

GAHC010100882025



2026:GAU-AS:3887

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

Case No. : WA/375/2025

SMTI PRATIMA CHETIA
DAUGHTER OF PHANI CHETIA, A RESIDENT OF CHETIA GAON, HARHI
SAPATIA, IN THE DISTRICT OF LAKHIMPUR, ASSAM-787058, INDIA.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM,
DISPUR, GUWAHATI, ASSAM-781006.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM.
EDUCATION (HIGHER) DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE COMMISSIONER AND SECRETARY
EDUCATION (HIGHER) DEPARTMENT
GOVT OF ASSAM
DISPUR
GUWAHATI-781006.

4:THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI-781006

5:THE DIRECTOR OF HIGHER EDUCATION
KAHILIPARA
GUWAHATI-19
ASSAM.

6:HARHI COLLEGE
LAKHIMPUR
REP. BY ITS PRINCIPAL

7:PARINITA BORAH
W/O. SRI MUKTA SAIKIA
VILL.- BATAMARI
P/O. GHURAMARA
DIST. LAKHIMPUR
ASSAM
PIN-787032

Advocate for the Petitioner : GURU GOBINDRA GOGOI, MR. S J SARMAH,MR. J I
BORBHUIYA

Advocate for the Respondent : , SC, HIGHER EDU,SC, FINANCE

Linked Case : WA/176/2025

PRATIMA CHETIA
D/O. PHANI CHETIA
R/O. CHETIA GAON
HARHI SAPATIA
DIST. LAKHIMPUR
ASSAM
PIN-787058.

VERSUS

THE STATE OF ASSAM AND 9 ORS.
REP. BY THE ADDITIONAL CHIEF SECRETARY AND COMMISSIONER
EDUCATION (HIGHER) DEPARTMENT
DISPUR
GUWAHATI-06
ASSAM
INDIA.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
EDUCATION (HIGHER) DEPARTMENT
DISPUR
GUWAHATI
ASSAM.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EDUCATION (HIGHER) DEPARTMENT

DISPUR
GUWAHATI-06
ASSAM.

4:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06
ASSAM.

5:THE DIRECTOR CUM HEAD OF THE ENQUIRY COMMITTEE OF THE
HIGHER EDUCATION
KAHILIPARA
GUWAHATI-19
ASSAM
INDIA

6:THE JOINT DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19
ASSAM.

7:THE HARHI COLLEGE
REP. BY ITS PRINCIPAL
GOBINDAPUR
DHAKUAKHANA
LAKHIMPUR
ASSAM.

8:THE GOVERNING BODY
REP. BY ITS PRESIDENT AND SECRETARY
GOBINDAPUR
DHAKUAKHANA
LAKHIMPUR
ASSAM.

9:PARINITA BORA
ASST. PROFESSOR (NEW PROVINCILIZATION)
DEPARTMENT OF ASSAMESE
HARHI COLLEGE
GOBINDAPUR
DHAKUAKHANA
LAKHIMPUR
ASSAM.

10:KARABI GOGOI
ASST. PROFESSOR

DEPARTMENT OF ASSAMESE
HARHI COLLEGE
GOBINDAPUR
DHAKUAKHANA
LAKHIMPUR
ASSAM.

Advocate for : MR G G GOGOI
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 9 ORS.

BEFORE
HONOURABLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT & ORDER (ORAL)

Date : 18-03-2026

(ARUN DEV CHOUDHURY, J)

1. We have heard Mr. J. I Barbhuiya, learned counsel, for the appellant. Also heard Mr. S. Das, learned standing counsel, Higher Education Department, Mr. B.K. Das, learned counsel representing the College, Mr. A.C. Borbora, learned senior counsel assisted by Mr. M Smith, learned counsel for the private respondent.
2. By this intra-court appeal, a challenge has been made against the judgment and order dated 10.09.2021, passed in WP(C) 4041/2019, whereby the writ petition filed by the private respondent was allowed, directing her provincialisation as an Assistant Professor in the Assamese subject at Harhi College, Gobindapur, Lakhimpur and permitting the state authorities to pass consequential orders.

3. Another inextricably interlinked writ appeal, being WA No.176/2025, assailing a judgment dated 01.05.2025, passed in WP(C) 1200/2025, is also listed together. By the said judgment, the challenge made by the appellant to a speaking order dated 20.02.2025, provincialising the service of the private respondent, pursuant to the judgment dated 10.09.2021(supra), was negated on the ground that such an administrative order could not be independently assailed without assailing the foundational judicial order dated 10.09.2021 in WP(C) 4041/2019.
4. The case of the writ petitioner before the learned Single Judge in WP(C) 4041/2019, in essence, was that she had been appointed as an Assistant Professor in subject Assamese at Harhi College on 30.08.2003 and by virtue of her date of appointment, she was senior to at least two of the incumbents, namely Sri Sapna Gogoi, appointed on 24.12.2020 and the appellant, who is stated to have been appointed on 15.11.2005.
5. It was contended that the action of the state authorities in bypassing her claim while provincialising junior incumbents was arbitrary, discriminatory, and violative of Articles 14 & 16 of the Constitution of India
6. The state authorities sought to justify their action by contending that the respondent did not possess the requisite qualifications and that her appointment was in excess of the

post. A further distinction was sought to be drawn between the subject for which the respondent was appointed and the subject against which provincialisation was granted.

7. The learned Single Judge, upon appreciation of the materials on record, found the stand of the state to be unsustainable and held that the claim of the respondent had been unjustifiably overlooked. It was concluded that a legal right had accrued in favour of the respondent for being provincialised and that denial of such benefit, while extending the same to a junior incumbent, was arbitrary.
8. Proceeding on the said reasoning, the learned Single Judge issued a direction to the competent authority to provincialise the service of the respondent within a stipulated period. It was further observed that if, in the process, any adverse consequence were to ensue to other incumbents who had already been provincialised, the authority may pass appropriate orders after hearing them.
9. Interestingly, none of the aforesaid incumbents, including the appellant, were arrayed as party respondents in the writ proceeding.
10. Therefore, the central issue that arises for consideration is whether such an adjudication, which in effect contemplates the unsettling of an existing provincialisation, could have been rendered in the absence of the affected incumbents.

11. The appellant before us is the incumbent, whose provincialisation under the order dated 20.06.2015 stands directly imperilled by the impugned judgment and has resulted in another order dated 20.02.2025 withdrawing the provincialisation granted on 20.06.2015.
12. It is not in dispute that the appellant was not arrayed as a party respondent in the writ proceeding.
13. A bare perusal of the direction issued by the learned Single Judge, makes it clear that the impugned order is not merely declaratory in nature but carries the potential of divesting an existing benefit already conferred upon the appellant. Such a consequence is not incidental but is embedded in paragraphs 11 & 12 of the impugned judgment itself.
14. It is the settled principle of law that any order which entails adverse civil consequences must conform to the principles of natural justice. The rule of *audi alteram partem* is not an empty formality; it is a foundational requirement that ensures fairness in decision-making. A person whose rights are likely to be affected is a necessary party to the proceedings, and any adjudication in their absence is legally vulnerable.
15. We further emphasise that the exercise of the power of judicial review, particularly in service matters involving competing entitlements, must adhere to procedural fairness as much as to subjective correctness. An order that seeks to remedy an alleged illegality cannot itself be sustainable if it

results in the infraction of basic principles of natural justice. The legitimacy of judicial outcomes rests not merely on the correctness of conclusions but equally on the fairness of the process by which those conclusions are reached.

16. In the present case, the issue before the learned Single judge involved the determination of competing claims to provincialisation, including seniority, eligibility and the validity of earlier decisions of the authorities. Such issues are inherently *inter-se* in nature and cannot be conclusively determined without the participation of all affected incumbents.
17. The absence of the appellant from the array of parties has resulted in a situation where findings have been returned directly prejudicing her rights without affording her an opportunity of being heard.
18. This strikes at the very root of procedural fairness.
19. While the learned Single Judge has undertaken an examination of the respondent's claim on merit, such an exercise, in the absence of the necessary party, stands vitiated. The correctness or otherwise of the conclusions on merit is, therefore, rendered secondary to the fundamental procedural infirmity that has crept into the adjudication.
20. In such circumstances, the impugned judgment cannot be sustained in law.

21. For the reasons recorded herein above, we issue the following directions.

- I. The Writ Appeal No.375/2025 stands allowed. The judgment and order dated 10.09.2021, passed in WP(C) No.4041/2019, stands set aside.
- II. The writ petition is restored to its original file and remanded back to the learned Single Judge for a fresh adjudication in accordance with law, but only after affording the appellant a due and effective opportunity of hearing.
- III. The consequential order of withdrawal of provincialisation of the appellant dated 20.02.2025 shall be subject to the final outcome of the writ petition.
- IV. The appellant herein shall be impleaded as a party respondent in the writ petition by the respondent, by filing a fresh memo of appeal.
- V. Liberty is granted to the parties to amend the pleadings and place such additional materials as may be advised.
- VI. It is provided that the status quo as on today as regards the service of the appellant and the respondent shall be maintained till the final determination of the writ petition.

- VII. In view of the aforesaid determination, nothing remains to be adjudicated in WA 176/2025. Accordingly, the prayer for withdrawal of the said Writ Appeal by the learned counsel for the appellant stands allowed. Accordingly, the same stands closed.
- VIII. The Registry shall place the record before the Hon'ble Chief Justice on the administrative side for passing necessary order assigning the matter before a learned Single Judge.
22. While parting with the records, we clarify that we have expressed no opinion on the merits of the rival claims, all of which remain open for the consideration of the learned Single Judge.
23. We also request the learned Single Judge to take the writ petition in priority, taking note of the fact that the issue of provincilisation dates back to the year 2015.

JUDGE

CHIEF JUSTICE