

GAHC010132342025



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

Case No. : WA/241/2025

SRI ISMAIL ALI AND 5 ORS.
SON OF LATE JAFAR KHAN, WORKING AS PEON(GRADE IV) IN THE
OFFICE OF THE WELFARE MINORITIES AND DEVELOPMENT
DEPARTMENT, DISPUR, GUWAHATI-781006.

2: HAFIZUDDIN
SON OF LATE JAMIR UDDIN
WORKING AS DRIVER IN THE OFFICE OF THE WELFARE MINORITIES
AND DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI 781006

3: CHAND MAHAMMAD ALI
SON OF LATE KUDRAT ALI
WORKING AS PEON(GRADE IV) IN THE OFFICE OF THE WELFARE
MINORITIES AND DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI 781006

4: ABU MERAJ HUSSAIN
SON OF LATE PHULBABA HUSSAIN
WORKING AS STENO-III IN THE OFFICE OF THE WELFARE MINORITIES
AND DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI 781006

5: FAREJOR RAHMAN
SON OF MD. JOYNAL ABEDIN
WORKING AS LDA IN THE OFFICE OF THE WELFARE MINORITIES AND
DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI 781006

6: HANIF ALI

SON OF MD. SURAT JAMAL
WORKING AS DRIVER IN THE OFFICE OF THE WELFARE MINORITIES
AND DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI 78100

VERSUS

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

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
PERSONNEL AFFAIRS
DISPUR
GUWAHATI

3:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
WELFARE OF MINORITY DEVELOPMENT DEPTT.
DISPUR
GUWAHATI

4:THE JOINT SECY. TO THE GOVT. OF ASSAM
WELFARE OF MINORITY DEVELOPMENT DEPTT.
DISPUR
GUWAHATI

5:THE DIRECTOR
ASSAM MINORITIES DEVELOPMENT BOARD
GUWAHATI 6

6:THE ACCOUNTANT GENERAL (A AND E)
MAIDAMGAON
GUWAHATI 29

7:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED
GUWAHATI-

For petitioner/applicant(s) : Mr. A. Deke, Advocate

For respondent(s) : Ms. M.D. Borah, SC, WMDD
Mr. S.K. Medhi, SC, AG
Ms. S. Sarma, GA, Assam

– **BEFORE** –
HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MRs. JUSTICE MANISH CHOUDHURY

21.08.2025

(Ashutosh Kumar, CJ)

We have heard Mr. A. Deka, learned counsel for the appellants, and Mr. S.K. Medhi, learned Standing Counsel; Ms. S. Sarma, learned Government Advocate, as well as M.D. Borah, learned Standing Counsel, Welfare of Minority Development Department, Assam, for the respondents.

The appellants are the employees (Grade-III and Grade-IV) working under the Assam Minorities Development Board (hereinafter referred to as "Board"). They have challenged the judgment of the learned Singled Judge passed in WP(C) 5747/2023, whereby their claim for being paid pension has been rejected.

The contention on behalf of the appellants is that the learned Single Judge did not appreciate the fact that they had been serving under the Board for a long time on the posts which were sanctioned by the State Government and such posts were permanently retained. Thus, they qualify for being paid pension under Rule 31 of the Assam Services (Pension) Rules, 1969 (hereinafter referred to as "Rules of 1969").

The stand of the State/respondents which was accepted by the learned Single Judge was that even though the posts were permanently retained but the sanction was only for a limited period. The appellants were paid out of the grants-in-aid provided to the Board by the Government, rather than from regular Government Salary Budget, which comes under ordinary Head.

The other contention of the State, which was accepted by the learned Single

Judge was that notwithstanding the fact that the Board has State presence and also possesses certain trappings of the State, bringing it within the ambit of Article 12 of the Constitution of India, but there would be a distinction between a body which is taken to be a State within the meaning of Article 12 of the Constitution, and a body/Board which would be foisted with financial burden.

The learned Single Judge relied on a judgment of the Supreme Court in the case of ***State of Assam vs. Barak Upatyaka D.U. Karmachari Sanstha, (2009) 5 SCC 694*** to hold that even if a Board or a cooperative society be treated to be State within the definition of Article 12 of the Constitution of India but it would not be considered as State Government and the employees in such a body would not be called the holders of civil posts, or employees of the State. Thus, even though the Board in question may come within the definition of "State" for other purposes, but the employees of the Board, who are/ were being paid their salary from grants-in-aid, would not be called government servants.

Rule 31 of the Rules of 1969 is very categorical in stipulating the conditions of qualifying service for being entitled for pension.

As per Rule 31, the service of an officer would not qualify for pension unless it conforms to three conditions, namely, (i) the service must be under Government; (ii) the employment must be substantive and permanent and (iii) the servant must be paid by Government.

However, there is a caveat by way of a proviso, which declares that the Governor may, even though the afore-noted condition (i) or condition (ii), or both, are not fulfilled, declare any specified kind of service rendered in a non-Gazetted capacity to be qualified for pension, and in individual cases and subject to such conditions, as he may think fit to impose in each case, allow the

service rendered by an officer to count for pension.

As has been noted by the learned Single Judge, the appellants are employees of the Board and they served on conditionally sanctioned posts, which posts were permanently retained and they were being paid their salary from grants-in-aid and not from the ordinary Head for disbursement of salary of the government employees.

The learned counsel for the appellants drew the attention of this Court to a notification dated 15th February, 2024 issued by the Secretary to the Government of Assam, Welfare of Minorities and Development Department with respect to one employee of the Board, by which the said employee was allowed to be governed by a new set of Pension Rules under the "New Defined Contribution Pension Scheme".

On perusal of the afore-noted notification, this Court is of the view that this was a specific declaration with respect to the employee in question and would not be applicable to the appellants entitling them to contend that they are being treated differently.

For the reasons afore-stated, we do not find any reason to interfere with the judgment passed by the learned Single Judge.

The appeal is, thus, dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant