



**IN THE GAUHATI HIGH COURT  
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)  
PRINCIPAL SEAT AT GUWAHATI**

**WP(C) No. 1916/2023**

1. Sanjib Nath,  
S/o Late Gagan Nath,  
Resident of Vill-Bapuji Nagar,  
Ward No.16, PO-Baladmari, PS-Goalpara,  
Pin-783121, Dist.-Goalpara, Assam.
2. Sanjib Kumar Das,  
S/o Late Birendra Kumar Das,  
Resident of Vill-Moutupuri,  
PO & PS-Howli, Pin-781316,  
Dist.-Barpeta, Assam.
3. Aklima Khatun,  
D/o Ismail Hussain,  
Resident of Vill-Habi Dongra, PS-Baghbar,  
Pin-781308, Dist.-Barpeta, Assam.
4. Suruj Kalita,  
S/o Gobinda Kalita,  
Resident of Vill-Chenial Para, PO-Mudaibari,  
PS-Kalaigaon, Dist.-Udalguri, Assam, Pin-784146.
5. Mizanur Rahman,  
S/o Hatem Ali Ahmed,  
Resident of Vill-Naitor, PO-Nagarbera,  
Pin-781127, Dist.-Kamrup(R), Assam.
6. Abu Bakkar Siddique,  
S/o Khalilur Rahman,  
Resident of Vill-Moirabari, PO & PS-Moirabari,  
Pin-782126, Dist.-Morigaon, Assam.
7. Ashiqur Rahman,

- S/o Abdul Mannas,  
Resident of Vill-Moirabari, PO & PS-Moirabari,  
Pin-782126, Dist.-Morigaon, Assam.
8. Pratibha Mahela,  
D/o Late Haren Mahela,  
Resident of Vill-Sahariagaon, PO-Sonarigaon,  
PS-Dhing, Dist.-Nagaon, Assam, Pin-782123.
  9. Hemangi Ray,  
D/o Majen Chandra Ray,  
Resident of Vill-Bijni Town, PO & PS-Bijni,  
Pin-783390, Dist.-Chirang, Assam.
  10. Sheikh Chand Arman Khurshed,  
S/o Late Faizur Rahman,  
Resident of Vill-Moirabari, PO & PS-Moirabari,  
Pin-782126, Dist.-Morigaon, Assam.
  11. Rabin Ahmed,  
S/o Sadiqz Zaman,  
Resident of Vill-Moirabari, PO & PS-Moirabari,  
Pin-782126, Dist.-Morigaon, Assam.
  12. Rajesh Khan,  
S/o Akbar Khan,  
Resident of Vill-Padmapara, PO-Jatradia,  
PS-Tarabari, Dist.-Barpeta, Assam, Pin-781305.
  13. Mridula Kalita,  
D/o Late Kulen Kalita,  
Resident of Vill-Goalpara,  
PO-Dalgoma, PS-Matia, Dist.-Goalpara,  
Assam, Pin-783125.
  14. Papriya Nath,  
D/o Late Dijen Nath,  
Resident of Vill-Rangapather, PO-Sufery,  
PS-Sonari, Pin-785689, Dist.-Charaidew, Assam.
  15. Saidul Islam,  
S/o Khademul Islam,  
Resident of Vill-Kacharipara Jangle,  
PO & PS-Dalgaon, Pin-784116,

- Dist.-Darrang, Assam.
16. Jurimani Deka,  
D/o Biren Deka,  
Resident of Vill-Dalgaon Grant, PO & PS-Dalgaon,  
Pin-784116, Dist.-Darrang, Assam.
  17. Azizur Rahman,  
S/o Hakim Uddin,  
Resident of Vill-Mourigaon, PO-Mandia,  
PS-Baghbar, Dist.-Barpeta, Assam, Pin-781308.
  18. Abunaser Md. Zahangir Hassan,  
S/o Abul Hassan,  
Resident of Vill-Jamuguri, PO-Alitargari,  
PS-Juria, Dist.-Nagaon, Assam, Pin-782124.
  19. Kanjit Das,  
S/o Sri Kuladhar Das,  
Resident of Vill-Ganakkuchi Pather, Ward No.21,  
PO-Santinagar, PS-Barpeta, Pin-781314,  
Dist.-Barpeta, Assam.
  20. Bhaskar Jyoti Borah,  
S/o Bipin Borah,  
Resident of Vill-Telia Bebejia, PO & PS-Juria,  
Pin-782124, Dist.-Nagaon, Assam.
  21. Khanika Das,  
D/o Late Parikshit Das,  
Resident of Vill-Ganakkuchi Nasatra,  
PO-Ganakkuchi, Pin-781314, PS & Dist.-Barpeta, Assam.
  22. Bhrigu Kumar Saikia,  
S/o Motiram Saikia,  
Resident of Vill-Telia Bebejia, PO & PS-Juria,  
Pin-782124, Dist.-Nagaon, Assam.
  23. Nazrul Islam,  
S/o Dilbar Hussain,  
Resident of Vill-Palahartari, PO & PS-Nagarbera,  
Pin-781127, Dist.-Kamrup(R), Assam.
  24. Hariprasad Nath,

- S/o Late Narendra Chandra Nath,  
Resident of Vill-Kadamtola, PO-Dalgoma,  
Pin-783125, PS-Matia, Dist.-Goalpara, Assam.
25. Lintu Mani Banik,  
S/o Sri Biswajit Banik,  
Resident of Vill-Gandhi Nagar, Ward No.16,  
PO & PS-Barpeta, Dist.-Barpeta, Assam, Pin-781301.
26. Alimun Nessa,  
D/o Late Fazel Ali,  
Resident of Vill & PO-Naphuk,  
PS-Sonari, Pin-785689, Dist.-Charaidew, Assam.
27. Nazrul Islam,  
S/o Azizur Rahman,  
Resident of Vill-Naitor Khameri, PO & PS-Nagarbera,  
Pin-781127, Dist.-Kamrup(R), Assam.
28. Madhab Sutradhar,  
S/o Late Krishna Sutradhar,  
Resident of Vill-School Reserve Dhing,  
PO & PS-Dhing, Dist.-Nagaon, Assam, Pin-782123.
29. Khandakar Jiaur Rahman,  
S/o Khandakar Matiar Rahman,  
Resident of Vill-Mandia, PO-Mandia,  
PS-Baghbar, Dist.-Barpeta, Assam, Pin-781308.
30. Mantu Deka,  
S/o Nirmal Deka,  
Resident of Vill-Bezpara, PO-Mudaibari,  
PS-Mangaldai, Dist.-Darrang, Assam, Pin-784146.
31. Mahibul Islam,  
S/o Late Mahsin Ali Ahmed,  
Resident of Vill-Mandia, PO-Mandia,  
PS-Baghbar, Dist.-Barpeta, Assam, Pin-781308.
32. Pradip Kumar Nath,  
S/o Late Gobin Nath,  
Resident of Vill-Namdumdumia, PO & PS-Dhing,  
Pin-782123, Dist.-Nagaon, Assam.

