

GAHC010186752025



2026:GAU-AS:11623

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

Case No. : WA/35/2026

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM, DEPARTMENT OF
SCHOOL EDUCATION, DISPUR, GUWAHATI-781006.

2: THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 781019

3: THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHEMAJI
ASSAM.

4: THE BLOCK ELEMENTARY EDUCATION OFFICER
BORDOLONI BLOCK
DHEMAJI
ASSAM.

5: THE DEPUTY INSPECTOR OF SCHOOLS
DHEMAJI
DIST-DHEMAJI
ASSAM

VERSUS

CHANDRESWAR SAIKIA AND ORS.
ASSTT. TEACHER, CHENGAMARI L.P. SCHOOL, BORDOLONI BLOCK, DIST-
DHEMAJI, ASSAM.

2:NARESH BARUAH
HEADMASTER L.P. SCHOOL
BORDOLONI BLOCK
DIST. DHEMAJI
ASSAM.

3:IKAN PEGU
ASSTT. TEACHER

RUPALI L.P. SCHOOL
BORDOLONI BLOCK
DIST. DHEMAJI
ASSAM.

4:INDRESWAR CHUTIA
ASSTT. TEACHER
ADUT KHURACHUK L.P. SCHOOL
BORDOLONI
BLOCK
DIST. DHEMAJI
ASSAM.

5:NIRU BORUAH
ASSTT. TEACHER
CHAIDHUA BALIGAON L.P. SCHOOL
BORDOLONI BLOCK
DIST. DHEMAJI
ASSAM.

6:MUHINI PHUKAN
ASSTT. TEACHER
MOINAPARA L.P. SCHOOL
BORDOLONI BLOCK
DIST. DHEMAJI
ASSAM.

7:KANTI SAIKIA
ASSTT. TEACHER OF NO. 503 AUNIATI KAIBATTA L.P. SCHOOL
BORDOLONI BLOCK
DIST. DHEMAJI
ASSAM.

8:SUBHABALA DAS
ASSTT. TEACHER
AUNIATIKAIBATTA L.P. SCHOOL
BORDOLONI BLOCK
DIST. DHEMAJI
ASSAM.

9:NAREN HAZARIKA
HEADMASTER
BALIGAON L.P. SCHOOL
BORDOLONI BLOCK
DIST. DHEMAJI
ASSAM.

10:MINESWARI DIHINGIA
ASSTT. TEACHER
BHAKATKAIBATTA L.P. SCHOOL
BORDOLONI BOCK
DIST. DHEMAJI

ASSAM.

11:RISHINDRA HAJONG
HEADMASTER NO. 2 BAJAYANTIPUR L.P. SCHOOL
BORDOLONI BLOCK
DIST. DHEMAJI
ASSAM.

12:JURI BALA HAZARIKA
ASSTT TEACHER
34 BARBILABHEBELI KASARI L.P. SCHOOL
BORDOLONI BLOCK
DIST. DHEMAJI
ASSAM.

13:JITENDRA KUMAR BORA
ASSTT. TEACHER
GOKHAIN BARI L.P. SCHOOOL
BORDOLONI BLOCK
DIST. DHEMAJI
ASSAM.

14:REBAT GOGOI
ASSTT TEACHER
MONGALATI L.P. SCHOOL
BORDOLONI BLOCK
DIST. DHEMAJI
ASSAM.

15:THE TREASURY OFFICER
DHEMAJI
ASSAM

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the appellants : Mr. NJ Khataniar, Advocate

For the Respondents : Mr. N Borah, Advocate.

