

GAHC010148992023



2025:GAU-AS:11212

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

Case No. : WA/418/2023

STATE OF ASSAM REPRESENTED BY PRINCIPAL SECRETARY TO THE
GOVERNMENT OF ASSAM, FINANCE DEPARTMENT
REP. BY PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM,
FINANCE DEPARTMENT, DISPUR, GUWAHATI- 781006.

VERSUS

ALL ASSAM RETIRED OFFICERS, TEACHERS AND EMPLOYEES
COMMITTEE
S.B. HOUSING COMPLEX, TRIPURA ROAD, KHANAPARA, GUWAHATI- 28,
DIST.- KAMRUP (M), ASSAM.

2:SRI BIMAN SARMAH
S/O SRI NORENDRA NATH SARMA
RANGBHUMI
GOTANAGAR
HOUSE NO. 6

2ND FLOOR
P.O.- GOTANAGAR
GUWAHATI- 781033.

3:SRI JATINDRA NATH BORAH
S/O LATE BHARAT CHANDRA BORAH

ANIRUDHA PATH
BASISTHAPUR PATH NO. 2

GUWAHATI- 781028.

4:THE CHIEF SECRETARY
TO THE GOVERNMENT OF ASSAM

DISPUR
GUWAHATI- 781006.

5:COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI- 781006.

6:COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
PERSONAL DEPARTMENT
DISPUR
GUWAHATI- 781006

Advocate for the Petitioner : MR. R BORPUJARI,

Advocate for the Respondent : GA, ASSAM, MR. M K CHOUDHURY (r-1,2,3),MR P BHARDWAJ (r-1,2,3),MR. M SARMA (r-1,2,3),MR. D. BORAH

For the Appellant(s):- Mr. R. Borpujari, Advocate,

**For the Respondent(s):- Mr. M. Sarma, Advocate for the respondent Nos. 1 to 3.
Mr. P. Saikia, Govt. Advocate, Assam**

BEFORE

HONOURABLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR

HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

21-08-2025

(Arun Dev Choudhury, J)

1. The present intra-Court appeal is filed assailing the judgment and order dated 28.04.2016 passed in WP(C) No.61/2011. By way of the aforesaid writ petition, a challenge was laid to the decision of the Government of Assam not to give benefits of arrears of pension/Death-Cum Retirement Gratuity etc. arising out of the recommendation

of the Assam Pay Commission, 2008 to the pensioners, who retired from service during the period in between 01.01.2006 and 31.03.2009, on the grounds of financial stringency and instead to give them notional benefits, despite acceptance and implementation of the Assam Pay Commission, 2008, with effect from 01.01.2006.

2. In that writ petition, the learned Single Judge, relying upon the judgment of ***D.S. Nakara & Ors. -Vs- Union of India***, reported in ***(1983) 1 SCC 305***, held that such classification was not permissible in the case of pensioners, who formed a class in themselves, especially when the recommendations were implemented with effect from 01.01.2006. For employees who would have retired prior to 01.01.2006, there would naturally be no benefit of the pay hike; still, persons retiring between 01.01.2006 and 31.03.2009 could not have been denied the benefit of the Pay Commission recommendation of higher salary only for financial stringency.

3. This anomaly was further confounded by the fact that there was no specific statement that the straitened financial circumstances of the State would be overcome after 3 (three) years.

4. The State of Assam challenged such a decision in appeal, citing the Hon'ble Supreme Court's decision in ***State of Punjab & Ors. -Vs- Amar Nath Goyal & Ors.***, reported in ***(2005) 6 SCC 754***, wherein it was held that the financial constraint is a valid ground for fixation of cut-off date for grant of benefit of increased quantum of pay or other benefits.

5. However, the appellant/State of Assam withdrew that appeal to approach the learned Single Judge in review.

6. The review petition, however, was dismissed on the ground that there was no error apparent on the face of the record or that something which could not be discovered without a long drawn process of reasoning.

7. In the present appeal, along with the order dismissing the review petition, the order passed in the original writ petition has also been impugned.

8. There is no dispute on the proposition of law as urged by Mr. Borpujari, learned Advocate, that generally the State has the power to fix a cut-off date for extending pensionary benefits and that financial constraint can be a valid ground for fixation of a cut-off date for the grant of the benefit of increased quantum of pay or other benefits. However, it is equally well settled that if the cut-off date is arbitrary, discriminatory or violative of Article 14 of the Constitution of India, a writ Court can strike it down.

9. In **D.S. Nakara** (supra), the Hon'ble Apex Court held that a classification between pre and post cut-off date retirees was arbitrary, when both the classes formed a homogenous class. In substance, when all the retirees formed one homogenous class, the benefits must be extended equally.

10. In the case in hand, there is no dispute at the bar that the pensioners in question retired between 01.01.2006 and 31.03.2009. There is also no dispute in the present case that the recommendation of the Assam Pay Commission, 2008, was accepted and implemented with effect from 01.01.2006. Given this position, there is no valid justification for creating two classes of pensioners: those who retired between 01.01.2006 and 31.03.2009, and those who retired after 31.03.2009, solely to grant a revised pension.

11. All these pensioners formed one class and are entitled to revision of their pensions in terms of the recommendation of the Assam Pay Commission, 2008. As held in **All Manipur Pensioners Association Vs. State of Manipur** reported in **(2020) 14 SCC 625**; in this case, also, the classification as aforesaid sought to be made by the State has no nexus with the object and purpose of the grant of the benefit of revised pension.

12. The object and purpose of such revision is due to increase in cost of living and when all the pensioners formed a single class, there cannot be any separate classification amongst this homogenous group and therefore, the actions of the authorities are rightly held by the learned Single Judge to be unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

13. In the considered opinion of this Court, the ratio laid down in ***D.S. Nakara*** (supra) and ***All Manipur Pensioners Association*** (supra) are applicable in the given facts of the present case and the determination made in ***State of Punjab & Ors.*** (supra) cannot be placed into service, in the facts of the present case.

14. For the reasons recorded hereinabove, this Court is of the opinion that this appeal lacks merit and the impugned judgment and order dated 28.04.2016, requires no interference. Accordingly, this appeal stands dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant