

GAHC010123172016



2026:GAU-AS:3

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

Case No. : WP(C)/7471/2016

ATUL CHANDRA DAS
S/O SRI RATNESWAR DAS R/O BAMUNBARI P.O. ASSAM SINTEX, DIST.
NALBARI, ASSAM.

VERSUS

STATE OF ASSAM and 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, DEPARTMENT OF
ELEMENTARY EDUCATION, GOVT. OF ASSAM, DISPUR, GUWAHATI -
781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI -19.

3:THE DIRECTOR OF EDUCATION
BAC KOKRAJHAR
ASSAM.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

NALBARI.

5:THE DEPUTY INSPECTOR OF SCHOOLS

NALBARI.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER

TIHU

BARAMA
NALBARI.

7:THE TREASURY OFFICER
NALBARI /TIHU
DIST. NALBAR

For the Petitioner : Mr. D.K. Roy.Advocate.

For the Respondents : Mr. A. Phukan, SC, Elem. Edu.,
Mr. B.C. Musahary, SC, BTC.
.....Advocates.

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

Date of Hearing :- 23.10.2025, 20.11.2025,
09.12.2025 & 16.12.2025

Date on which judgment is reserved :- 16.12.2025

Date of pronouncement of judgment :- 05.01.2026

Whether the pronouncement is of the operative part of the judgment? :- N/A

Whether the full judgment has :- Yes
been pronounced?

JUDGMENT AND ORDER (CAV)

Heard Mr. D.K. Roy, learned counsel for the petitioner. Also heard Mr. A. Phukan, learned standing counsel, Education (Elementary) Department, appearing for the respondent Nos.1, 2, 4 and 5 and Mr. B.C. Musahary, learned standing counsel, BTC, appearing for the respondent No.3.

2. In this petition, under Article 226 of the Constitution of India, the petitioner, namely, Shri Atul Chandra Das has challenged the order dated 03.11.2016, passed by the Commissioner & Secretary Elementary Education Deptt., Assam (**Annexure-24**) and also prayed for issuing direction to the respondents to pay the salary of the petitioner including the arrear salary from June, 2006, till date.

Background Facts:-

3. The background facts, leading to filing of the present petitioner, are adumbrated herein below:-

“The petitioner was appointed as Assistant Teacher by the Deputy Inspector of Schools, Nalbari on 29.11.1999 and posted at Murmela Kumarpara LP School. The petitioner joined on 30.11.1999, as Assistant teacher pursuant to appointment letter dated 29.11.1999. Thereafter, on 13.12.2004, he was transferred to Bhurkuchi Srimanta Sankardev LP School. The petitioner has been paid his salary till May, 2006. But, from June, 2006 he has not been paid his salary, in spite of

continuous service being rendered by him without any break. Being aggrieved, the petitioner had preferred one writ petition, being WP(C) No. 709/2012 before this Court. Then vide order dated 22.06.2015, this Court had disposed of the said petition directing the respondents to consider his case for payment of his salary.

Due to non-compliance of the aforesaid order dated 22.6.2015, the petitioner had instituted a contempt proceeding, being Contempt Cas(C) No. 749/2015. Then, during pendency of the contempt petition the Commissioner & Secretary, Education (Elementary) Deptt., Assam, has passed the impugned order, dated 03.11.2016, without application of mind.

It is stated in the said order that petitioner's name is included in the list of 2272 Nos. of illegal teachers. Whereas similarly situated person, namely Md. Ahmed Ali, whose name appeared in Sl. No. 662 in the said list, is granted the benefit. It is the contention of the petitioner that the said order, dated 03.11.2016 is not based on actual facts on records. And as such, the petitioner is treated with discrimination. It is his further contention that the impugned order is arbitrary and bias, and therefore, the same is liable to be set aside and quashed. Therefore, the petitioner, being aggrieved, approached this Court to address his grievance by setting aside the order dated 3.11.2016."

4. The respondent No.2, i.e. the Director of Elementary Education filed his affidavit in opposition, wherein he has taken a stand that the petitioner was appointed at Murmela Kumarpara L.P. School under BTC area, by the then Deputy Inspector of Schools, Nalbari as per approval of the Sub-Divisional Elementary Education Advisory Board, BAC vide order dated 29.11.1999. But he

has not annexed any document showing his participation in any selection process such as advertisement, call letter, select list showing his merit position etc.

