

GAHC010230262022



2025:GAU-AS:11393

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

Case No. : WP(C)/7239/2022

SMTI. MAMONI KAKATI
D/O- LATE MEDINI KAKOTI,
R/O- VILL. CHARING SANTIPARA GAON,
P.O.- HATIGHULI,
P.S.- GOURISAGAR,
DIST.- SIVASAGAR (ASSAM),
PIN- 785664.

VERSUS

THE STATE OF ASSAM 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
SOCIAL WELFARE DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPARTMENT

DISPUR
GHY-6.

3:THE DIRECTOR OF SOCIAL WELFARE DEPARTMENT
ASSAM
UZANBAZAR
GUWAHATI-1.

4:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE DEPARTMENT

DISPUR

GUWAHATI-6.

5:THE PRINCIPAL

SCHOOL FOR HEARING IMPAIRED

JORHAT

PIN- 785001.

6:THE DIRECTOR OF SOCIAL JUSTICE AND EMPOWERMENT

ASSAM

BELTOLA

NEAR LAKHI MANDIR

PIN- 781028

Advocate for the Petitioner : MR. I H SAIKIA, MS L HMAR,MR. K KALITA,MR. B BORAH

Advocate for the Respondent : GA, ASSAM, MR R M DAS, SC, SOCIAL JUSTICE &
EMPOWERMENT,MR. C K S BARUAH, GA, ASSAM,MR. R BORPUJARI, SC, FINANCE

Linked Case : WP(C)/7585/2022

JYOTSHNA BORTHAKUR

D/O. LT. DEBENDRA NATH BORTHAKUR

VILL. BHATAMORA GAON

P.O. PORBOTIA (RRL)

P.S. PULIBOR

DIST. JORHAT

ASSAM

PIN-785006.

VERSUS

THE STATE OF ASSAM AND 5 ORS

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM

SOCIAL WELFARE DEPTT.

DISPUR

GUWAHATI-06.

2:THE DEPUTY SECRETARY

TO THE GOVT. OF ASSAM

SOCIAL WELFARE DEPTT.

DISPUR
GUWAHATI-06.

3:THE DIRECTOR OF SOCIAL WELFARE DEPTT.

ASSAM
UZANBAZAR
GUWAHATI-01.

4:THE PRINCIPAL

THE SCHOOL OF HEARING IMPAIRED
JORHAT
PIN-785001.

5:THE COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI-06.

6:THE DIRECTOR OF SOCIAL JUSTICE AND EMPOWERMENT
ASSAM
BELTOLA
NEAR LAKHI MANDIR
PIN- 781028.

Advocate for : MR. I H SAIKIA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

26-08-2025

1. Heard Mr. I. H. Saikia, learned counsel for the petitioners. Also heard Ms. R.M. Deka, learned Standing counsel, Social Welfare Department as well as Ms. S. Baruah, learned Standing counsel, Social Welfare Child & Women Department and Mr. B. Gogoi,

learned Additional Advocate General, Assam representing the Finance Department for the respondents.

2. Both the petitioners, Mamoni Kakati & Jyotshna Borthakur, were temporarily engaged as Casual Employees at consolidated pay of Rs. 900/-(fixed) per month, initially for a period of three months on 23.02.1996 as Grade-III and Teacher respectively, at the School for Hearing Impaired, Jorhat. The orders of aforesaid engagements were issued under the signature of the Director, Social Welfare & Probation, Assam.

3. Thereafter, the Deputy Secretary to the Government of Assam, Social Welfare Department, Dispur under its communication No.SWD.183/2011/10 dated 16.02.2012 intimated the Accountant General, Assam that certain posts have been created and sanctioned for the School for Hearing Impaired, Jorhat during the year 2011-2012.

4. The aforesaid communication discloses that the Government of Assam was pleased to create the posts of one Principal, two Graduate Teachers (Arts), two Graduate Teachers (Science), one LD Assistant, one Caretaker in the LDA rank and one Night Chowkidar with effect from the date of sanction. The expenditure was debitable from a specific Head of Accounts and that such posts were sanctioned with concurrence of the Finance Department (SIU) and was granted under order No.620/2011 dated 13.12.2011.

5. Thereafter, by Office Order dated 31.03.2016, the services of the petitioners were regularized against such sanctioned posts w.e.f. 16.02.2012, i.e., the date of creation and sanction of such posts and the petitioners were paid their regular scale of pay w.e.f. 31.03.2016, i.e., from the date of issuance of regularization of their services. However, it is the grievance raised in these petitions that the petitioners are deprived of their rights to receive their salaries for the said period w.e.f. 16.02.2012, i.e., the date from which their services were regularized. Such claim is resisted by the respondent State.