Mr. P. Hazarika, Advocate

Date on which judgment was reserved : NA

Date of pronouncement of judgment : 17.08.2026

Whether the pronouncement is of the

Operative part of the judgment? : N/A

Has the judgment been pronounced? : Yes

JUDGMENT & ORDER (ORAL)

(Arun Dev Choudhury, J)

1. Heard Mr. NJ Khataniar, learned Standing Counsel, Department of School Education. Also heard Mr. N Borah, learned counsel for respondent Nos.1 to 11, and Mr. P Hazarika, learned counsel for respondent Nos.12 to 14.
2. By filing this appeal, the State of Assam and these authorities have challenged the judgment and order dated 08.01.2025, passed by the learned Single Judge in WP(C) No.9573/2019 and the connected writ petitions, whereby the learned Single Judge quashed the termination orders issued by the Deputy Inspectors of Schools, Dhemaji, terminating the services of the respondent writ petitioners, and further directed that the respondents shall be entitled to all benefits as Assistant Teachers and shall be treated as regular Assistant Teachers for all purposes.
3. Since the writ petitions before the learned Single Judge arose out of substantially similar facts and the same issue relating to the termination of services of the respondent

writ petitioners, they were heard together and disposed of by the common judgment and order dated 08.01.2025.

4. The challenge in the writ petitions was essentially directed against the show cause notices issued in March 1992, the consequential termination orders, and the denial of salary and service benefits.
5. The petitioners were appointed as Assistant Teachers in various lower primary schools in the District of Dhemaaji in 1989. In WP(C) No. 9573/2019, the writ petitioners claimed that they had been selected through a selection process and subsequently appointed by the Deputy Inspectors of Schools, Dhemaaji. The appointment orders produced on record show appointments made in December 1989 to different lower primary schools. The respondents further claimed that they continued to discharge their duties in their respective schools and were transferred from one school to another.
6. The writ petitioners further relied upon orders of confirmation issued by Deputy Inspectors of Schools and contended that their services had been confirmed from the respective dates. They also relied on the fact that they had been permitted to cross the efficiency bar; some of them had been entrusted with the duties of Headmaster, and their names were reflected in service records. It was

their case that their services were treated by the authorities as continuing service and that salary was paid to them from time to time.

7. It is also borne out by the materials on record that there were interruptions in the payment of salary. According to the writ petitioners, salary was stopped in April 1996 but was subsequently released after intervention by departmental authorities and thereafter paid up to July 2007. The petitioners asserted that their services had never been validly terminated, and they continued to discharge their duties. Their salary, however, was stopped in August 2007, which led to the earlier round of litigation.
8. In the meantime, the employer took a stand that the appointments had been made irregularly/illegally, including against non-existent or non-sanctioned posts and without following the prescribed departmental norms and recruitment procedures. It was also the case that the state enforced a ban on appointments at that time.
9. The authorities asserted that show cause notices had been issued to the writ petitioners in March 1992. They submitted replies in April 1992, and after considering them, their services were terminated in May 1992.

A copy of the termination order dated 18.05.1992, placed on record, reflects that the reply to the show cause

notices was found unsatisfactory and that the appointments had been made against non-existent posts/very irregularly and without following departmental norms and procedures during the period of ban on appointments.

10. When the salary of the respondents was stopped in the year 2007, they approached this court by filing WP(C) 5635/2007 and other connected writ petitions. The said writ petition was disposed of by an order dated 27.04.2012.

The learned Single Judge, noting the rival contentions as to whether the petitioners had actually been served with the termination orders, directed the authorities to examine the case of each petitioner to determine whether the show cause notices and the termination orders had been served upon them.

The court further directed that if it was found that no show cause notice or termination order had been served, the concerned petitioners would be entitled to salary for the services they rendered for the period indicated in the order.

11. Pursuant to the aforesaid order, the Director of Elementary Education, Assam, considered the report of the District Elementary Education Officer, Dhemaji, and other

relevant materials and passed an order dated 05.05.2015.

The said order recorded that show cause notices had been issued to the petitioners in March 1992, that replies had been submitted in April 1992, and that the replies were found unsatisfactory.

It was further recorded that the petitioners had been terminated in May 1992 and that their admissible salaries had been paid up to that date.

12. The respondents, however, disputed the said conclusion and maintained that although they had received the show cause notices, the termination orders had never been served upon them.

Their contention was that, in the absence of communication of the termination orders, their services could not have ended and that their continued service thereafter could not be deemed unauthorized.

13. In the meantime, the State Government undertook a larger exercise regarding teachers who had been appointed irregularly/illegally in the lower and upper primary schools during the relevant period.

Pursuant to an earlier direction of this Court, the Education Department constituted screening committees to examine, inter alia, the selection procedure, the nature of

appointment, the status of the post, the working status, the status of salary, and the academic and professional qualifications of the teachers concerned.

Applications were invited, and the cases were scrutinized. The screening committees then categorized the teachers.

The cabinet Memorandum placed on record records that Category 3 consisted of teachers who were not recommended but were continuing to work and that a further policy decision was proposed for dealing with such teachers.

It is significant that the respondents themselves participated in the aforesaid screening exercise. They submitted their documents, and the screening committee considered their cases.

14. The affidavit in opposition filed on behalf of the state specifically sets out the aforesaid subsequent development and states that upon verification, the petitioners fell within the category of teachers who were not recommended but were continuing to work and that, pursuant to the Cabinet decision, those fulfilling the prescribed conditions were offered fresh accommodation according to their qualification.
15. The Cabinet Memorandum records that, after

consideration of reports from the screening committees and the views of the concerned departments, approval was sought to recommend teachers who had received salaries up to 2007 but had not acquired the required professional qualification before 2011 as tutors, with prospective effect from the date of approval of the Cabinet.

The Cabinet approved the proposal on 07-10-2020.

16. Pursuant to the aforesaid Cabinet decision, orders of accommodation were issued. One such order dated 30.01.2021, which is on record, shows that a concerned appointee was recommended as a tutor in the concerned lower primary school on fixed pay.

The order makes it clear that the accommodation was made pursuant to the government's policy decision and was prospective in nature, against personal post created for that purpose.

17. The affidavit filed by the State further records that, except for writ petitioners Nos. 7, 9 and 10 in WP(C) No. 9573/2019, the remaining petitioners accepted the orders of accommodation and joined their respective schools as tutors, accepting the terms and conditions contained therein. The petitioners Nos.7, 9, and 10 could not join as they had attained the age of superannuation before

accommodation could be made.

The affidavit further records the subsequent retirement of some of the petitioners and the death of one of them after joining as a tutor. Such facts are not in dispute.

18. The writ petitioners/respondents have never challenged the screening committee proceedings, the categorization made pursuant thereto, the Cabinet decision dated 07.10.2020, or the consequential orders of accommodation dated 30.01.2021.

On the contrary, the materials disclose that the concerned petitioners, after participating in the screening exercise, accepted the subsequent accommodation and joined service afresh as tutors.

19. This subsequent development assumes considerable significance in determining the nature and extent of relief, which could have been granted by the learned Single Judge.

20. Before the learned Single Judge, as well as before us, the learned counsel for the respondents contended that the petitioners had been regularly selected and appointed as Assistant Teachers in 1989 and had continued to serve thereafter. It was argued that neither the show cause notice nor the termination orders had been duly served

upon them and that the entire exercise of termination was therefore liable to be set aside.

21. Placing reliance upon the judgment of the Hon'ble Apex Court in **Union of India v. Dinanath Shantaram Karekar & Ors** reported in (1998) 7 SCC 569, **Municipal Corporation of Delhi v. Qimat Rai Gupta & Ors** reported in (2007) 7 SCC 309, **National Textile Corporation (M.P) Limited Vs. MR Jadhav** reported in (2008) 7 SCC 29 and **Dulu Devi v. State of Assam and others** reported in (2016) 1 SCC 622, it is contended that mere passing of a termination order and keeping it on record would not end the service relationship unless the order was communicated to the employee.
22. The learned counsel for the State, on the other hand, argued that the appointments of the writ petitioners were not made pursuant to a lawful recruitment process; they were against non-existent, non-sanctioned posts and without advertisement or selection in accordance with applicable rules.

It was submitted that show cause notices had admittedly been issued, replies had been submitted, and the competent authority, after considering the replies, had passed the termination orders in May 1992.

It was further submitted that the earlier order dated

27.04.2012 passed in WP(C) 5635/2007 had not declared the petitioners' appointments to be regular appointments and had merely directed verification of the service of the show cause notices and termination orders.

It was therefore contended that the learned Single Judge could not have treated the writ petitioners as regular Assistant Teachers for all purposes merely because the State could not produce satisfactory proof of communication of the termination orders.

23. Mr. Khataniar, learned counsel for the appellant, further placed reliance upon the subsequent screening process and the Cabinet decision dated 07.10.2020. It was submitted that the writ petitioners had themselves participated in the screening exercise, accepted the subsequent accommodation as Tutors, and joined service pursuant to orders dated 30.01.2021.

It was argued that none of those subsequent proceedings had been challenged. It was therefore contended that the learned Single Judge, while deciding the legality of the termination orders of 1992, could not have granted a declaration which would have the effect of retrospectively nullifying the subsequent unchallenged orders and conferring upon the writ petitioners the status of regular Assistant Teachers from 1989 without their

required educational qualification.

24. It was further submitted by Mr. Khataniar that long continuation in service cannot, by itself, validate an appointment made without following the prescribed recruitment procedure and against non-existent or non-sanctioned posts.

Placing reliance upon the judgments of the Hon'ble Apex Court in **State of Bihar and others v. Devendra Sharma**, reported in **(2020)15 SCC 466**, and **R. Vishwanatha Pillai v. State of Kerala and others**, reported in **(2004) 2 SCC 105**, it is argued that the right to salary and other statutory service benefits attached to a regular public post cannot be claimed merely on the basis of an appointment which is not shown to have been made in accordance with law.

25. The learned Single Judge, upon consideration of rival submissions and the materials on record, noted that the petitioners claimed continuous service from 1989, whereas the State Respondent asserted that their service had been terminated in May 1992 after the issuance of show cause notices and consideration of their replies.

The learned Single Judge also noted that this Court, in earlier proceedings, had directed the authorities to ascertain whether the termination order had actually been served on the individual petitioners.

26. The learned Single Judge thereafter considered the decisions in **Dinanath Santaram Karekar** (supra), **Qimat Rai Gupta** (supra), **M. R. Jadhav** (supra) and **Dulu Devi** (supra) and held that the State Respondents had failed to produce sufficient material to establish that the termination orders had been served upon the petitioners.
27. The learned Single Judge noted the State's submission regarding the receipt of the show cause notices and the petitioners' replies, but nevertheless concluded that their failure to establish service of the termination orders was decisive.

The Learned Single Judge further observed that the Respondent Authorities ought to have proceeded against the petitioners in accordance with law, if their appointments were illegal, but had failed to do so.

28. The learned Single Judge placed reliance on **Dulu Devi** (supra) for the proposition that an order terminating service does not become effective merely by being passed and retained on file.

Finally, the Single Judge quashed the termination orders and directed that the writ petitioners shall be entitled to all benefits as Assistant Teachers and shall be treated as regular Assistant Teachers for all purposes.

29. It is this latter part of the judgment, particularly the direction granting all consequential benefits and regular status from the original appointment, which requires our consideration in the present appeal.
30. Having considered rival submissions and materials available on record, we are of the view that the learned Single Judge was justified in interfering with the termination orders, but the consequential direction issued cannot be sustained in its entirety.
31. It is not in dispute that the State has placed on record the copies of Show-Cause notices issued to the respondents and the replies submitted by the respondents. The termination order dated 18.05.1992 also refers to the Show-Cause notices and the replies submitted thereto, noting that the reply was found unsatisfactory.
32. The dispute, therefore, is not really as to whether the competent authority has passed an order of termination but whether such order was communicated to the individual petitioners.
33. An order terminating the service of an employee is required to be communicated to the employee so as to become operative. It is a well-settled principle that the mere passing of an order or retaining the same on the file does not, by itself, amount to the communication of the

order to the employee. In **Dulu Devi** (supra), the Hon'ble Supreme Court reiterated the said principle in the context of a similarly situated employee.