33. Rupa Begum,  
D/o Sabibar Rahman,  
Resident of Vill-Chenga Musalman Gaon,  
PO-Chenga, PS-Tarabari, Dist.-Barpeta,  
Assam, Pin-781305.
34. Niranjan Das,  
S/o Late Nripendra Das,  
Resident of Vill-Naitor, PO & PS-Nagarbera,  
Pin-781127, Dist.-Kamrup(R), Assam.
35. Ram Krishna Deka,  
S/o Gopi Kanta Deka,  
Resident of Vill & PO-Chenga, PS-Tarabari,  
Pin-781305, Dist.-Barpeta, Assam.
36. Papusing Mahela,  
S/o Baladhar Mahela,  
Resident of Vill-Batabari Gaon, PO-Sonari Gaon,  
PS-Dhing, Dist.-Nagaon, Assam, Pin-782123.
37. Shah Alam Ali,  
S/o Chad Akkas Ali,  
Resident of Vill-Chenga Musalman Gaon,  
PO-Chenga, PS-Tarabari, Dist.-Barpeta,  
Assam, Pin-781305.
38. Golap Chandra Nath,  
S/o Late Bhagaban Chandra Nath,  
Resident of Vill-Phularguri, PO-Kayakuchi,  
Pin-781352, PS & Dist.-Barpeta, Assam.
39. Pankaj Nath,  
S/o Late Kamala Kanta Nath,  
Resident of Vill-Phularguri, PO-Kayakuchi,  
Pin-781352, PS & Dist.-Barpeta, Assam.
40. Alakesh Nath,  
S/o Late Sabha Ram Nath,  
Resident of Nilachalpur Bezbaruah Nagar,  
PO-Maligaon, Pin-781011, Dist.-Kamrup(M),  
Assam.
41. Abdur Rahim,

- S/o Late Falu Miah,  
Resident of Vill-Kuriha, PO-Kayakuchi,  
Pin-781352, PS & Dist.-Barpeta, Assam.
42. Animesh Nath,  
S/o Digbijoy Nath,  
Resident of Vill-Dahalpara, PO-Bhulukadoba,  
PS-Sorbhog, Dist.-Barpeta, Assam, Pin-781317.
43. Karnadhar Nath,  
S/o Anil Nath,  
Resident of Vill-Chakabausi, PO-Bhukukadoba,  
PS-Sorbhog, Dist.-Barpeta, Assam, Pin-781317.
44. Moktal Hussain,  
S/o Late Shifat Ali,  
Resident of Vill-Palahartari, PO & PS-Nagarbera,  
Pin-781127, Dist.-Kamrup(R), Assam.
45. Jeherul Haque,  
S/o Ainal Haque,  
Resident of Vill-Sapkata, PO & PS-Mukalmua,  
Pin-781126, Dist.-Nalbari, Assam.
46. Jaidur Rahman Choudhury @ Jaidur Rahman,  
S/o Abdul Hakim,  
Resident of Vill-Mukalmua, PO & PS-Mukalmua,  
Pin-781126, Dist.-Dhubri, Assam.
47. Kishor Baishya,  
S/o Kanak Baishya,  
Resident of Vill-Kaldi, PO-Bonpura,  
PS-Mukalmua, Pin-781138, Dist.-Nalbari, Assam.
48. Nayanmani Barman,  
D/o Prafulla Barman,  
Resident of Vill-Dihijar, PO-Nankarbhaira,  
Pin-781369, Dist.-Nalbari, Assam.
49. Gautam Deka,  
S/o Damodar Deka,  
Resident of Vill-No.1 Kaplabari, PO-Hidilattary,  
PS-Mukalmua, Dist.-Nalbari, Assam, Pin-781138.

50. Chandana Das,  
D/o Parameswar Das,  
Resident of Vill-Dahalpara, PO-Bhulukadoba,  
PS-Sorbhog, Dist.-Barpeta, Assam, Pin-781317.
51. Abdul Samad,  
S/o Akbar Ali,  
Resident of Vill-Barbalupara, PO-Gossaibori,  
PS-Matia, Dist.-Goalpara, Assam, Pin-783125.
52. Sri Robin Sahu,  
S/o Mohabir Sahu,  
Resident of Vill-Safrai 2 No. Borpothar, PO-Monmohan,  
Pin-785689, PS-Sonari, Dist.-Charaidew, Assam.
53. Pranjal Kumar,  
S/o Bal Mukund Singh,  
Resident of Vill-Gandhi Nagar, PO-Haibargaon,  
Pin-782002, PS & Dist.-Nagaon, Assam.
54. Md. Imtajul Hussain,  
S/o Late Abdul Aziz Laskar,  
Resident of Vill-Safrai 2 No. Borpothar, PO-Monmohan,  
Pin-785689, PS-Sonari, Dist.-Charaidew, Assam.
55. Amina Begum,  
D/o Late Tajmur Ali,  
Resident of Vill-Madhapur, PO-Marowa,  
PS-Mukalmua, Dist.-Nalbari, Assam, Pin-784348.

.....Petitioners.

**-Versus-**

1. The State of Assam,  
Represented by the Principal Secretary to the  
Government of Assam, Education Department,  
Assam Sachivalaya, Dispur, Guwahati-781006.
2. The Director of Secondary Education,  
Assam, Kahilipara, Guwahati-19.
3. The Director of Elementary Education,  
Assam, Kahilipara, Guwahati-19.
4. Commissioner & Secretary to the Government of Assam,  
Finance Department, Dispur, Guwahati-781006.

5. Managing Director,  
Adarsha Vidyalaya Sangathan, Assam,  
Kahilipara, Guwahati-19.
6. The Mission Director,  
Rashtriya Madhyamik Siksha Abhijan,  
Assam, Kahilipara, Guwahati-19.
7. Principal, Adarsha Vidyalaya, Matia,  
PO & PS-Matia, Pin-783125,  
Dist.-Goalpara, Assam.
8. Principal, Adarsha Vidyalaya,  
Vill & PO-Ganakkuchi, Dist.-Barpeta,  
Assam, Pin-781314.
9. Principal, Adarsha Vidyalaya, Mandia,  
PO & PS-Mandia, Pin-781308,  
Dist.-Barpeta, Assam.
10. Principal, Adarsha Vidyalaya, Dalgaon,  
Vill-Ruhinikash, PO-Dalgaon, Dist.-Darrang,  
Assam, Pin-784116.
11. Principal, Adarsha Vidyalaya, Dokuchi,  
PO & PS-Nagarbera, Pin-781127,  
Dist.-Kamrup(R), Assam.
12. Principal, Adarsha Vidyalaya, Moirabari,  
PO & PS-Moirabari, Pin-782126,  
Dist.-Morigaon, Assam.
13. Principal, Adarsha Vidyalaya, Saharia,  
Kissamat, PO & PS-Batadrava,  
Dist.-Nagaon, Assam, Pin-782122.
14. Principal, Adarsha Vidyalaya, Dahalapara,  
PS-Sorbhog, PO-Bhulukadoba,  
Dist.-Barpeta, Assam, Pin-781317.
15. Principal, Adarsha Vidyalaya, Chenga,  
PO-Chenga, PS-Tarabari, Dist.-Barpeta,  
Assam, Pin-781305.
16. Principal, Adarsha Vidyalaya, Rangapathar,  
PO-Suffry, PS-Sonari, Dist.-Charaidew,

- Assam, Pin-785689.
17. Principal, Adarsha Vidyalaya, Juria,  
PO & PS-Juria, Pin-782124,  
Dist.-Nagaon, Assam.
  18. Principal, Adarsha Vidyalaya, Pub Mangaldai,  
PO-Dhula, Pin-784146, Dist.-Darrang, Assam.
  19. Principal, Adarsha Vidyalaya, Pakabetbari,  
PO-Kayakuchi, Pin-781352,  
Dist.-Barpeta, Assam.
  20. Principal, Adarsha Vidyalaya, Barkhetri,  
PO-Barkhetri, Pin-781138,  
Dist.-Nalbari, Assam.

.....Respondents.

**BEFORE  
HON'BLE MR. JUSTICE ROBIN PHUKAN**

For the Petitioners : Mr. S. Alim. ....Advocate.

For the Respondents : Mr. N.J. Khataniar, SC, Sec.Edu.  
.....Advocate.

Dates of Hearing : 26.11.2024,

Date of Judgment : ***18<sup>th</sup> December, 2024***

**JUDGMENT AND ORDER (CAV)**

Heard Mr. S. Alim, learned counsel for the petitioners and also heard Mr. N.J. Khataniar, learned Standing Counsel, Secondary Education Department, appearing for the respondents.

**2.** The issue to be answered by this Court in this petition under Article 226 of the Constitution of India, is whether a decision taken by a State Cabinet can be cancelled or superseded by a review meeting headed by Chief Minister.

**3.** The background facts leading to filing of the present petition, is adumbrated herein below:-

"The petitioners herein, are contractual employees engaged under Rashtriya Madhyamik Shiksha Abhiyaan (RMSA), Assam, as non-teaching staff of Model Schools (Adarsha Vidyalayas) against fixed pay. Thereafter, the respondent authorities, under the Orders of Governor of Assam, dated 28.10.2021 under No.PMA(S) 09/2017/463, pursuant to a Cabinet decision taken in the meeting of Council of Ministers held on 24.09.2021, for effective administrative control and monitoring of 'Adarsha Vidyalayas' functioning as on date under Samagra Siksha, Assam, notified constitution of Adarsha Vidyalaya Sangathan, Assam, for operationalization and management of Adarsha Vidyalayas, which will act as an autonomous body, under the Secondary Education Department, Government of Assam and will be a registered society and one Model School shall be established in each Legislative Assembly Constituency and also decided to pay the salaries of the teaching and non-teaching staff of Adarsha Vidyalayas as per ROP except daily wage worker, introduction of Hostel facilities for teachers and non-teaching staff. Thereafter, on 26.04.2022, the State respondent i.e. the Secretary to the Government of Assam, Secondary Education Department has issued another Notification to grant the ROP based salary and other entitlements to all teaching

and non-teaching staff (except daily wage workers) of operationalized Adarsha Vidyalayas of Assam pursuant to the Notification dated 28.10.2021 w.e.f. 01.04.2022. Accordingly, the State respondents have extended the benefit of ROP based pay to the teaching staff. But, subsequently, by another Notification, issued by the Managing Director, Adarsha Vidyalaya Sangathan, Assam, dated 30.01.2023, in pursuance of the decision taken in the review meeting of the Adarsha Vidyalaya Sangathan, Assam, held on 15.10.2022, chaired by the Hon'ble Chief Minister of Assam, it has been notified that all the existing incumbents drawing fixed pay in functional Adarsha Vidyalayas of Assam, shall henceforth be entitled for 3% annual increment and thereby the ROP based salary for non-teaching staff of Adarsha Vidyalayas could not be implemented, as their inception into service was based on fixed pay basis."

**4.** Being aggrieved, the petitioners approached this Court by filing the present petition for issuing a direction to the respondent authorities to pay ROP based salaries to the petitioners as contained in the Notification dated 28.10.2021 w.e.f. 01.04.2022 and also to grant CPF, CL, EL, ML, and CCL, etc.

**5.** The respondent authorities have filed affidavit-in-opposition and stated that the contractual engagement of the petitioners have been extended from time to time on need basis, on execution of contract agreement and salaries of the non-teaching staff were enhanced by 20% pursuant to the Government Notification dated 16.08.2017 and that to the teaching staff ROP based salary has been provided vide Notification dated 05.10.2020 and the ROP based salary could not be extended to the

non-teaching staff as their entry into service, was based on fixed pay basis. However, an enhancement of 3% annual increment for the non-teaching staffs is granted vide Notification dated 30.01.2023.