He has also not mentioned about the date of advertisement, date of filing application, date of interview to substantiate his claim that he was appointed in accordance with due process of selection. As such, the initial appointment of the petitioner appears to be doubtful. It is also stated that in the appointment order dated 29.11.1999, it was stated that the appointee will be considered for regular scale of pay on successful completion or prescribed training. However, the petitioner was allowed to draw regular scale of pay vide order dated 21.01.2001 (Annexure-3/page 20) but there was no reference with regard to passing of necessary training in respect of the petitioner to avail regular scale of pay. The petitioner has also not stated anything as to when he successfully passed out training in terms of his appointment order. Therefore, the order dated 21.01.2001 was also not in accordance with law. Further, it is stated that the petitioner was transferred and kept attached at Bhurkuchi Srimanta Sankardeva L.P. School, Tihu Barama Education Block, Nalbari vide order, dated 13.12.2004, which falls under the jurisdiction of General Area. The salary of the petitioner was stopped from the month of June 2006 since his appointment as well as drawing regular scale of pay was not in accordance with law.

Further, it is stated that in this connection, the Government has constituted three members Enquiry Committee in respect to illegal, irregular and transferred teachers in Nalbari District headed by R. Deka, ACS, Deputy Secretary to the Government of Assam and the Committee prepared two number of list containing 436 and 2272 Nos. of illegal teachers. The name of the petitioner appeared in the list of 2272 Nos. of illegal teachers.

It is also stated that the petitioner had earlier approached this Court vide WP(C) No. 709/2012 for payment of salary and this Court vide Order dated 22.06.2015, had directed the Commissioner and Secretary to the Government of Assam, Education (Elementary) Department to consider the case of the petitioner for payment of salary and to take a decision in accordance with law. And in compliance of this Court's order, the Commissioner and Secretary to the Government of Assam, Education (Elementary) Department passed a speaking order on 3.11.2016, whereby the claim of the petitioner for salary was rejected since his name appeared in the list of 2272 illegal teachers.

5. The petitioner then filed his reply to the affidavit-in-opposition filed by the respondent No.2, wherein he denied the averments made by the respondent No.2 and re-affirmed the statement made by him in para No. 2, 3, 4, 7, 8, 11, 15, 16 and 17 of his petition.

6. The petitioner has filed another affidavit in reply to the affidavit-in-opposition purportedly filed by the respondent No.1, in **WP(C) No.2017/2017, (Sri Bibekananda Konwar v. State of Assam)**. But, no such affidavit is found available on the record. However, in his affidavit the petitioner has reiterated and reaffirmed the statement made in the writ petition. It is also stated that he was appointed as Teacher during the year 1999, against the sanctioned vacant post as per advertisement published in the month of January, 1997. He then applied for the post submitting all the required documents and he was also called for interview and he did well in the interview and selected by the Sub-Divisional Level Selection Committee, Nalbari and that he has been paid his salary up to May, 2006. But, thereafter, he has not been paid salary till date. And he is still working as Asstt. Teacher at Bhurkuchi Srimanta Sankardev LP School.

7. The respondent No.3, i.e. the Director of Education, BTC, in the district of Kokrajhar, Assam has filed his affidavit-in-opposition, wherein he has taken a stand that there is no record of appointment order dated 29-11-1999, issued by the Deputy Inspector of Schools, Nalbari in respect of the petitioner as well as records of such advertisement, call letter, selection, publication of select list and approval of the competent authority of the erstwhile BAC for appointment of the petitioner. It is also stated that the case of the petitioner falls under the general area and there is no record available in the office of the BTC and that there is no correspondence regarding the service of the petitioner as the school was under the jurisdiction of Deputy Inspector of Schools, Nalbari before existence of BTC. The said authority is the sole authority to clarify the matter since the BTC has started to pay the payment of salary from June, 2006.