It is on record that the State has also failed to place before the Court the original receipt or other satisfactory materials from which such service of termination orders upon each individual petitioner can be established.

34. We are, therefore, inclined to uphold the finding of the learned Single Judge that the State has failed to establish effective communication of the termination order.

Consequently, the termination order cannot be treated as having effectively brought the service of the petitioners to an end merely because such orders had been passed by the competent authority.

35. However, the matter does not end there. In our opinion, the learned Single Judge erred in assuming that, once the termination orders are held to be ineffective for want of communication, the petitioners must necessarily be treated as regular Assistant Teachers from the date of their original appointments and granted all consequential service benefits.

In our respectful opinion, such a conclusion does not follow as a necessary consequence of the finding

regarding the communication of the termination order.

36. The legality and character of the original appointment, and the nature of the service benefits flowing from such appointments, are important beyond the issue of whether the termination orders were effectively communicated to the respondents.

Setting aside an ineffective order of termination does not amount to a declaration that the original appointments were made in accordance with the prescribed recruitment procedure or that the appointee acquired an indefensible right to the post and all statutory benefits attached to a regular appointment.

Such restriction assumes greater significance in the facts of the present case, inasmuch as the legality of the original appointment was itself the subject matter of a subsequent comprehensive exercise undertaken by the State and participated in by the respondents.

37. We are conscious that the question of whether the original appointments of each of the petitioners were void ab initio or merely irregular is not required to be adjudicated in the present appeal. But the subsequent governmental exercise, specifically undertaken to determine the status of such appointments, and the petitioners themselves participated in that exercise, is an important aspect of the

present litigation.

38. As recorded hereinabove, the petitioners participated in the screening process. They did not challenge the constitution of the Screening Committee or remain outside the process. Their cases were considered based on the documents and the materials they submitted. Pursuant to the reports of the Screening Committee, the Government formulated a policy for dealing with different categories of Teachers.
39. We repeat, the Cabinet Memorandum specifically contemplated prospective accommodation as Tutors for those Teachers who had received salaries up to 2007 but had not acquired the requisite professional qualification to be appointed as Assistant Teachers. The Cabinet approved the said proposal on 07.10.2020. Pursuant thereto, the petitioners, except those who had already attained the age of superannuation and could not join, were offered accommodation as Tutors.
40. The order dated 30.01.2021 is itself clear that the accommodation was as a Tutor and was pursuant to the Government's decision. It was not an order declaring or restoring the petitioners to the status of regular Assistant Teachers with retrospective effect from 1989. More importantly, the writ petitioners who were so

accommodated accepted the said orders and joined their respective schools as Tutors and, as of date, continue to serve as tutors.

41. Such facts were specifically brought on record before the learned Single Judge by the State through an affidavit. Such facts are also not in dispute. This factual position has also been noticed in the impugned judgment.
42. Importantly, neither the Screening Committee proceedings, the categorization made pursuant thereto, nor the Cabinet Decision dated 07.10.2020, as well as the consequential order dated 30.01.2021, have been challenged by the respondents/writ petitioners. The said proceedings, therefore, continue to hold the field.
43. In such circumstances, a Court exercising its jurisdiction under Article 226 of the Constitution of India cannot, while deciding the limited question of the effectiveness of the 1992 termination order, grant a consequential declaration that would nullify or render nugatory subsequent unchallenged policy decisions and proceedings.
44. The distinction between the right to challenge an ineffective termination and the right to claim benefits attached to a regular appointment is also supported by the Supreme Court decision relied upon before us.

In **Devendra Sharma** (supra), the Hon'ble Supreme Court considered appointments made without following prescribed recruitment procedures and reiterated that long continuation in service cannot, by itself, convert an appointment that is illegal in its inception into a valid appointment conferring a right to regularization, contrary to the applicable recruitment rules.