**6.** The respondent No.5 has filed one additional affidavit on 27.05.2024 and it is stated that after issuance of Notification dated 28.10.2021 pursuant to the Cabinet decision, a subsequent review meeting was held under the chairmanship of Hon'ble Chief Minister on 15.10.2022, wherein it is decided not to extend ROP based salary to the non-teaching staff of Adarsha Vidyalayas, who were engaged on fixed pay basis, as their entry point/initial engagement procedure differs from other staffs, but they are entitled to 3% annual increment.

**7.** Mr. Alim, learned counsel for the petitioners submits that a decision taken in a Cabinet meeting can be cancelled or ignored or modified by a subsequent Cabinet meeting. In the case in hand, the Cabinet meeting has decided to extend the benefit of ROP based salary to both teaching and non-teaching staff pursuant to the Notification dated 28.10.2021 and subsequent Notification dated 26.04.2022 w.e.f. 01.04.2022. But, subsequently, vide Notification dated 30.01.2023 the State respondents have taken a decision to grant 3% annual increment to the incumbents drawing fixed pay in the functional Adarsha Vidyalayas of Assam and the Notification dated 30.01.2023 was issued pursuant to a review meeting held under the chairmanship of Hon'ble Chief Minister and the decision was not taken by a Cabinet meeting and as such, the order dated 30.01.2023 is illegal and arbitrary and the same requires interference of this Court.

**7.1.** Mr. Ali, also referred to a decision of Hon'ble Supreme Court in **Kaushal Kishor v. State of Uttar Pradesh & Ors.**, reported in

(2023) 4 SCC 1, to contend that the responsibility of Council of Ministers and individual Ministers to the Council is not the same and that being so, the petitioners herein cannot be denied the benefit of ROP based pay, decision of which was taken in a Cabinet meeting held on 24.09.2021. Under such circumstances, Mr. Alim contended that the respondents may be directed to grant ROP based salary pursuant to the Notification dated 26.04.2022.

**8.** Per contra, Mr. Khataniar, learned Standing Counsel for the Secondary Education Department, fairly submitted that the decision to extend the benefit of ROP based pay to the non-teaching staff was taken in a Cabinet meeting and the subsequent decision was taken by a review meeting, held under the chairmanship of Hon'ble Chief Minister of Assam, wherein decision is taken not to extend the ROP based pay to the non-teaching staff being contractual employees and that the matter was never placed before the subsequent Cabinet meeting for approval.

**9.** Having heard the submission of the learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record. Also, I have gone through the decision referred by Mr. Alim in **Kaushal Kishor (supra)**. This decision, however, deals with collective responsibility of the Council of Ministers. Therefore, the ratio laid down therein, is not applicable in all force to the given fact and circumstances herein this case.

**10.** It is not in dispute that the decision to extend the ROP based salary to the teaching and non-teaching staff was taken in a Cabinet Meeting held on 24.09.2021 and the notifications to that effect were published by the respondent authorities on 28.10.2021, and also on 26.04.2012, in the name of the Governor. Thereafter, the respondent authorities have issued

another Notification, dated 26.04.2022. In the said Notification it has been clearly stated that the ROP based salary and other entitlements shall be provided to the teaching and non-teaching staff with effect from 01.04.2022.

**11.** It is to be noted here that before an advice of the Council of Ministers amounts to an order of the State Government, there are two requirements to be fulfilled, namely, (i) The order of the State Government has to be expressed in the name of the Governor as required by Article 166(1), and (ii) It has to be communicated to the persons concerned. (See- **State of Punjab vs. Sodhi Sukhdev Singh**, reported in **AIR 1961 SC 493**, and **Bachhittar Singh vs. State of Punjab**, reported in **AIR 1963 SC 395**). What therefore follows is that unless and until the decision taken by Council of Minister is translated into action by the issue of a notification expressed in the name of the Governor as required by Article 166(1), it could not be said to be order of the Government. (See-**State of Kerela vs. Smti A. Laksmikutty & Others**, reported in **(1986) 4 SCC 632**).