It is further stated that the name of the petitioner has been reflected in the list of 2272 Nos. of illegal appointed teachers at UP/LPS by the then DEEO, Nalbari /DLS, as appraised in the Enquiry report submitted by a committee, headed by R. Deka, Dy. Secretary to the Government of Assam before existence of BTC. The Government of Assam in its speaking order vide Memo No. ELC/COP(7)49/2015/1502/23 dated 3/11/2016, had already taken decision stating that the claim of the petitioner for payment of arrear salary from June, 2006 onwards cannot be considered since his name is found in the list of 2272 numbers of illegal teachers of 1999 in Nalbari District.

8. The petitioner then filed his additional affidavit bringing on record an order dated 30.01.2021, issued by the Director, Elementary Education, Assam whereby the petitioner has been accommodated as Tutor at Bhurkuchi Srimanta Sankardev LP School in the Fixed Salary @ Rs.10,800/- p.m. w.e.f. 01.11.2020.

Submissions:-

9. Mr. Roy, learned counsel for the petitioner submits that this is the third round of litigation. He submits that the petitioner was appointed as Assistant Teacher by the Deputy Inspector of Schools, Nalbari on 29.11.1999. And he joined at Murmela Kumarpura LP School on 30.11.1999, and thereafter, on 13.12.2004, he was transferred to Bhurkuchi Srimanta Sankardev LP School and since then, he has been rendering his service, without any break till date. He received salary till May, 2006 and thereafter, he has not been paid his salary. Then the petitioner had preferred one writ petition, being WP(C) No. 709/2012, which was disposed of vide order dated 22.06.2015, directing the respondents to consider his case for payment of his salary.

9.1. Mr. Roy, further submits that due to non-compliance of the aforesaid order dated 22.06.2015, the petitioner had instituted a contempt proceeding, being Contempt Cas(C) No. 749/2015 and during pendency of the contempt petition the Commissioner & Secretary, Education (Elementary) Deptt., Assam, has passed the impugned order, dated 03.11.2016. Mr. Roy also submits that the claim of the petitioner was rejected on the ground that the name of the petitioner was included in the list of 2272 Nos. of illegal teachers.

9.2. But, Mr. Roy submits that in case of one person, namely Md. Ahmed Ali, whose name appeared in Sl. No. 662 in the said list, is granted the benefit of regular pay and since the present petitioner is also similarly situated, said benefit has to be extended to the petitioner also and while passing the impugned order dated 03.11.2016, the respondent No.2 had failed to consider the same. And the petitioner is treated with discrimination. And as the impugned order is discriminatory, the same is liable to be interfered with.

9.3. Referring to the additional affidavit of the petitioner, Mr. Roy submits that subsequently, vide order dated 30.01.2021, the Director, Elementary Education,

Assam has accommodated the petitioner as Tutor at Bhurkuchi Srimanta Sankardev LP School in the Fixed Salary @ Rs.10,800/- p.m. w.e.f. 01.11.2020. But, since the petitioner is rendering his service continuously, without any break he is entitled to salary from June 2006 till his appointment as Tutor vide order dated 30th January, 2021.

9.4. Mr. Roy has referred following decisions in support of his submission:-

- (i) **State of Assam and Ors. vs. Arunima Chetia, reported in (2016) 3 GLR 198;**
- (ii) **Writ Petition (C) No. 5286/2004 (Mrs. Usha Rani Goswami & 5 Others vs. State of Assam and 4 others);**
- (iii) **Central Inland Water Transport Corpn. vs. Brojo Nath Ganguly, reported in (1986) 3 SCC 156.**

10. Per contra, Mr. A. Phukan, the learned standing counsel for the respondent No.2 submits that the initial appointment of the petitioner appears to be doubtful and that he was allowed to draw regular scale of pay vide order dated 21.01.2001 but there was no reference with regard to passing of necessary training in respect of the petitioner to avail regular scale of pay and that there is averments in his petition as to when he completed his training in terms of his appointment order and that the salary of the petitioner was stopped from the month of June 2006 since his appointment as well as drawing regular scale of pay was not in accordance with law.

