GAHC010262502017

2026:GAU-AS:15574

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

Case No. : WP(C)/5547/2017

DHARMENDRA DAS and 7 ORS.
S/O JUGEN DAS, VILL-JANKHANA GAON, PO-KELIONI, DIST. JORHAT, ASSAM

2: SHRI SURAJIT GOGOI
S/O GIRIN GOGOI VILL- SELENGHAT BORNAGAYAN GAON
P.O. SELENGHAT
DIST. JORHAT
ASSAM

3: SRI TANKESWAR TALUKDAR
S/O MATHUR TALUKDAR VILL and P.O. DESOINAGAR
DIST. JORHAT
ASSAM

4: SMTI. BINDU BASFAR
D/O BHUKA BASFAR VILL- CIVIL HOSPITAL CAMPUS
JORHAT
P.O. and DIST. JORHAT
ASSAM

5: SHRI MALAY PALLAB BORAH
S/O SRI CHANDRA DHAR BORAH VILL- CHARA CHOWA GOAN
PANICHUKUWA
P.S. PULIBAR
DIST. JORHAT
ASSAM

6: SRI KANHAYA BASFOR
S/O LT. SUDI BASFOR VIL- BENGANAKHWA GRANT
P.O. BENGANAKHUWA
DIST. GOLAGHAT
ASSAM

7: SRI JITEN DAS
S/O SRI BHOGRAM DAS VILL- NA JANKHOWA GAON
P.O. KOKILAMUKH
DIST. JORHAT
ASSAM

8: SRI MANAS JYOTI HAZARIKA
S/O SRI HARESWAR HAZARIKA VILL- SARUHOOZ GAON
P.O. DAHOTIA
DIST. JORHAT
ASSA

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, HEALTH AND FAMILY WELFARE A DEPTT., DISPUR, GUWAHATI, ASSAM

2:DIRECTOR OF HEALTH SERVICES

ASSAM HENGRABARI
GUWAHATI-36.

3:THE JOINT DIRECTOR OF HEALTH SERVICES JORHAT

P.O. JORHAT
DIST. JORHAT ASSAM
PIN - 785001.

4:DISTRICT TRESURY OFFICER JORHAT

P.O. JORHAT
DIST. JORHAT
ASSAM

5:ACCOUNTANT TO THE OFFICE JOINT DIRECTOR
OF HEALTH SERVICES JORHAT
P.O. JORHAT
DIST. JORHAT
ASSAM
PIN - 785001

Advocate for the Petitioner : MS.B TALUKDAR, MR.P BAIRAGI,MR.S J SARMA,MR.G G GOGOI

Advocate for the Respondent : , SC, FINANCE,SC, HEALTH

Linked Case : WP(C)/6329/2017

RATUL NATH and ANR.
S/O. SRI UTTAM NATH
VILL. NATHGAON P.O. BHONA
DIST. JORHAT ASSAM.

2: AKASH BASFOR
S/O. MUNILAL BASAFOR
VILL. BENGANAKHOWA P.O. BENGANAKHOWA
DIST. GOLAGHAT ASSAM.

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE A DEPTT.
DISPUR GHY. ASSAM.

2:DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI GUWAHATI-36.

3:JOINT DIRECTOR OF HEALTH SERVICES
JORHAT P.O. JORHAT DIST. JORHAT ASSAM
PIN-785001.

4:DISTRICT TREASURY OFFICER
JORHAT P.O. JORHAT DIST. JORHAT ASSAM.

5:ACCOUNTANT TO THE OFFICE JOINT DIRECTOR OF HEALTH SERVICES
JORHAT P.O. JORHAT DIST. JORHAT ASSAM
PIN-785001.

Advocate for : MR.P BAIRAGI
Advocate for : appearing for THE STATE OF ASSAM and 4 ORS.

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the petitioner : Mr. S.J. Sharma, Advocate.

For the Respondents : Mr. B. Gogoi, Ld. Addl. Advocate General ;

Date on which Judgment is reserved : 29.07.2026

Date of pronouncement of Judgment : **12.10.2026**

Whether the pronouncement is of the operative part of the Judgment? : NA

Whether the full Judgment has been pronounced? : Yes

Judgment & Order (CAV)

Heard Mr. S.J. Sharma, learned counsel, appearing for the petitioners. Also heard Mr. B. Gogoi, learned Additional Advocate General, appearing for the State Respondents.

2. The issue arising in the above-noted 02 (two) writ petitions being common to both the writ petitions, with the consent of the learned counsel for the parties, the writ petitions were taken up for hearing analogously, and are being disposed of by this common order.

3. The petitioners in the above-noted writ petitions have assailed an order dated 24.05.2017, issued by the Joint Director of Health Services, Jorhat,

removing them from their respective services, on the grounds that their initial appointments were found to be not genuine.

4. WP(C).No.5547/2017

The petitioners in the above noted writ petition have projected that they were appointed as Grade-IV employees by the Joint Director of Health Services, Jorhat, on 16-02-2000, 05-10-1999, 15-12-1999, 21-12-1999, 18.02.2000, 12.11.2004, 02.02.2000 and 16.02.2000, respectively. The petitioners have projected that in pursuance to joining their respective services, they continued to discharge their assigned duties. It is also projected that the appointments of the petitioners were regular appointments and they were being paid their salaries accordingly. It is also projected that the salaries of the petitioners were stopped without any reason, w.e.f., October, 2014. Thereafter, the petitioners were removed from their respective services vide the order dated 24-05-2017.

WP(C).No.6329/2017

The petitioners project that the petitioner no.1 was initially appointed on 12-02-2000, by the Joint Director of Health Services, Jorhat, as a Grade- IV employee, and the petitioner no.2, was also appointed as a Grade- IV employee vide order dated 12-01-2005, by the same authority. The petitioners also project that after joining in their respective services, in pursuance to the orders of appointment issued to them, they were discharging their assigned duties and were also being paid their salaries. However, the salaries of the petitioners were

stopped since October, 2014. Thereafter, on the ground that the petitioners initial appointment was found to be not genuine, the petitioners were removed from their services vide order dated 24-05-2017.

4.1. The petitioners in the above noted 02 (two) writ petitions have also projected that their salaries being stopped, they had together approached this Court by way of instituting a writ petition being WP(C).No.2578/2015, praying for authorization of their salaries in arrears.

4.2. This Court vide order dated 29-09-2015, had disposed of the said writ petition by directing for payment of the arrear salaries of the petitioners, however, without prejudice to the right of the respondents to continue with the enquiry, regarding their appointment as Grade-IV/Sweeper.

4.3. The petitioners, subsequently having been removed from their services, have instituted the above noted writ petitions.

5. Mr. S. J. Sharma, learned counsel, for the petitioners, in the above noted writ petitions, after reiterating the facts noticed, hereinabove, has submitted that the petitioners in pursuance to their initial appointments, were being paid their salaries in cash, and subsequently their salaries were being so deposited in their respective bank accounts. The learned counsel for the petitioners has submitted that the appointments of the petitioners being in pursuance to a process of selection, the appointments have to be deemed to be regular and to have been so effected against sanctioned vacant posts as

available at the relevant point of time. Accordingly, he submits that the respondent authorities, having extracted the service from the petitioners, could not have withheld their respective salaries.

5.1. Mr. S. J. Sharma, by referring to the order dated 24-05-2017, issued towards removing the petitioners from their respective services, has submitted that no reason has been assigned as to why the appointments of the petitioners were found to be not genuine. He submits that the reasoning advanced by the respondent authorities in the order dated 24-05-2017, being a vague one, the same would mandate an interference from the Court with a further direction to the Respondent authorities for reinstatement of the petitioners in their respective services and for release of their salaries in arrears. Mr. Sharma, in support of his submissions, has placed reliance on a decision of a Division Bench of this Court in the case of ***Narayan Prasad Rabha and Ors. Vs. State of Assam & Ors., [Judgment & Order dated 30.01.2026 in W.A. No.428/2023***.

6. Per contra, Mr. B. Gogoi, learned counsel for the respondents, has submitted that the appointment order of the petitioners, on verification, was found to be a fake/forged, inasmuch as, there is no record of the petitioners having drawn their respective salaries, after they had joined their services in pursuance to the orders of appointments issued to them. He submits that the petitioners being appointees prior to 01.02.2005, they having projected that

they were appointed as regular employees, GPF deduction, was mandated to be made from their salaries. No such deduction is found to have been made from the salaries of the petitioners and the petitioners are also not found to have raised any grievance in this connection. He submits that the petitioners were subsequently incorporated in the New Pension Scheme, although the petitioners project that they were appointed on a regular basis prior to 01.02.2005.

6.1. Mr. B. Gogoi, further submits that, in terms of a policy decision adopted in the matter, the salaries of the Government employees were being deposited in their respective bank accounts w.e.f., the year 2006, in the district of Jorhat. However, from the materials brought on record, it is seen that the petitioners salaries were being deposited in their account only w.e.f. 2011. He submits that the petitioners have projected that they were drawing their salaries in cash, prior to the date from which their salaries were being deposited in their respective bank accounts, however, no material was brought on record by the petitioners during the process of verification to substantiate such claim made by them. He submits that the acquittance roll maintained for the purpose of disbursing salaries to the employees, were also not produced by the petitioners, and the acquittance roll so maintained is also not found to include the names of the petitioners, in the above noted 02 (two) writ petitions.

