SHEKHAR DAS
S/O NOT KNOWN
R/O- HOUSE NO. 14D
ROY NAGAR
DIST.- KARIMGANJ
ASSAM.

8:PRAKASH CHAUHAN
ASSTT. PROFESSOR
COMPUTER SCIENCE AND I.T. DEPTT.
COTTON UNIVERSITY

GHY.-01
DIST. KAMRUP(M)
ASSAM.

9:KANGKANA BORA
ASSTT. PROFESSOR
COMPUTER SCIENCE AND I.T. DEPTT.
COTTON UNIVERSITY
GHY.-01
DIST.- KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH**

ORDER

Date : 13-02-2020

Heard Mr. K. N. Choudhury, learned senior counsel, assisted by Mr. H. Das, learned counsel for the petitioners. Also heard Mr. P. D. Nair, learned Standing Counsel, Cotton University and Mr. K. Gogoi, learned Standing Counsel, Higher Education Department.

2. Issue notice, returnable within 3 (three) weeks.

Mr. K. Gogoi, learned Standing Counsel, Education (Higher) Department accepts notice on behalf of respondent Nos.1, 2, 3.

Mr. P. D. Nair, learned Standing Counsel, Cotton University accepts notice on behalf of respondent Nos.4, 5 and 6.

Petitioners shall take steps for service of notice upon respondent Nos. 7 to 9 by registered post with A/D.

3. List again on 06.03.2020, on which date, an attempt shall be made to dispose of this writ petition considering the nature of the case.

Accordingly, the respondent authorities are also expected to file their response by the next date fixed.

4. Mr. K. N. Choudhury, learned senior counsel for the petitioners has prayed for passing an interim order to protect the services of the petitioners, which they have been rendering since 2007-2008 on contractual basis as Assistant Professors in the Department of Computer Science and Information Technology in Cotton College/Cotton University.

5. Mr. Choudhury, learned senior counsel for the petitioners submits that it is an undeniable fact that when the petitioners entered service though on contractual basis, they went through a rigorous process of recruitment and the process required to be followed for regular appointment was followed in their cases also at the time of making contractual appointments. By dint of long service rendered since 2007-2008, they are legitimately expecting that their services would be regularised. In fact, that legitimate expectation was also given a fillip by the positive response from the side of the Government by requesting the Cotton University to submit a formal proposal in connection with the issue of regularisation of the services of the petitioners as Assistant Professors in the Department of Computer Science and Information Technology for further action of the Government as communicated in the official letter dated 24.10.2018 from the Director of Higher Education, Assam addressed to the Registrar of Cotton University, which was again followed by another communication from the State Government to the Registrar of the Cotton University on 15.02.2019.

6. However, while the petitioners were hopeful that their claim for regularisation of their services would be favourably considered by the State Government, the Cotton University on the contrary had initiated certain process which would come in the way of the said claim and in fact, instead of submitting the proposal as requested by the State Government in that regard, proceeded to dispense with the services of the petitioners by issuing the impugned advertisement and appointment orders of the private respondents and also by dispensing the services of the petitioners, vide impugned order dated 06.02.2020 addressed to each of the individual petitioners.

It has been submitted that in the aforesaid backdrop facts, the services of the petitioners may be protected till final disposal of this petition.

7. On the other hand, Mr. P.D. Nair, learned Standing Counsel, Cotton University, on written instructions has submitted that the said proposed action to dispense with the services of the petitioners is primarily for the reason that the concerned authorities of the Cotton University had taken a view that the services of the petitioners will not be necessary as

regular appointments have been already made in this regard.

8. It has been also submitted that the termination of the services of the petitioners is also in terms of the order passed by this Court in WP(C) No. 9474/2019 in which an interim order was passed on 20.12.2019 to the effect that till regular appointment is made, the petitioners may be allowed to continue their services and in fact, since regular appointments have been made pursuant to the advertisement dated 19.06.2019, the services of the petitioners are deemed not required. Their services have accordingly been dispensed with by order dated 06.02.2020.

9. It has been further submitted that as the authorities had already deemed that their services are not required and since salaries of the teachers have to be paid out of the fees levied on the students, if any interim order is passed directing continuation of the services of the petitioners at this stage, it would amount to undue fiscal pressure on the University which may involve hiking fees of the students, which is not desirable and as such, accordingly, it has been submitted that in the event, if the petitioners are successful, their services can be regularised.

10. As regards the aforesaid objection raised by the learned Standing Counsel, Cotton University, Mr. Choudhury, learned senior counsel for the petitioners submits that since the petitioners have been serving on contractual basis since 2007-2008 and since the State authorities already had initiated the process for regularisation, as late as last year, it would be in the fitness of things that the services of the petitioners be continued.

11. Learned senior counsel for the petitioners also has submitted that if an endeavour is made to dispose of this petition within a month, they are also not willing to forgo any wages for the services to be rendered by them in the event, this Court passes an order not to dispense with their services in terms of the impugned order dated 06.02.2020.

12. Having heard learned counsel for the parties and also considering the peculiar facts of the case as narrated above and also keeping in mind the submission made by learned senior counsel for the petitioners that they will not insist upon payment of salary in the event the impugned order dated 06.02.2020 is suspended, this Court is of the view that no prejudice will be caused to the Cotton University if the impugned order dated 06.02.2020 remains suspended till the next returnable date, i.e. 06.03.2020 as mentioned above.

Accordingly, it is directed that till the next returnable date, i.e. 06.03.2020, the impugned order dated 06.02.2020 remains suspended, on the condition as mentioned above.

13. This order passed is primarily a prima facie view of this Court and detail merit will be considered properly at the time of hearing.

JUDGE

Comparing Assistant