10.1. Mr. Phukan also submits that in connection with illegal appointments of teachers in Nalbari Districts, the Government has constituted three members Enquiry Committee, headed by R. Deka, ACS, Deputy Secretary to the Government of Assam and as per report of the said committee the name of the petitioner appeared in the list of 2272 Nos. of illegal teachers. Mr. Phukan also

submits that pursuant to the order of this Court in WP(C) No. 709/2012, the Commissioner and Secretary to the Government of Assam, Education (Elementary) Department passed a speaking order on 03.11.2016, whereby the claim of the petitioner for salary was rejected since his name appeared in the list of 2272 illegal teachers.

10.2. Mr. Phukan also submits that subsequently, vide order dated 30.01.2021, the Director, Elementary Education, Assam has accommodated the petitioner as Tutor at Bhurkuchi Srimanta Sankardev LP School in the Fixed Salary @ Rs.10,800/-p.m. w.e.f. 01.11.2020 and the petitioner has accepted the same and also given an undertaking that he will not claim any benefit of past service rendered by him prior to 01.11.2020. And in view of such undertaking, now the petitioner cannot turn around and claim the benefit of past service rendered by him prior to 01.11.2020, and under such circumstances, Mr. Phukan submits that the impugned order dated 03.11.2016, requires no interference of this Court.

11. On the other hand, Mr. B.C. Musahary, learned standing counsel, BTC, appearing for the respondent No.3 submits that Bhurkuchi Srimanta Sankardev LP School, in which the petitioner has been rendering his service falls outside the BTAD (erstwhile BAC) area. He also submits that there is no record of appointment order dated 29-11-1999, as well as records of advertisement, call letter, selection, publication of select list and approval of the competent authority of the erstwhile BTC for appointment of the petitioner. It is also the submission of Mr. Musahary that the school of the petitioner falls under the jurisdiction of Deputy Inspector of Schools, Nalbari before existence of BAC and said authority is the sole authority to clarify the matter since the BTC has started to pay the payment of salary from June, 2006.

11.1. Further submission of Mr. Musahary is that the name of the petitioner has been reflected in the list of 2272 Nos. of illegal appointed teachers at UP/LPS by the then DEEO, Nalbari/DLS, Nalbari/DIS as per Enquiry report submitted by a committee headed by R. Deka, Dy. Secretary to the Government of Assam before existence of BAC and that the Government of Assam vide impugned order dated 03/11/2016, had already rejected the claim for arrear salary of the petitioner as his name is found in the list of 2272 numbers of illegal teachers of 1999 in Nalbari District. Therefore, it is contended to dismiss this petition.

12. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 03-11-2016 (**Annexure-24**), passed by the Commissioner and Secretary, Elementary Education Department, Assam and other annexures, annexed with the petition and the accommodation order dated 30.01.2021 by which the petitioner was accommodated as Tutor.

13. From the contentions being made in the respective pleadings of the parties and also from the submissions of learned counsel for both the parties, following facts and circumstances emerges:-

- (i) The petitioner was appointed as Assistant Teacher by the Deputy Inspector of Schools, Nalbari on 29.11.1999, and posted him at Murmela Kumarpara LP School and he joined there on 30.11.1999, and thereafter, on 13.12.2004, he was transferred to Bhurkuchi Srimanta Sankardev LP School.
- (ii) The petitioner was paid his salary till May, 2006, and thereafter, no salary is paid to him, in spite of the continuous service being

rendered by him without any break.

- (iii) The petitioner then preferred one WP(C) No. 709/2012, and vide order dated 22.06.2015, this Court had disposed of the said petition directing the respondent authorities to consider his case for payment of his salary.
- (iv) The order, dated 22.06.2015, was not complied with for which the petitioner had instituted a contempt proceeding, being Contempt Case (C) No. 749/2015.
- (v) And during pendency of the contempt petition, the Commissioner and Secretary, Education (Elementary) Deptt., Assam, has passed the impugned order, dated 03.11.2016, rejecting the claim of the petitioner.
- (vi) The ground for rejection is that the name of the petitioner appeared in the list of 2272 Nos. of illegally appointed teachers.
- (vii) But, in case of one similarly situated person, namely, Md. Ahmed Ali, whose name also appeared in Sl. No. 662 in the list of illegal teachers, is granted the benefit of arrear salary and pay.
- (viii) Thereafter, vide order dated 30.01.2021, the Director, Elementary Education, Assam has accommodated the petitioner as Tutor at Bhurkuchi Srimanta Sankardev LP School in the Fixed Salary @ Rs.10,800/- p.m. w.e.f. 01.11.2020 and the petitioner has accepted the same.

14. It appears that the impugned order, dated 03.11.2016, so passed by the respondent No.1 i.e. Commissioner and Secretary, to the Government of Assam,

Department of Elementary Education, Assam, is enclosed with the petition as Annexure-24, which read as under:-

**GOVERNMENT OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT**

No. ELC/COP(C)749/2015/1502/23 Dated Dispur the 3rd Nov 2016

O R D E R

Read:- The order dtd 22/06/2015 passed by the Hon'ble High Court in WP(C)709/2012 filed by Shri Atul Ch. Das of Nalbari District for release of his salary.

Also read:-

1. The report submitted by the DEE, Assam vide his letter No. EBC 34/2007/Pt/487 dtd.22/09/2008.
2. The order of the Deputy Secretary, Elementary Education Department vide letter No.AEE.269/200/Pt/35 dtd.19/01/2009.
3. The order of the DEE, Assam vide letter No.ECA-46/2006/492 dtd. 14/11/2006.

Findings:- The petitioner of Atul Ch. Das appears to be appointed at Murmela Kumarpara LP School of Nalbari District on 29/11/99. He appears to be transferred and kept attached at Bhurkuchi Srimanta Sankardeva LP School on 13/12/2004. It appears that the petitioner did not receive his salary from 01/06/2006.

An enquiry Committee was constituted in respect of illegal, irregular and transferred teachers in Nalbari district headed by R. Deka, ACS, Dy. Secretary to the Govt. of Assam, Education Department and the committee prepared two number list containing 436 and 2272 nos of illegal teachers in Nalbari district. The name of the petitioner Shri Atul Ch. Das appeared in the list 2272 of illegal teachers.

Order:- Since the name of the petitioner Shri Atul Ch. Das appeared in the list of 2272 illegal teachers of Nalbari District. Therefore, the claim of the petitioner for payment of his salary from June, 2006 onwards cannot be considered.

This is issued to compliance of order dtd. 22/06/2015 passed by the Hon'ble High Court in WP(C)709/2012

Sd/-Preetom Saikia, IAS

Commissioner & Secretary to the Govt. of Assam
Education (Elementary) Department.

14.1. Thus, a cursory perusal of the impugned order and also from the stand of the respondent No.2 it becomes apparent that the only ground for rejection of the claim for arrear salary of the petitioner is that the name of the petitioner Shri Atul Ch. Das appeared in the list of 2272 illegal teachers of Nalbari District. Therefore, the claim of the petitioner for payment of his salary from June, 2006 onwards cannot be considered.

14.2. But, nowhere in the affidavit filed by the state respondent it had denied the categorical averment of the petitioner that he has continuously been

rendering service with effect from 01.06.2006 till his accommodation as Tutor vide order dated 30.01.2021. The state respondent had never terminated/discharged the petitioner from service. No such averment is being made in the affidavit filed by it. The factum of rendering service continuously by the petitioner with effect from 01.06.2006 remained uncontroverted. Besides, non -payment of salary to the petitioner for the aforesaid period is apparent from the impugned order itself and also from the affidavit filed by it.

14.3. Now, the issue to be addressed is - can the state respondent extract the service of the petitioner with effect from 01.06.2006 till his accommodation as Tutor vide order dated 30.01.2021, without paying salary. This issue was dealt with by Hon'ble Supreme Court in the case of **Sukhdeo Pandey vs. Union of India**, reported in (2007) 7 SCC 455, wherein it has been held that it is well-settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. The relevant para is extracted herein below:-

“17. Before parting with the matter, however, we may make one thing clear. From the record, it appears that after the appellant was reverted from the cadre of Postman to his substantive post of EDBPM, he has not joined duty and has not worked. No interim relief was granted by any court including this Court in his favour. In the circumstances, it was obligatory on him to report for duty as EDBPM. He, however, failed to do so. We, therefore, hold that if the appellant has not worked, he will not be paid salary for the period for which he has not worked. It is well-settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. In other words, the doctrine of “no work, no pay” is based on justice, equity

and good conscience and in absence of valid reasons to the contrary, it should be applied. In the present case, though the appellant ought to have joined as EDBPM, he did not do so. He, therefore, in our considered opinion, cannot claim salary for that period. But he will now be allowed to work as Postman. He will also be paid salary as Postman but we also hold that since the action of the respondent authorities in reverting him to his substantive post of EDBPM was strictly in consonance with law, the appellant would be entitled to pensionary and other benefits not as Postman but as EDBPM which post he was holding substantively.”

14.4. Again a Division Bench of this Court in the case of Arunima Chetia (supra), answered the same as under:-

“9. Upon hearing the rival contentions and after going through the order of the learned single Judge in question, it is an admitted fact that all the respondents in the appeals are continuously working as teacher and their salaries are being paid by virtue of the Court's order. Arrears of salary from July 2007 are not being paid. When the respondents are continuously serving as teacher, the question whether they are illegally appointed or otherwise it matter-less. However, for the services rendered by the private respondents and availed by the State, on the principle of "quantum meruit" the salaries have to be paid. In that view of the matter we find no ground to interfere in the order of the learned single Judge. Accordingly the appeals are dismissed.”

14.5. And this settled proposition of law laid down in the aforesaid cases, eschewed consideration of the respondent No.1 while the impugned order was

passed on 03.11.2016, though the decision was rendered by this Court on 18.03.2015. And in view of the decision of the aforesaid proposition of law, the ground for rejection of claim of the petitioner for payment of arrear salary fails to withstand the legal scrutiny and on this count alone and also on the principle of "**quantum meruit**" the same is liable to be interfered with.

14.6. In the case of **Man Singh vs. the State of Uttar Pradesh Through Secretary & Ors.**, reported in 2022 LiveLaw(SC) 341, also Hon'ble Supreme Court has held as under:-

“The Single Judge in its order dated 11.05.2000 maintained the order dated 24.12.1998 of cancellation of appointment of the appellant as Principal on account of violation of Chapter 3 Rule 4 of U.P. Educational Manual prescribes that a close relation mentioned in said Rule cannot be appointed as Principal.

The appellant was appointed as a principal in the year 1974-75 when junior High School was upgraded as High School and was recognized by the State Government. Thus, the appellant has worked for almost 24 years before the services came to be cancelled for the reason that he is Reason: relative of the member of the Selection Committee.

The order dated 24.12.1998 also records that the money be recovered from the appellant which has been paid to him, as a result of his irregular appointment for the post of Principal.

We find that the High Court has failed to consider the fact that even if the appointment was irregular, the appellant had discharged the duties and in lieu of duties, he had to be paid. The State cannot take any

work from any employee without payment of any salary.”

14.7. Moreover, the respondent authority had not denied that one Md. Ahmed Ali, whose name also appeared in Sl. No. 662 in the list of illegal teachers, is granted the benefit of arrear salary and pay. **It is well settled in the case of State of Karnataka vs. C. Lalitha**, reported in (2006) 2 SCC 747, that service jurisprudence evolved by Hon’ble Supreme Court from time to time postulates that all persons similarly situated should be treated similarly. But, in the case in hand the petitioner is being treated differently from said Md. Ahmed Ali. Thus, the right of the petitioner guaranteed by Article 14 of the Constitution of India is violated. Mr. Roy, learned counsel for the petitioner has rightly pointed this out and this Court finds substance in the same.

15. Now, moving forward to the submission of Mr. Phukan, the learned standing counsel for the respondent No. 1, 2, 4 and 5, that the petitioner was accommodated as Tutor at Bhurkuchi Srimanta Sankardev LP School in the Fixed Salary @ Rs.10,800/- p.m. w.e.f. 01.11.2020, and that the petitioner has accepted the same and also given an undertaking that he will not claim any benefit of past service rendered by him, prior to 01.11.2020, and in view of such undertaking, now the petitioner cannot turn around and claim the benefit of past service rendered by him prior to 01.11.2020, this Court afraid such an argument cannot be accepted in view of settled proposition of law by the Hon’ble Supreme Court in the case of **Brojo Nath Ganguly (supra)**, wherein, dealing with the issue of labour and service and unequal bargaining power of the labour qua the State, it has been held as under:-

“89. Should then our courts not advance with the times? Should they still continue to cling to outmoded

concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to “uphold the Constitution and the laws”. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can

obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.”

15.1. Further, a co-ordinate Bench of this Court also dealt with this issue in Writ Petition (C) No. 5286/2004 (Mrs. Usha Rani Goswami & 5 Others vs. State of Assam and 4 others) and held as under:-

“11. When the Government secured such undertaking the teachers were desperate and were serving without salaries which was stopped w.e.f. May 1995. They were also anxious to have their services regularized. In such backdrop, when the State offered to regularize the services of the teachers with a pre-condition

that they will not claim their arrear salaries, the teachers were hardly in a position to bargain and resist giving the undertaking to the State, as they were on the back foot and were not on equal bargaining position.

12. But in this context of the unequal bargaining power of the State vis-a-vis the teachers who were desperate for salaries and regularization, the Clause incorporated by the State through unequal bargaining power is nothing but an unconscionable covenant, forced by the State on a group who hardly had any strength to resist the might of the State. In fact, the Petitioners had practically no choice in the matter and had to relinquish their claim for arrear salaries, despite rendering service for long years. This type of covenant can't be said to be right or reasonable and amounts to unconscionable contract, as has been held by the Apex Court in Brojo Nath Ganguly (supra).

13. Accordingly having regard to the decision of the Apex Court in [Government of Orissa Vs. Ashok Transport Agency and Others.](#) the offending contract is declared to be a void covenant which can't be enforced in law. Unlike a voidable contract, it is ab initio void and the Court is disinclined to refuse relief to the Petitioners, on the basis of such void covenant.

14. In view of above and considering the law laid down by the Apex Court in Sukhdeo Pandey (Supra) and this Court's decision in the case of State Land Use Board Casual Employees' Association (Supra), I declare that the Petitioners are entitled to their arrear salaries from their respective dates of appointment.

15.2. The proposition of law, that can be crystallized from the aforesaid decisions, is that “the courts will not enforce and will, when called

upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power.” It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line, in a prescribed or standard form, or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be.

15.3. In the instant case, the petitioner had not been paid salary since 01.06.2006, till his accommodation as Tutor, w.e.f. 01.11.2020. In spite of the salary not being paid, he continued to render his service without any break, factum of which has never been disputed by the respondent authorities at any point of time and in its pleadings. The petitioner was in dire need of a source of his livelihood. Under such circumstances, when the offer for accommodating him as Tutor was made in lieu of his benefit of his past service, he easily accepted the same as it was his dire need. His bargaining power qua the state respondents is grossly unequal. And as such, the undertaking so given or the contract, so entered into by the petitioner and the state respondents is not only voidable but also void ab-initio.

15.4. And this Court, having taken oath to “uphold the Constitution and the laws”, is unable to uphold such an unreasonable and void contract and is under constitutional obligation not to enforce the same, rather to strike down such unfair and unreasonable clause in the contract, entered into by the petitioner,

who is not equal in bargaining power. Therefore, this Court is unable to record concurrence with the submission of Mr. Phukan, learned standing counsel for the state respondents. And accordingly, the same stands overruled.

16. In the result, this Court finds sufficient merit in this petition and accordingly, the same stands allowed. By a mandamus of this Court, the State respondents, more particularly the respondent No. 1 and 2 are directed to pay the arrear salary to the petitioner, with effect from 01.06.2006 till 01.11.2020, on which he was accommodated as Tutor.

17. Let the exercise mentioned in para No.16 be carried out within a period of three months from the date receipt of certified copy of this order. The petitioner shall obtain a certified copy of this order and place the same before the respondent authorities, within a week from today. In the event of failing to carry out the direction in para 16, the entire amount of arrear salary shall carry interest @ Rs. 9% per annum from the date of accrual till final payment.

18. In terms of above, this writ petition stands disposed of, leaving the parties to bear their own costs.

J U D G E

Comparing Assistant