6.2. Mr. B. Gogoi, has further submitted that, from the pleadings brought on record by the petitioners, it is evident that their appointments were not

preceded by a process of selection, and the petitioners were issued with the said appointments by the Officer concerned on a pick-and-choose basis. Mr. Gogoi, submits that the Departmental Authorities, upon verifying the service particulars submitted by the petitioners, found that they were not appointed in pursuance to a due process of selection, and were held to be not genuine employees, and accordingly they were removed from their respective services.

6.3. Mr. B. Gogoi, further submits that, in the present writ petitions also, the petitioners have not brought on record any material, to demonstrate that they were in continuous service from the date of their initial appointments, and accordingly, he submits that the selection and appointments of the petitioners being doubtful, the plea of the petitioners that they were not given a notice, before the orders of removing them from service, would not mandate a consideration by this Court, inasmuch as, issuance of a notice, in the facts and circumstances of the present writ petitions, would be a futility.

6.4. Mr. B. Gogoi has further submitted that, the reliance placed by the petitioners upon the decision of the Division Bench of this Court, in the case of ***Narayan Prasad Rabha*** (supra) would not advance their cases, inasmuch as, in the said decision, this Court had found the appellants, therein, to have been so recruited, in pursuance to a due process of selection, and further that the regularization of services of some of the appellants, therein, was also found to have been made, by following the procedure mandated in this connection.

7. I have heard the learned counsel for the parties and also perused the materials available on record.

8. In the above noted 02 (two) petitions, the petitioners have brought on record, the orders of appointments issued to them, by the Joint Director of Health Services, Jorhat. However, there is no statement made in the writ petitions, that the said appointments were so made, on the petitioners being selected, in pursuance to a recruitment process initiated in the matter. The recruitment to Grade-IV post, figuring in the service, is to be so effected, in terms of the provisions of the Assam Public Services (Direct Recruitment of Class-III and Class-IV Posts), Rules 1997.

9. From the date of their respective appointment, as disclosed by the petitioners, in the present writ petitions, this Court finds that, all the petitioners, herein, were so appointed, pursuant to the provisions of the said Rules of 1997, coming into force. However, the writ petitions do not contain any details regarding the particulars of the selection process, so initiated prior to issuance of orders, appointing the petitioners in the matter. The petitioners in the present writ petitions, have also projected that, after they had joined their respective services, in terms of the orders of appointment issued to them, they were being paid their respective salaries in cash. While the said statement has been made by the petitioners, the petitioners have not brought on record any material to justify the same. It is the common practice that the Government

servants were earlier being paid their respective salaries, through the acquittance roll. However, the petitioners in the present writ petitions, have not even averred that they had received their such salaries, by signing on the acquittance roll.

10. The petitioners further have not brought on record, copies of the Attendance Register for the period following their appointments to establish that they were actually discharging their duties, with effect from the date of their respective appointments, and/or proximate, thereto. Further, another fact which this Court notices is that the petitioners in the above noted 02 (two) writ petitions have projected that they were appointed on dates prior to 01.02.2005, i.e., prior to coming into force of the "New Pension Scheme". Accordingly, on the date the petitioners were appointed, the Old Pension Scheme, governed by the provisions of the Assam Services (Pension) Rules, 1969, was holding the field. In respect of the Government employees appointed, prior to 01.02.2005, GPF accounts were opened in their names. However, in the present writ petitions, the petitioners have not projected, that GPF accounts in their respective cases, were opened by the respondent authorities. In fact, no particulars of such GPF accounts has been brought on record. The petitioners are found to have not raised any grievance, with regard to non-deduction of their respective contribution towards the GPF account from their respective salaries. The initial appointment of the petitioners, in the above-noted 02 (two) writ petitions, not

having been found to have been so effected in terms of the provisions of the said Rules of 1997, this Court is of the considered view, that the petitioners must be held to be backdoor appointees.

11. The petitioners have miserably failed to establish, that they had entered into their respective services, in a lawful manner. The appointments effected in respect of the petitioners, being found to be in contravention of the statutory provisions holding the field and also in violation of the provisions of Article 14 and 16 of the Constitution of India, the said appointments cannot be given an imprimatur, by this Court. The appointments of the petitioners, being found to have been effected *dehors* the procedure mandated, the claim of the petitioners for interference with the order of removal issued in their respective cases, would not mandate an acceptance by this Court. This Court having found that the appointments of the petitioners being so effected, without an open or transparent process being undertaken, it is held that such appointments strike at the root of Article 14 and 16 of the Constitution of India and accordingly, the petitioners cannot be held to be entitled, to be extended with equitable relief.

12. Having drawn the said conclusions, this Court would now consider the decision of the Division Bench of this Court rendered in the case of ***Narayan Prasad Rabha*** (supra), relied upon by the learned counsel for the petitioners. On a perusal of the said decision, this Court finds that, therein, the Court had found that the appellants involved, were in fact, appointed in

pursuance to a public advertisement, issued for recruitment against existing vacant sanctioned posts. Further, the allegation of fraud leveled by the Respondents, was found to have not been established against the appellants, therein. The facts as existing in the present writ petitions, are clearly distinguishable from the facts involved, in the decision of the Division Bench of this Court in the case of ***Narayan Prasad Rabha*** (supra), and accordingly this Court is of the considered view, that the said decision would not advance the case of the petitioners, herein. The petitioners having been removed, from their respective services on the ground that their initial appointments, were found to be not genuine, in other words, the petitioners being not found to have entered their respective services in a lawful manner, this Court is of the considered view, that the extension of opportunity of hearing, to the petitioners, in the light of the facts and circumstances, noticed hereinabove, would be a mere futility, and accordingly, the contention of the learned counsel for the petitioners, in the above noted writ petitions, that the order dated 24-05-2017, would mandate an interference, inasmuch as, the petitioners were not afforded, an opportunity of hearing, before the issuance of the same, would not also mandate an acceptance from this Court.

13. In view of the above discussion, this Court is of the considered view, that the petitioners have failed to make out a *prima facie* case requiring this Court to interfere with the order dated 24.05.2017, in exercise of its

extraordinary jurisdiction under Article 226 of the Constitution of India. Accordingly, the challenge presented by the petitioners to the order dated 24.05.2017, stands rejected.

14. Having drawn the said conclusions, this Court would now consider the prayer of the petitioners for being authorized their salaries in arrears w.e.f. October, 2014. In this connection, this Court would refer to the conclusions drawn by this Court vide the order dated 29.09.2015 in WP(C).No.2578/2015. The said conclusion being relevant, the same is extracted, hereinbelow;

> "While the validity of petitioners' appointment may be enquired into by the respondents, but if they are working as per orders of the Departmental authority without any conclusive determination as to the validity of their appointments, they are required to be paid their due salary as was paid earlier. Payment of salaries to the petitioners, however, would be without prejudice to the right of the respondents to continue with the enquiry stated to be regarding their appointment as Grade-IV/Sweeper.
>
> In the light of the above, respondent no.2 i.e. the Director of Health Services, Assam, is directed to verify the claim of the petitioners and thereafter pass appropriate order(s) for release of salary of the petitioners for the aforesaid period within a period of 4 (four) weeks' from the date of receipt of a certified copy of this order."

15. A perusal of the said conclusion would go to reveal that this Court noticing the fact that the validity of the petitioners appointments was under enquiry, and opining that if the petitioners were found to be working as per orders of the Department Authority, without there being a conclusive determination as to the validity of their appointments, they are required to be paid their due salaries as was paid earlier. Accordingly, this Court directed the Director of Health Services, Assam, to verify the claim of the petitioners and

thereafter, pass appropriate order(s) for release of salaries of the petitioners.

16. The said direction having been passed by this Court also by noticing the fact that the validity of the appointments of the petitioners was under scrutiny, this Court is of the considered view that the said order dated 29.09.2015, having not being assailed by the State Respondents, the same has attained its finality. Accordingly, the petitioners, herein, although found not be entitled to continue in their services after 24.05.2017 i.e., w.e.f., the date they were removed from their respective services, this Court in view of the conclusions drawn vide the order dated 29.09.2015 in WP(C).No.2578/2015, requires the Director of Health Services, Assam, to examine as to whether the petitioners were in services w.e.f., October, 2014, till 24.05.2017, and in the event, the petitioners were found to have been rendering services during the said period, the Director of Health Services is required to release to the petitioners their due salaries for the said period.

17. Accordingly, in view of the directions passed by this Court vide order dated 29.09.2015 in WP(C).No.2578/2015, the Director of Health Services, Assam, is directed to implement the said direction forthwith. The Director of Health Services, Assam, shall verify the contentions of the petitioners that they were rendering their services after October, 2014, till the date of their removal from services. The Director of Medical Education, Assam, on verifying the claim of the petitioners finds that the petitioners, were rendering services shall

proceed to issue a speaking order and therein, determine the salaries receivable by the petitioners. In the event, on verification, all or any of the petitioners in the above noted writ petitions, are found to be not discharging their duties during the period of October, 2014, till the date of their removal from service, the Director of Health Services, Assam, shall indicate the same in the speaking order required to be passed by him.

18. The exercise now required to be initiated for release of salaries to the petitioners be so initiated and concluded within a period of 03 (three) months from the date of receipt of a certified copy of the present order from the petitioners in the above noted 02 (two) writ petitions.

19. With the above observations and directions, the present writ petitions being WP(C).No.5547/2017 and WP(C).No.6329/2017, stand disposed of.

JUDGE

Comparing Assistant

Ranu Boro