6. The respondent, more particularly, the Director of Social Justice & Empowerment has resisted such claim on the ground that as the petitioners had joined

their services as regular employees on 01.04.2016 pursuant to the order of regularization of their services dated 31.03.2016, they are entitled to salaries from 01.04.2016 and not from 16.02.2012.

7. By filing an additional affidavit-in-opposition, the said Director has further taken a stand that the services of the petitioners were regularized on the basis of a Cabinet Memorandum and Cabinet had decided to regularize their services after obtaining views from the Finance (Estt-A) Department, Finance (EC-I) Department, Finance (PRU) Department. However, there was no reflection that the services of the petitioners will be regularized w.e.f. 16.02.2012 in the Cabinet Memorandum and the Cabinet decision. Therefore, it is the contention of the said Director that though the Cabinet had recommended to regularize the services of the petitioners, however, there was no decision of the retrospective effect of such regularization.

8. Though the aforesaid stand has been taken by the said Director, however, the Director has not been able to show any ground as to why the regularization was given effect from 16.02.2012, rather it is the stand of the Director that he/she is not aware of such reason as the earlier Department was the Social Welfare & Probation Department and now said Department was bifurcated into the two Departments and now the subject matter is dealt by the Social Justice & Empowerment Department.

9. Perusal of the material undisputedly reflects that the creation and sanction of posts for the aforesaid School was notified on 16.02.2012 and the order of regularization of services of the petitioners issued under the signature of the Director of Social Welfare Department, clearly stipulates that such order of regularization is given effect from 16.02.2012. Therefore, in the considered opinion of this Court that at this stage, the same Director cannot take a stand that the effect of regularization ought not to have been given w.e.f. 16.02.2012, instead of such effect ought to have been given w.e.f. 31.03.2016 i.e., the date of issuance of order of regularization.

10. It is true that generally regularization comes into effect from the date of

regularization and a Court cannot direct for payment of arrear of salary, and other benefits from a back date and the Court should refrain itself from directing the retrospective regularization. However, in the case in hand, the posts were created and sanctioned w.e.f. 16.02.2012 and the petitioners continued to work from their date of initial appointments. The order of regularization clearly shows that the benefit is granted with retrospective effect from the date of creation and sanction of such posts, i.e., 16.02.2012. The respondent State has not denied granting the benefit of retrospective regularization. Such order, even if it is assumed that, was issued by mistake or otherwise, however, till date, the respondent has not rectified such defect, if any.

11. This Court in the present writ petitions is not deciding the legality and/or validity of the order of regularization dated 31.03.2016 giving retrospective regularization nor the petitioners are seeking any direction for their retrospective regularisation. Therefore, in the given facts of the present case, this Court in exercise of its power of judicial review, cannot uphold the contention of the respondents as recorded hereinabove, in absence of rectification of the order of regularization dated 31.03.2016.

12. In the considered opinion of this Court, the order of regularization itself stipulates that the services of the petitioners were regularized w.e.f. 16.02.2012 and admittedly, they were rendering their services during the aforesaid period till the issuance of order of regularization, i.e., 31.03.2016. Therefore, the respondents cannot be justified to withdraw the benefit of arrear salaries for the aforesaid period. This Court is also of the opinion that the respondent authorities without rectifying the regularization order or the date of effect of such regularization, cannot by way of an affidavit improve their case. Law is by now well settled that when the authority make an order, and/or take any action, its validity must be based on the reasons/such decision mentioned in the order itself and the authority cannot improve or supplements reasons later before the Court by way of filing an affidavit (reference ***Mohinder Singh Gill & Another Vs. the Chief Election Commissioner, New Delhi & Others*** reported in ***(1978) 1 SCC 405***).

13. That being the position, the petitioners be paid their arrear salaries for the

aforesaid period by the competent authority and it is not out of place to mention that infact, the authorities and the DDO had already forwarded the proposal for arrear salaries of the petitioners to the concerned Department. Such exercise be carried out within a period of 3 (three) months from the date of receipt of a certified copy of this order to be furnished by the petitioners.

14. With the aforesaid observation and determination, these two writ petitions stand disposed of. Parties to bear their own costs.

JUDGE

Comparing Assistant