**12.** In the case of **J.P. Bansal v. State of Rajasthan**, reported in **(2003) 5 SCC 134**, Hon'ble Supreme Court has held as under:-

“8. We need not delve into the disputed question as to whether there was any Cabinet decision, as it has not been established that there was any government order in terms of Article 166 of the Constitution. The Constitution requires that action must be taken by the authority concerned in the name of the Governor. It is not till this formality is observed that the action can be regarded as that of the State. Constitutionally speaking, the Council of Ministers are advisers

and as the Head of the State, the Governor is to act with the aid or advice of the Council of Ministers. Therefore, till the advice is accepted by the Governor, views of the Council of Ministers do not get crystallised into action of the State.”

**13.** Again in the case of **Gulabrao Keshavrao Patil vs. State of Gujarat** reported in (1996) 2 SCC 26, also it has been held by Hon’ble Supreme Court that the decision of a Minister, under the Business Rule is not final or conclusive until the requirements in terms of Clauses (1) and (2) of Article 166 are complied with.

**14.** In the case in hand, the decision to extend the ROP based pay and other service benefits to the teaching as well as non-teaching staffs was taken in the Cabinet Meeting held on 24.09.2021, and the same stands translated into action by publishing a Notification by the respondent authorities on 28.10.2021, in the name of the Governor. Thus, the requirements in terms of Clauses (1) and (2) of Article 166 of the Constitution stands complied with.

**15.** But, in the order dated 30.01.2023, issued subsequently by the respondent authorities, it has been stated that in view of the decision of the review meeting of Adarsha Vidyalaya Sangathan, held on 15.10.2022, chaired by Hon’ble Chief Minister, Assam that all the existing incumbents drawing fixed salary in the functional Adarsha Vidyalayas of Assam, shall be entitled for 3% of annual increment, and thereby the benefit of scale of pay was denied to the petitioners herein.

**16.** Admittedly, the subsequent decision was not taken in Cabinet meeting, but in a review meeting under the chairmanship of Hon’ble Chief Minister of Assam. The decision was taken in a review meeting dated 15.10.2022, which is being enclosed as Annexure-'A' of the additional

affidavit filed by the respondent No.5 on 06.03.2024. Perusal of the resolution of the review meeting at Sl.No.4 of Annexure-'A' indicates that the benefit of ROP shall not be applicable for teaching and non-teaching staff of Adarsha Vidyalayas who are engaged on fixed pay basis as their entry point/initial engagement procedure differs from other staff, instead, they will be entitled for 3% annual increment.

**17.** And also admittedly, the order, dated 30.01.2023, impugned in the present petition, was not sanctified by the Cabinet. It was not issued in the name of the Governor satisfying/complying the requirements in terms of Clauses (1) and (2) of Article 166 of the Constitution. And as held by Hon'ble Supreme Court in the case of **Gulabrao Keshavrao Patil (supra)** a decision of a Minister, under the Business Rule, is not final or conclusive until the requirements, in terms of Clauses (1) and (2) of Article 166, are complied with.

**18.** That being so, the impugned order, dated 30.01.2023, issued subsequent to decision taken by the review meeting, and that too, without complying the requirements, in terms of Clause (1) and (2) of Article 166 of the Constitution, to the considered opinion of this Court cannot override/supersede the two earlier notifications, published by the respondent authorities on 28.10.2021, and also on 26.04.2012, granting the ROP based pay to the petitioners.

**19.** In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. The respondent authorities are directed to extend the benefit of ROP based pay and other service benefits as per entitlement, pursuant to Notification, dated 28.10.2021 and subsequent Notification dated 26.04.2022, issued by the Principal Secretary to the Government of Assam, Secondary Education Department, and by the

Secretary to Government of Assam, Secondary Education Department to the present petitioners.

**20.** In terms of above, this writ petition stands disposed of. The parties have to bear their own costs.

*Sd/- Robin Phukan*  
**JUDGE**

**Comparing Assistant**