45. The aforesaid principles, however, have to be applied to the facts of the present case with due circumspection.

We are not holding that the petitioners had never rendered service or that the salary actually paid to them for the period during which they worked is liable to be recovered, nor are we declaring in the present appeal that the appointment of each of the petitioners was void ab initio.

The question is narrower, namely, whether the failure of the State to establish the communication of the termination order dated 18.05.1992 by itself entitles the petitioners to be declared regular Assistant Teachers from 1989 and to all consequent benefits, more particularly, in the backdrop of the subsequent developments and the policy decisions taken by the State.

46. The reasoning of the learned Single Judge that, since the petitioners were allowed to continue for a considerable

period and were subsequently adjusted as Tutors, they should be treated as regular Assistant Teachers for all purposes, in our view, overlooks the distinction between the actual continuation in service and legal entitlement to the status of a regular appointee.

47. The fact that a person has worked for a long period, even if such service has been permitted by the authorities, cannot, by itself, create a substantive right to a regular post when the subsequent governmental process has dealt with the appointment in a different manner, and the consequential orders have not been challenged.

We may also notice that the original appointment orders themselves cannot be treated as conclusive proof of regular appointments only for the reason that they were issued by a state authority and the petitioners were permitted to join.

48. The State has subsequently questioned the very manner in which the appointments were made. The Cabinet Memorandum records the circumstances under which large numbers of such appointments were made and the subsequent screening process undertaken to determine their status.

The subsequent policy decisions and fresh accommodation as Tutors, which remain unchallenged,

are therefore the material circumstances which the learned Single Judge ought to have taken into account while determining the consequential relief.

49. We have also taken note of the arguments advanced by the learned counsel for the respondents that in **Mohor Ali Seikh & Others Vs. State of Assam and Others** reported in **(2024) 5 GLT 689**, a Coordinate Bench had held that the Tutors being government servant are entitled for a scale of pay instead of fixed a remuneration and therefore, being similarly situated, a direction may be issued to grant them the scale of pay at par with the provincialised Tutors under the The Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 and as directed in **Mohor Ali Seikh** (Supra)
50. We have taken note of such an argument and perused the judgment.
51. Having regard to the subsequent status of the respondents as Teachers, it is provided that the competent authority of the State Government shall consider the question of extending an appropriate scale of pay to the respondents in their capacity as Tutors in accordance with law and applicable to such Teachers, including the determination made by the Coordinate Bench in **Mohor Ali Seikh (supra)**.
52. We accordingly conclude that the finding of the learned

Single Judge that the termination order dated 18.05.1992 cannot be sustained for want of proof of communication does not call for interference.

However, the direction that the petitioners shall be entitled to all benefits as Assistant Teachers and shall be treated as regular Assistant Teachers for all purposes cannot be sustained.

In particular, said direction cannot operate to nullify the subsequent Screening Committee proceedings, the Cabinet decision dated 07.10.2020, and the orders dated 30.01.2021, by which the concerned petitioners were accommodated as Tutors prospectively for lack of the required qualification to be appointed as Assistant Teachers.

Those proceedings and the orders, having not been challenged, must be permitted to operate according to their terms. The petitioners who accepted and joined pursuant to the said orders cannot simultaneously rely upon the same subsequent service arrangement and seek to have it treated as a mere continuation of their alleged irregular service as Assistant Teachers from 1989 for the purpose of claiming retrospective benefits.

53. Accordingly, the appeal is partly allowed.

54. The common judgment and order dated 08.01.2025 passed by the learned Single Judge is upheld to the extent that it set aside the termination order dated 18.05.1992, on the ground that the State respondents failed to establish their communication with the petitioners.
55. However, the direction granting the petitioners all consequential benefits as Assistant Teachers and treating them as regular Assistant Teachers for all purposes is set aside.
56. The writ appeal stands disposed of in the above term; there shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant