

GAHC010161452023



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

Case No. : WP(C)/4265/2023

TARAP ALI AHMED AND 34 ORS.

SON OF LATE HAMID ALI

VILLAGE- BALIKURI, P.O.- BALIKURI, P.S.- KALGACHIA, DISTRICT-
BARPETA, PIN-781319, ASSAM

2: MD. KHALIL ALI
SON OF - JABBAN ALI
VILLAGE- KHUDRA FALDAI
P.O.-BYANKUCHI
P.S.- SARTHEBARI
PIN-781307
DISRICT- BARPETA
ASSAM

3: ALI HUSSAIN AHMED
SON OF - ALHAZ BINOD ALI AHMED

VILLAGE- BAMUNDONGRA
P.O.- HABIDONGRA
P.S- BAGHBAR
PIN-781308
DISTRICT- BARPETA
ASSAM

4: SULTAN AHMED
SON OF - ASAHAQUE ALI
VILLAGE AND P.O.- BALIKURI
P.S.- KALGACHIA
DISTRICT- BARPETA
PIN-781319
ASSAM

5: SAHAR ALI AHMED
SON OF - GUTU MIAH

VILLAGE- CHITOLI
P.O. AND P.S.- BAGHBAR
PIN-781308
DISTRICT-BARPETA
ASSAM

6: MOYEZ UDDIN AHMED
SON OF - MAHAR ALI
VILLAGE AND P.O.- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

7: MD. AYEN ALI BHUYAN
SON OF - LATE ASRAF ALI BHUYAN
VILLAGE AND P.O.- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA

8: NAZIM UDDIN TALUKDAR
SON OF -LATE MUZAFAR ALI
VILLAGE AND P.O.- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

9: MD.SHAHIDUR RAHMAN
SON OF - TUFAN ALI
VILLAGE AND P.O.- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

10: ZAHIDUL ISLAM
SON OF - MD. IMAN UDDIN
VILLAGE AND P.O.- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

11: KAD BHANU
DAUGHTER OF - ABDUL GANI
VILLAGE AND P.O.- BALIKURI
P.S- KALGACHIA

DISTRICT- BARPETA
PIN- 781319
ASSAM

12: MD. NURUL ISLAM
SON OF - LATE DARBESH ALI
VILLAGE-KUKARPAR
P.O.- KHONGRA
P.S-SARTHEBARI
DISTRICT- BARPETA
PIN- 781305
ASSAM

13: FEDDUS ALI AHMED
SON OF - MAHAB ALI
VILLAGE- KATHAL BHURI
P.O.-KHANGRA
P.S- SARTHEBARI
DISTRICT- BARPETA
PIN- 781305
ASSAM

14: RAHMAT ALI MONDAL
SON OF -KHUSHMAHMUD MONDAL
VILLAGE AND P.O.- PATHIMARI
P.S-CHENGA
DISTRICT- BARPETA
PIN- 781308 ASSAM

15: KHALILUR RAHMAN
SON OF - LT SAHER UDDIN AHMED
VILLAGE AND P.O.- CHENGA
P.S-TARABARI
DISTRICT- BARPETA
PIN- 781305
ASSAM

16: SAHINUR ALI
SON OF - SAFAT ALI
VILLAGE AND P.O.- CHENGA
P.S-TARABARI
DISTRICT- BARPETA
PIN- 781305
ASSAM

17: DIPAK KUMAR DAS
SON OF - LT HARI PRASAD DAS
VILLAGE AND P.O.- CHENGA

P.S-TARABARI
DISTRICT- BARPETA
PIN- 781305
ASSAM

18: HAZARAT ALI AHMED
SON OF - ABDUL MALEQUE
VILLAGE AND P.O.- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

19: ALIA KHANAM
DAUGHTER OF - BILAYAT HUSSAIN
VILLAGE AND P.O.- RAMAPARA PATHAR
P.S-BAGHBAR
DISTRICT- BARPETA
PIN- 781314
ASSAM

20: KUMAR ALI AHMED
SON OF - MD. AYEN ALI
VILLAGE- DIGJANI
P.O- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

21: HAZARAT ALI AHMED
SON OF - DUKHI MIAH
VILLAGE AND P.O.- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

22: AMIR HAMZA
SON OF -MD. KURPAN ALI
VILLAGE AND P.O.- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

23: MD. AMZAD ALI
SON OF -MD. AZAHAR ALI

VILLAGE AND P.O.- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

24: MD. AKBAR ALI
SON OF - MD. MUZAFAR ALI
VILLAGE AND P.O.- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

25: IMAN ALI
SON OF -MONSER ALI
VILLAGE - RUBHI
P.O.- BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

26: RAFIQUL ISLAM
SON OF -OMAR ALI
VILLAGE AND P.O.-MOINBARI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

27: ASMAT ALI AHMED
SON OF -EZZAT ALI
VILLAGE AND P.O.-UJIRAR CHAR
P.S-ALUPATI
DISTRICT- BARPETA
PIN- 781308
ASSAM

28: SOLIMAN KHAN
SON OF -SURHAB ALI KHAN
VILLAGE AND P.O.-CHAPRA JAHURPAM
P.S- BARPETA
DISTRICT- BARPETA
PIN- 781314
ASSAM

29: MAHAMMAD ALI

SON OF -MD. HAMED ALI
VILLAGE- BANGLI PARA AND P.O.-JANIA
P.S-BARPETA
DISTRICT- BARPETA
PIN- 781314
ASSAM

30: ABDUR RAHMAN
SON OF - NOWSHAD ALI
VILLAGE- -KADAM TOLA AND P.O.-ALUPATI
P.S-ALUPATI
DISTRICT- BARPETA
PIN- 781308
ASSAM

31: MD. MAFIZUL ISLAM
SON OF - JOHIR UDDIN
VILLAGE- TITAPANI
P.O.-BALAGAON
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

32: HUSSAIN ALI AHMED
SON OF -LATE DARBESH ALI
VILLAGE- DIGAYANI
P.O.-BALAGAON
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

33: ABDUL HAKIM KHAN
SON OF -RAMJAN KHAN
VILLAGE- BANGAKABHANGGA
P.O.-BALIKURI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781319
ASSAM

34: ALAUDDIN ALI
SON OF -ALAHI MUNSHI
VILLAGE- CHANGELIA
P.O.- KALABHANGA
P.S-BARPETA
DISTRICT- BARPETA

PIN- 781315
ASSAM

35: MD. FOZLUL HOQUE
SON OF -MD. MOKBUL HUSSAIN
VILLAGE- KISMAT MOINBORI
P.O.-MOINBORI
P.S- KALGACHIA
DISTRICT- BARPETA
PIN- 781321
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI-06

2:THE SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
DISPUR
1
GUWAHATI-781006

3:THE DIRECTOR ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATT-781019

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BARPETA
PIN-781314

5:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE (EC-II) DEPARTMENT
DISPUR
ASSAM
GUWAHATI-781006
ASSA

Advocate for the Petitioner : MR. A DEKA, MR. S A HUSSAIN,MR D J HALOI,MR N SARMA

Advocate for the Respondent : SC, ELEM. EDU, SC, FINANCE

Linked Case : WP(C)/8384/2022

BIJOY RAY CHOUDHURY AND 3 ORS.
S/O LATE SADANANDA RAY CHOUDHURY
R/O RAGHUNANDANPUR
P.O.-BOITAMARI
P.S.-ABHOYAPURI
DIST-BONGAIGAON
PIN-783389
ASSAM

2: KANIKA BALA RAY
D/O LATE RABI RAM RAY
R/O NANKARGAON
P.O.-DHANTALA BAZAR
P.S.-BONGAIGAON
DIST-BONGAIGAON
PIN-783372
ASSAM

3: BIJOY KRISHNA RAY
S/O LATE DHABAL CH ROY
R/O VILL-BAJITPARA
P.O.-DHANTALA BAZAR
P.S.-ABHOYAPURI
DIST-BONGAIGAON
PIN-783372
ASSAM

4: MANINDRA RAY
S/O LATE SHASADAHR RAY
R/O VILL-KAZIPARA PART-I
P.O.-CHAPAR
P.S.-CHAPAR
DIST-BONGAIGAON/DHUBRI
PIN-783371
ASSAM
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-6

2:THE SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
DISPUR

GUWAHATI-781006

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BONGAIGAON
PIN-783380

5:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE (EC-II) DEPARTMENT
DISPUR
ASSAM
GUWAHATI-781006
ASSAM

Advocate for : MR. N SARMA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/1637/2023

ABDUL MAZED AHMED AND 8 ORS
SON OF ABDUL WAHED

RESIDENT OF VILLAGE- ADITPUR

UNDER P.O.- GUNIALGURI
P.S.- KALGACHIA
IN THE DISTRICT OF BARPETA
PIN- 781319
ASSAM.

2: ABDUR RASHID
SN OF MOKBUL HUSSAIN

RESIDENT OF VILLAGE- CHANDMAMA
UNDER P.O.- CHANDMAMA
P.S.- KALGACHIA
IN THE DISTRICT OF BARPETA
PIN- 781312
ASSAM.

3: AMZAD HUSSAIN

SON OF INSER ALI

RESIDENT OF VILLAGE- BARBHITHA
UNDER P.O.- CHANDMAMA
P.S.- KALGACHIA
IN THE DISTRICT OF BARPETA
PIN- 781321
ASSAM.

4: MD. ABDUL LATIF
S/O- ABDUL MOZID

RESIDENT OF VILLAGE- CHANDMAMA
UNDER P.O.- CHANDMAMA
P.S.- KALGACHIA
IN THE DISTRICT OF BARPETA
PIN- 781321
ASSAM.

5: ABDUS SATTAR
SON OF SOBHAND AKAND

RESIDENT OF VILLAGE- CHANDMAMA
UNDER P.O- CHANDMAMA
P.S.- KALGACHIA
IN THE DISTRICT OF BARPETA
PIN- 781321
ASSAM.

6: ABUSHAMA TALUKDAR
SON OF ABUTALEB TALUKDAR

RESIDENT OF VILLAGE- ISABPUR
UNDER PO.- ISABPUR
P.S.- KALGACHIA
IN THE DISTRICT OF BARPETA
PIN- 781321
ASSAM.

7: HASSAN ALI MONDAL
SON OF GOFUR MANDAL

RESIDENT OF VILLAGE- SOILMARI
UNDER P.O.- CHIKNI
P.S.- KALGACHIA
IN THE DISTRICT OF BARPETA
PIN- 781321
ASSAM.

8: MD. SOFIOR RAHMAN
SON OF MOHIR UDDIN

RESIDENT OF VILLAGE- ISABPUR
UNDER P.O.- ISABPUR
P.S. KALGACHIA
IN THE DISTRICT OF BARPETA
PIN- 781321
ASSAM.

9: ABDUL HANNAN AHMED
SON OF ASMAT ALI

RESIDENT OF VILLAGE- APRUPI
UNDER P.O.- CHANDMAMA
P.S.- KALGACHIA
IN THE DISTRICT OF BARPETA
PIN- 781321
ASSAM.
VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR GUWAHATI-6.

2:THE SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
DISPUR GUWAHATI- 781006.

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BONGAIGAON PIN- 783380.

5:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE (EC-II) DEPARTMENT
DISPUR ASSAM GUWAHATI- 781006
ASSAM.

Advocate for : MR. A DEKA
Advocate for : SC ELEM. EDU appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 25.10.2024

(Vijay Bishnoi, CJ)

Heard Mr. A. Deka, learned counsel for the petitioners. Also heard Ms. R. B. Bora, learned Junior Government Advocate, Assam, and Mr. Rajesh Mazumdar, learned standing counsel, Elementary Education Department, appearing on behalf of their respective respondents.

All these 3(three) writ petitions are filed by the petitioners who were initially appointed as Teachers in various Venture Schools of the Districts of Barpeta and Bongaigaon and later on, their services have been provincialized as Tutors under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; challenging the validity of the provisions of Section 8(3) and 8(4) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

The petitioners, herein, have also prayed for issuing a writ of mandamus, directing the respondent authorities to grant minimum pay scale to them or to enhance the fixed monthly salary as per the existing rules and regulations.

Certain ancillary reliefs have also been claimed by the petitioners in these writ petitions.

It is to be noted that a co-ordinate Bench of this Court in WP(c)2729/2019 [Mohor Ali Sheikh & 22 ors. v. State of Assam & ors.] and other connected writ petitions, while examining the validity of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, including Section 8 thereof; vide judgment & order, dated 04.10.2024, has directed the State Government to take necessary steps to provide for a regular pay scale to the Tutors which can even be commensurate to the pay structure indicated to the Schedule of the Governing Act.

The operative portion of the judgment & order, dated 04.10.2024, rendered by the co-ordinate Bench of this Court in the case, referred to above, on the issue; is reproduced, hereunder:

“179. It is true that the courts cannot direct the legislature to enact law in a particular manner. However, in discharge of its statutory obligation the Government, in exercise of its Rule making power, will have a duty to frame Rules for proper implementation of the provisions of the Statute. While framing the Rules, the State will also be under a bounden duty to, not only to act in terms of the scheme of the Act but also to unflinchingly adhere to the Constitutional norms of equality. It will, therefore, be in the fitness of things that the State Government itself, in exercise of its Rule making power under section 23 of the Act, takes necessary steps to provide for a regular pay scale to the Tutors, which can even be commensurate to the pay structure indicated in the Schedule of the Governing Act. Such a measure, in our view, will restore the equality of treatment to this category of Teachers with the other Government employees and at the same time will not become burdensome to the exchequer. We, therefore, direct the respondents to initiate necessary steps in the matter, in the light of the observations made here-in-above, as expeditiously as possible, preferably within a period of 6 (six) months from today.”

Having heard the learned counsels appearing for the parties at some length and after going through the materials available on record; we are of the considered view that the issue raised in these 3(three) writ petitions, is squarely covered by the decision of the co-ordinate Bench of this Court rendered in WP(c)2729/2019 [Mohor Ali Sheikh & 22 ors. v. State of Assam & ors.].

Hence, these writ petitions stands disposed of in terms of the judgment & order, dated 04.10.2024, rendered by the co-ordinate Bench of this Court in WP(c)2729/2019 [Mohor Ali Sheikh & 22 ors. v. State of Assam & ors.].

JUDGE

CHIEF JUSTICE

Comparing Assistant