

GAHC010021002024



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

Case No. : WP(C)/912/2024

DHARMA KANTA BHATTACHARYYA AND 16 ORS
SON OF LATE PRANANATH BHATTACHRYYA,
RESIDENT OF VILLAGE AND P.O. GUAKUCHI
DIST NALBARI, ASSAM
PIN- 781369.

2: GAURI SANKAR DAS
SON OF LATE GIRISH CH.DAS

RESIDENT OF KUMARHATI
BARPETA TOWN

WARD NO 6
DISTRICT- BARPETA

BARPETA
ASSAM
PIN. 781301

3: RATNA KUMAR DAS
SON OF LATE TARANI KANTA DAS

RESIDENT OF VILLAGE BAPUJI NAGAR
WORD NO 16
P.O. BALADMARI
DIST GOALPARA
GOALPARA
ASSAM
PIN - 783101

4: PRABIN CH. BARMAN
SON OF LATE HARKANTA BARMAN

RESIDENT OF VILLAGE LAKHINAGAR

HAIBARGAON

DISTRICT- NAGAON
ASSAM

PIN- 782002

5: CHANDRA KANTA DAS
SON OF LATE BHUBAN CHANDRA DAS

RESIDENT OF GARIGAON

JALUKBARI
KAMRUP
ASSAM

PIN- 781012

6: NARAYAN CHANDRA DAS
SON OF LATE GUNADHAR DAS

R/O AMRANGA

DISTRICT- KAMRUP
ASSAM

PIN-781125.

7: BHARAT CHANDRA DUTTA
SON OF LATE MANIK CH. DUTTA

RESIDENT OF BELSOR

DISTRICT- NALBARI
ASSAM

PIN-781378.

8: SARAT CHANDRA DEKA
SON OF LATE KALICHARAN DAS

RESIDENT OF SARTHEBARI
BARPETA
ASSAM
PIN- 781301

9: PARAMANANDA KALITA

SON OF LATE UTTAM CHANDRA KALITA

RESIDENT OF TIHU

DISTRICT- NALBARI
ASSAM

PIN- 781378.

10: MD. KASHED ALI
SON OF LATE TAHER ALI

RESIDENT OF MUKALMUA
NALBARI
ASSAM

PIN-781378.

11: BANGSHIDHAR MEDHI
SON OF LATE GAURI KANTA MEDHI

RESIDENT OF KASUAPATHAR

DISTRICT- NALBARI
ASSAM

PIN-781378.

12: JAHANARA BEGUM
WIFE OF TOWFIQUE AHMED

RESIDENT OF HATIGAON

DISTRICT- KAMRUP(M)
ASSAM

PIN-781038.

13: MAHENDRA BARMAN
SON OF LATE MAHESWAR BARMAN

RESIDENT OF BYAKUCHI
SARTHEBARI

DISTRICT- BARPETA
ASSAM

PIN-781301.

14: NARAYAN CHANDRA MALI
SON OF LATE BASANTA MALI

RESIDENT OF AGAMONI

DISTRICT- DHUBRI
ASSAM

PIN-783301.

15: CHANDRA KUMAR GHOSH
SON OF KHAGEN CH. GHOSH

RESIDENT OF GOALPARA

DISTRICT- GOALPARA
ASSAM
PIN-783101.

16: PUTUL DAS
SON OF LATE PRADIP KUMAR DAS

RESIDENT OF BAMUNPARA
GOALPARA

DISTRICT- GOALPARA
ASSAM

PIN- 783101.

17: PRAMILA MUSHAHARI
WIFE OF LATE GUNA RAM MUSHAHARI

RESIDENT OF HAIDABARI
DISTRICT- BISWANATH CHARIALI

ASSAM
PIN- 784176

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI- 781006, ASSAM.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM

FINANCE DEPARTMENT
DISPUR

GUWAHATI - 781006
ASSAM.

3:THE SECRETARY TO THE GOVERNMENT OF ASSAM
IRRIGATION DEPARTMENT
DISPUR
GUWAHATI - 781006
ASSAM

4:THE ASSAM STATE MINOR IRRIGATION DEVELOPMENT CORPORATION
LIMITED
REPRESENTED BY ITS MANAGING DIRECTOR
ASSAM STATE MINOR IRRIGATION DEVELOPMENT CORPORATION
LIMITED
ULUBARI
GUWAHATI- 781007
ASSAM.

5:THE MANAGING DIRECTOR
THE ASSAM STATE MINOR IRRIGATION DEVELOPMENT CORPORATION
LIMITED
ULUBARI
GUWAHATI- 781007
ASSA

Advocate for the Petitioner : MR P BHARDWAJ

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

23.02.2024

Heard Mr. P. Bhardwaj, learned counsel for the petitioner. Also heard Mr. A. Talukdar, learned Government Advocate for the respondent no.1, Mr. R. Borpujari, learned Standing Counsel, Finance Department for the respondent

no.2 and Ms. D.S. Neog, learned Standing Counsel, Irrigation Department for the respondent nos. 3, 4 & 5.

2. The petitioners are erstwhile employees of Assam State Minor Irrigation Development Corporation Limited (in short ASMIDC). The said corporation was incorporated for the purpose of improving, establishing, executing shallow tubewells and low lift project in the State of Assam for advancement of Minor Irrigation.

3. Initially by notification dated 13.05.2005 issued by the Secretary to the Government of Assam, Irrigation Department offered VRS benefits to 302 numbers of regular employees including the petitioner on the basis of notification dated 20.09.2004. Though such VRS was implemented, alleging non release of benefits under such VRS, writ petition being WP(C) 4954/2006 was filed before this Court. By order dated 02.12.2008, the said writ petition was disposed of by this court directing the respondents to complete the payment of VRS benefits to the petitioners therein.

4. During the pendency of such writ proceeding by a notification dated 15.02.2006 the policy of voluntary retirement was revised. The said voluntary retirement scheme was implemented specially for the employees of State level public enterprises of Assam. Clause 1 of the said revised policy provides that

amongst others the package under VRS shall include unpaid salary / wages (basic pay + DA) up to the date of acceptance of VRS by the employee. The present dispute relates to the meaning of salary. The petitioners contend that the unpaid salary shall include House Rent Allowance (HRA), Medical Allowance (MA) and City Compensatory Allowance (CCA) and though other benefits are paid, the said allowance have not been paid.

5. This court while dealing with a similar issue and relating to VRS involving the employees of State Fed, came to a conclusion that HRA, MA and CCA are the components of the salary. On the basis of such finding this court vide order dated 06.01.2014 directed the respondent Corporation in the said writ petition being No. WP(C) 994/2007 to release HRA, MA and CCA to the employees of State Fed.

6. In the said judgment this court also interfered with the decision of a review meeting dated 26.03.2009, whereby HRA and MA was refused to be paid as not part of salary.

7. Subsequently relying on the said judgment, this court dealing with similar claim of the employees of Assam Agro Industries Development Corporation following the aforesaid judgment in the State Fed (supra) directed payment of HRA and MA. In the said case CCA was not claimed by the petitioner.

8. It is submitted that the issues involved in this writ petition are akin to the issues which were decided by a Co-ordinate Bench of this Court in WP(C) No.5836/2022 by the Judgment and Order dated 24.07.2023. The relevant portion of the said Judgment and Order dated 24.07.2023 is extracted below:

“The writ petitioners herein were all employees of the Assam State Minor Irrigation Development Corporation Limited (ASMIDC) which went into liquidation. Consequently, the 302 employees of the ASMIDC were offered Voluntary Retirement Scheme (VRS) which was notified by the departmental Secretary on 13.05.2005. The scheme was subsequently revised by the department vide notification dated 15.02.2006. Accordingly, benefits under the VRS Scheme was extended to all the 302 numbers of employees including the writ petitioners. However, the respondents have failed to pay the amount due and payable as House Rent Allowance (HRA), Medical Allowance (MA) and City Compensatory Allowance (CCA) although the aforesaid allowances, according to the petitioners, were included in the terms and conditions of the VRS scheme. Hence, this writ petition.

It appears that earlier a group of similarly situated former employees of ASMIDC had approached this Court by filing WP(C) No.9562/2019 which was disposed of by the learned Single Judge by order dated 13.05.2022 by accepting their similar claim for payment of HRA, MA and CCA. Mr. Bharadwaj submits that the case of the present petitioners is squarely covered by the judgment and order dated 13.05.2022 and therefore, this writ petition be also disposed of with a similar direction.

Mr. H. Sarma, learned Addl. Sr. Govt. Advocate, Assam as well as Mr. N. Upadhyay, learned Standing Counsel, Irrigation Department, Assam have also fairly submitted that the case of the petitioners would be covered by the judgment and order dated 13.05.2022 passed by this Court. However, the learned departmental counsel could not confirm as to whether, the aforesaid order of this Court has already been implemented by the departmental authorities or not.

Be that as it may, I find from the materials available on record that the writ petitioners in WP(C) No.9562/2019 had also prayed for a direction for payment of HRA, MA and CCA

against the same authority. They were also amongst the 302 regular employees of the ASMIDC who were covered under the VRS Scheme notified on 13.05.2005, which was revised by the department vide notification dated 15.02.2006. Taking note of the prayer made in the writ petition, the learned Single Judge, by the judgment and order dated 13.05.2022 had passed the following directions disposing of the writ petition :-

“11. In that view of the matter, it is held that the petitioners are entitled for HRA, MA and CCA and the same need to be calculated and included in salary for purpose of declaring VRS benefits and accordingly, the respondent Irrigation Department is directed to consider the case of the petitioner in the aforesaid term and if HRA, MA and CCA as per the clause 1(e) of the VRS scheme dated 15.02.2006 has not been paid, the same be paid within a period of two months from receipt of certified copy of this order to be furnished by the petitioners before the respondent authority.”

Since there is no dispute at the bar that the writ petitioners herein are also similarly situated employees of ASMIDC having similar nature of grievance, hence, I do not find any justifiable ground to deny a similar relief to the writ petitioners. The writ petition is, therefore, disposed of by providing that the prayer of the petitioners for consideration of HRA, MA and CCA as per clause 1(e) of the VRS Scheme dated 15.02.2006 be considered and the amount found due may be paid to them within a period of three months from the date of receipt of a certified copy of this order. With the above observation, the writ petition stands disposed of.”

9. Mr. R. Borpujari, learned Standing Counsel, Finance Department for the respondent no.2 and Ms. D.S. Neog, learned Standing Counsel, Irrigation Department for the respondent nos. 3, 4 & 5 do not object to the submissions made by the learned counsel for the petitioner.

10. Upon perusal of the Judgment and Order dated 24.07.2023 passed in WP(C) No.5836/2022 it is seen that the issues raised in the present writ petition stands squarely covered by the judgment and order dated 24.07.2023 passed in

WP(C) No.5836/2022. As such, this Court is of the considered view that the issues in the writ petition too will be covered by the Judgment and Order dated 24.07.2023 passed in WP(C) No.5836/2022.

11. Accordingly, the writ petition stands disposed of. The claims of the petitioners will be addressed in terms of the finding contained in the Judgment and Order dated 24.07.2023 passed in WP(C) No.5836/2022.

JUDGE

Comparing Assistant