GAHC010100852025

2025:GAU-AS:15584

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

1. WRIT APPEAL NO.191 OF 2025

Dr. Satyajit Paul,
Son of Late Prasanta Kumar Paul,
Resident of House No.16, H.S. Road, Chatribari,
Guwahati – 781008.

.....Appellant

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Education (Technical) Department, Dispur, Guwahati – 781006.

2. The Principal Secretary, Higher Education (Technical) Department, Government of Assam, Dispur, Guwahati – 781006.

3. The Joint Secretary to the Government of Assam, Higher Education (Technical) Department, Dispur, Guwahati – 781006.

4. The Director, Education (Technical) Department, Government of Assam, Kahilipara, Guwahati – 781022.

5. Dr. Rupanjali Nath,
Professor and HOD, Mechanical Engineering Department, Jorhat Engineering College, Jorhat – 785007.

.....Respondents

2. WRIT APPEAL NO.184 OF 2025

Dr. Satyajit Paul,
Son of Late Prasanta Kumar Paul,
Resident of House No.16, H.S. Road, Chatribari,
Guwahati – 781008.

.....Appellant

-***Versus***-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Education (Technical) Department, Dispur, Guwahati – 781006.

2. The Principal Secretary, Higher Education (Technical) Department, Government of Assam, Dispur, Guwahati – 781006.

3. The Director, Education (Technical) Department, Government of Assam, Kahilipara, Guwahati – 781022.

4. The Principal Accountant General, Maidam Gaon, Beltola, Guwahati.

5. The Principal, Jorhat Engineering College, Jorhat.

.....Respondents

3. WRIT APPEAL NO.193 OF 2025

Dr. Satyajit Paul,
Son of Late Prasanta Kumar Paul,
Resident of House No.16, H.S. Road, Chatribari,
Guwahati – 781008.

.....Appellant

-***Versus***-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Education (Technical) Department, Dispur, Guwahati – 781006.

2. The Principal Secretary, Higher Education (Technical) Department, Government of Assam, Dispur, Guwahati – 781006.

3. The Director, Education (Technical) Department, Government of Assam, Kahilipara, Guwahati – 781022.

4. The Principal Accountant General, Maidam Gaon, Beltola, Guwahati.

5. The Principal, Jorhat Engineering College, Jorhat.

.....Respondents

– **B E F O R E** –

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Petitioner(s)	**:** Mr. K.N. Choudhury, Senior Advocate, assisted by Mr. R.M. Deka, Advocate.
For the Respondent(s)	**:** Mr. K. Gogoi and Mr. S. Das, Standing Counsel, Education (Higher) Department.
	: Mr. R.K. Talukdar, Standing Counsel, Accountant General.
Date on which judgment is reserved	**:** 13.11.2025.
Date of pronouncement of judgment	**: 18.11.2025**.
Whether the pronouncement is of the operative part of the judgment?	**:** Not applicable.
Whether the full judgment has been pronounced?	**:** Yes.

JUDGMENT & ORDER (CAV)

(Ashutosh Kumar, CJ)

All the 3(three) writ appeals have been taken up together and are being disposed off by this common judgment.

2. We have heard Mr. K.N. Choudhury, learned Senior Advocate, assisted by Mr. R.M. Deka, learned Advocate for the appellants; Mr. K. Gogoi and Mr. S. Das, learned Standing Counsel, Education (Higher) Department and Mr. R.K. Talukdar, learned Standing Counsel, Accountant General for the official respondents.

3. These appeals are directed against the common judgment and order dated 10.04.2025 passed by a learned Single Judge of this Court in WP(C) No.2789/2024; WP(C) No.5804/2022 and WP(C) No.295/2023.

4. It would only be appropriate to first refer to the facts of the case before adverting to the impugned judgment.

5. The appellant, pursuant to a valid selection process conducted by the Assam Public Service Commission (APSC), was appointed as a Lecturer in Mechanical Engineering Department in Gauhati University. Thereafter, he acquired higher degrees and rose to the rank of Associate Professor under the Career Advancement Scheme (CAS) with effect from 01.01.2006.

After the establishment of the Golaghat Engineering College in the year 2018, considering the past record of the appellant, he was

appointed as In-charge Principal of the said Engineering College till the selection of a regular Principal of the College.

6. The Government of Assam in the Higher Education (Technical) Department, vide Office Memorandum dated 29.07.2021, raised the age of superannuation of the incumbents serving in Professor Grade, promoted through CAS of the Government Engineering Colleges of Assam, from 60 to 65 years.

In the meantime, another development took place.

The All India Council for Technical Education (AICTE), vide a Public Notice dated 09.08.2021, extended the date for completing Orientation/Refresher Courses/Short Term Training Programmes/ Continuing Education Programmes, for promotion under CAS for Faculty Members/Librarians/PTIs in Degree/Diploma level Institutions up to 31.12.2018 for all the candidates to ensure uniformity. All the AICTE approved Institutions were requested to comply with the above provision of extension of time for the purposes of promotion.

7. Thereafter, the scrutiny process began for promoting the Assistant Professors to the Grade of Professor. The Head of Department of Mechanical Engineering Department, Jorhat Engineering College submitted a scrutiny report regarding the appellant, confirming that he had completed the mandatory Short-Term Training programmes of 1(one) week and 2(two) weeks duration on 17.05.2018 in accordance with the AICTE Notification and, therefore, he became eligible for promotion to the post of Professor under the CAS on or after 18.03.2018.

8. Based on the said scrutiny report, the Director, Technical Education, Assam submitted a proposal on 16.03.2022 before the Government of Assam in the Department of Education for adoption of AICTE Public Notice regarding extension of date for completing such courses up to 31.12.2018 for the purposes of promotion of Faculty Members of Engineering Colleges under the CAS.

9. The Government of Assam in the Education Department adopted the recommendations of the AICTE regarding extension of the date for completing the Short-Term Training Programme for promotion of Faculty Members of Engineering Colleges under the CAS up to 31.12.2018 vide Office Memorandum dated 28.03.2022.

This had prepared the stage for promotion of the appellant to the post of Professor, who was set to retire at the age of 60 years on 31.03.2022.

10. The Departmental Promotion Committee (DPC), however, in its meeting dated 30.03.2022, i.e. a day before the appellant was to retire from service, recommended him for promotion to the post of Professor (Stage-5), at the Grade Pay of Rs.9,000 – Rs.10,000/- with effect from 17.05.2018. This recommendation by the DPC was signed by the Education Minister, Government of Assam on 31.03.2022.

Pursuant to the recommendation of the DPC, the appellant stood promoted to the post of Professor vide Notification dated 05.04.2022, which was about 4(four) days after his retirement on 31.03.2022.

11. The appellant vide application dated 08.04.2022 informed the Director of Technical Education about his promotion with effect from 17.05.2018 and requested him to forward the Notification of promotion to the Office of the Accountant General for issuance of Payslip for Professor to enable him to draw his salary of Professor.

By this time, the appellant received the letter dated 31.03.2022 issued by the Principal of Jorhat Engineering College intimating him that he has been released from service with effect from 31.03.2022 as he had attained the age of superannuation of 60 years as an Associate Professor.

12. An attempt was made by the appellant to have the order dated 31.03.2022, referred to above, revoked as he had been promoted to the post of Professor with effect from 17.05.2018 vide order dated 05.04.2022 in terms of the recommendations made by the DPC in its meeting dated 30.03.2022, but such an attempt came a cropper.

The appellant was informed that the Office of the Accountant General had issued an order of 'Nil Payslip' with effect from 01.04.2022 against his substantive post at Jorhat Engineering College.

13. Thereafter, the appellant approached the higher authorities in the Education (Technical) Department to regularise the service gap of 4(four) days with a request to provide him the extension of service as a Professor till the age of 65 years, but to no avail.

14. This forced the appellant to file a writ petition before this Court vide WP(C) No.5804/2022, challenging the order dated 31.03.2022,

whereby he was released from service from the said date.

A Bench of this Court, without getting into the facts in detail, passed an order dated 08.09.2022, directing the parties to maintain *status quo* so far as the posting of the appellant was concerned.

Such *status quo* order was kept on being extended.

However, one Dr. Rupanjali Nath (respondent No.5 in Writ Appeal No.191/2025) was made as the In-charge Principal of the College.

15. The said action of the respondents also was challenged by the appellant vide WP(C) No.295/2023, in which the operation of the order making respondent No.5 in Writ Appeal No.191/2025 as the In-charge Principal of the College, was stayed.

16. While in the first of the writ petitions preferred by the appellant, namely, WP(C) No.5804/2022, challenging the order releasing him from service after his superannuation, an affidavit was filed by the respondent No.1 therein intimating that the Office Memorandum dated 28.03.2022, adopting the recommendation of the AICTE regarding extension of the date for completion of Short-Term Training Programme, was withdrawn and a new Office Memorandum dated 19.05.2023 was issued.

It was also stated in the said affidavit that subsequent to withdrawal of the Office Memorandum dated 28.03.2022, referred to above, the Notification dated 05.04.2022 regarding promotion of the appellant also ceased to have any effect and, therefore, the appellant could not have been considered for promotion on the strength of the Office Memorandum dated 28.03.2022.

17. Thereafter, another writ petition was filed by the appellant vide WP(C) No.2789/2024 seeking expunction of the afore-noted statement in the affidavit, referred to above, by respondent No.1 in No.5804/2022 as also for quashing the Office Memorandum dated 19.05.2023.

18. The Office Memorandum dated 19.05.2023 is being extracted herein below for the sake of completeness:

"*eFile No.197594/1* *Dated Dispur, the 19th May, 2023*

Office Memorandum

Sub: Adoption of AICTE Public Notice regarding requirement/Extension of date for completing Short Term Training Programs/O rientation/ Refreshers Course for promotion of Faculty Members of Engineering Colleges and Polytechnics under Career Advancement Schemes.

In cancellation of earlier Govt. O.M. No.ATE.06/ 2022/27 dated 28/3/2022 and in partial modification of the OM No.ATE-68/2013/780 dated 17/01/2018, regarding the Career Advancement Scheme (CAS) for teachers eligible for promotion under CAS for the period 01/01/2006 to 07/11/2015, the date of requirement for participation/completion in Orientation/Refresher Courses/Short Term Training Programmes Continuous Education Programmes for promotion under CAS is hereby extended up to 31/12/2018 with respect to the 6th CPC for faculty members/Librarians/PTIs in Degree/ Diploma Level Institutions as per Public Notice issued by UGC vide Public Notice 2-16/2002(PS)/Pt.F1.II dated 16th October 2018 and by AICTE vide F. No.P&AP/Public Notice/CAS/ 571/2021 dated 05/08/2021.

This has the approval of the Finance (PRU) Department vide their e-File No.153735."

19. The contention of the appellant before the Writ Court as also before this Court is that there is no difference in the earlier Office Memorandum dated 28.03.2022 and the afore-noted Office Memorandum dated 19.05.2023, except for the fact that the later Office

Memorandum dated 19.05.2023, adopting the AICTE Public Notice regarding extension of the date for completing the Short-Term Training programmes has the approval of the Finance (PRU) Department. The earlier Office Memorandum dated 28.03.2022 was without the financial concurrence.

20. The result of all the above was that the appellant was treated as having superannuated as Assistant Professor after attaining the age of 60 years on 31.03.2022, and the promotion granted to him with retrospective effect, was set at naught.

21. The appellant contends that in view of his promotion to the post of Professor with effect from 17.05.2018, his retirement date had to be extended till 31.03.2027. It was highly unreasonable and unjustified for the respondents to have withdrawn the Office Memorandum dated 28.03.2022, which was only a modification of the earlier Office Memorandum dated 17.01.2018 and issuance of a new Office Memorandum dated 19.05.2023, by which time, the appellant had already superannuated.

22. Mr. K.N. Choudhury, learned Senior Advocate for the appellant impressed upon this Court that the Office Memorandums dated 28.03.2022 and 19.05.2023, referred to above, related only to the extension of time for completing the Short-Term Training Programmes/ Orientation/Refresher Courses for promotion of Faculty Members under the CAS up to 31.12.2018. Only because the earlier Office Memorandum dated 28.03.2022 did not have the financial sanction, the same was

withdrawn by a later Office Memorandum dated 19.05.2023.

It was further submitted that the Office Memorandum dated 28.03.2022 was issued with the approval of the State Government and, therefore, the concurrence of the Finance Department could have been obtained subsequently.

It was only a curable defect.

23. On the other hand, the contention of the respondents is that any Public Notice, without the concurrence of the Finance (PRU) Department, is a nullity. Since the appellant was promoted to the post of Professor under the Office Memorandum dated 28.03.2022, which was later recalled for want of financial sanction, the promotion of the appellant also ceased to have any effect.

24. The learned Single Judge, adverting to Rule 10 of the Assam Rules of Executive Business, 1968, which provides that no Department shall, without previous consultation with the Finance Department, authorize any order, held that the appellant was considered for promotion and was promoted to the post of Professor only due to the Office Memorandum dated 28.03.2022, which did not have any sanction of the Finance Department and thus, was invalid. In that event, the promotion of the appellant also stood stymied.

In support of the afore-noted reasoning, the learned Single Judge further held that there was nothing on record to show that the Finance Department had even been consulted with in respect to the contents of the Office Memorandum dated 28.03.2022, nor was there any record of any Cabinet decision for issuing the Office Memorandum

dated 28.03.2022.

The Assam Rules of Executive Business, 1968, having been made in exercise of the powers conferred by Clauses (2) & (3) of Article 166 of the Constitution of India, could not have been avoided by the respondents.

Thus, the withdrawal of the afore-noted Office Memorandum was necessary.

It was only fortuitous that the appellant lost his chances of being promoted to the post of Professor from an anterior date because of such withdrawal.

25. The learned Single Judge also relied upon a decision of the Supreme Court in ***Government of West Bengal & Ors. -Vs- Dr. Amal Satpathi & Ors. :: 2024 SCC OnLine SC 3512***, wherein the respondent No.1 (Dr. Amal Satpathi) was promoted to the post of Principal Scientific Officer on an officiating basis. There had been an amendment to the relevant Recruitment Rules, making him eligible for promotion to the post of Chief Scientific Officer. The Department had initiated the promotional process by approaching the Public Service Commission which recommended the name of respondent No.1 (Dr. Amal Satpathi) for promotion to the post of Chief Scientific Officer. However, the concerned Department had received the final approval for promotion on a date which was after the respondent No.1 had already superannuated. Since the decision had been made prior to his superannuation, he had made a representation to the Department to give effect to his promotion, but the Finance Department did not concur on the ground that unless the

employee assumes the duties and responsibilities of the promotional post before his superannuation, the recommendation of promotion cannot be given effect to.

26. The matter travelled to Supreme Court, wherein relying on the judgment of ***Bihar Electricity Board & Ors. -Vs- Dharamdeo Das :: 2024 SCC OnLine 1768; Ajay Kumar Shukla & Ors. -Vs-Arvind Rai & Ors. :: (2022) 12 SCC 579; Ajit Singh & Ors. -Vs- State of Punjab & Ors. :: (1999) 7 SCC 209*** and ***State of Bihar & Ors. -Vs- Akhouri Sachindra Nath & Ors. :: (1991) Supp. 1 SCC 334***, it was held that it is no longer in dispute that a promotion is effective from the date it is granted and not from the date when a vacancy occurs or when the post itself is created. The right to be considered for promotion no doubt accrues to an employee, which is a statutory right, but there is no fundamental right to promotion itself.

27. In ***Akhouri Sachindra Nath*** (supra), the Bench recalled, it was held that retrospective seniority cannot be given to an employee from a date when he was not even born in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others.

28. The Supreme Court in ***Dr. Amal Satpathi*** (supra) has, thus, concluded that while an employee's right to be considered for promotion is understandable but he does not have an absolute right to promotion itself.

The legal precedents have established that promotion becomes effective only on the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation.

Since in that case, the respondent No.1 had superannuated before the promotion was effectuated, he was even not found to be entitled to retrospective financial benefits associated with the promotional post of Chief Scientific Officer as he did not serve in that capacity.

29. Based on the afore-noted decisions, the learned Single Judge upheld the decision of the Government to withdraw the Office Memorandum dated 28.03.2022 and rejected all the contentions of the appellant.

30. Assailing the impugned judgment, Mr. K.N. Choudhury, learned Senior Advocate for the appellant submitted that the AICTE, in terms of the decision of the University Grants Commission (UGC) contained in the Public Notice dated 16.10.2018, had decided to extend the date of completing the Orientation/Refresher Course, etc., for promotion under CAS up to 31.12.2018 vide Public Notice dated 09.08.2021.

Thus, the original decision for extension of completing the Orientation Course/Refresher Course for promotion was up to 31.12.2018, which was because of the UGC Regulations. Therefore, in terms of Rule 10(1) of the Assam Rules of Executive Business, 1968, there was no requirement of obtaining any financial approval in respect of the Office Memorandum dated 28.03.2022 and subsequent promotion of the appellant to the post of Professor under the CAS.

It was also submitted that the Assam Rules of Executive Business, 1968 are not mandatory, but are directory in nature and are intended only to regulate the internal procedure of the Government. Any

non-compliance on a minor issue ought not to invalidate executive action, unless there is a specific prejudice or *mala fide*. The lack of prior approval of the Finance Department in Office Memorandum dated 28.03.2022 is only a procedural irregularity, which is highly curable.

31. After having heard the learned counsel for the parties and having gone through the records, we are of the view that the appellant was promoted to the post of Professor with effect from a retrospective date but such decision was taken after his superannuation. The decision to recall the promotion was also post-retirement. However, with the intervention of the Court, he continued to serve on the post as Professor till the date of his superannuation as Associate Professor.

True it is that the DPC recommended the name of the appellant for promotion on a day prior to his superannuation at the age of 60 years but such recommendation was primarily based on an entitlement created by virtue of Office Memorandum dated 28.03.2022, which ultimately stood withdrawn for lack of financial approval. The appellant, therefore, could not assume the responsibilities of the post of Professor as he was released from service on 31.03.2022, but as noted above, till his retirement, he continued as having promoted from the retrospective date.

Thus, giving the appellant an extension of his service tenure till the year 2027 would not be in accordance with law. The recommendation for promotion cannot be actually effected after superannuation. However, since the appellant was promoted under the CAS, based on fulfilling the eligibility criteria unlike regular promotions,

any promotion under such scheme to be made notionally effective would not require any vacant post.

32. Precisely for this reason, we have found that the Principal, Jorhat Engineering College communicated to the appellant that from the retrospective date of promotion till the date of his superannuation on 31.03.2022, he would perhaps be entitled for financial benefits but only when the relevant Payslip is received in the Office of the Principal of Jorhat Engineering College.

33. True it is that if a promotion is not effected, as was in the case of the respondent No.1 (Dr. Amal Satpathi) in ***Government of West Bengal & Ors. -Vs- Dr. Amal Satpathi & Ors.*** (supra), he was also not held to be entitled to any retrospective financial benefits associated with the promotional post of Chief Scientific Officer as he did not serve in that capacity.

But the same principle would not apply *proprio-vigore* in the case of the appellant herein, who was the in-charge Principal and was promoted specifically with retrospective date vide a Notification issued post his retirement, which, in turn, was based on a Scheme (CAS) and only after it was found that he fulfilled the criteria.

34. Thus, in our estimation, the appellant would be entitled for only the financial benefits of the higher post of Professor from 17.05.2018, i.e. the notional date from which he was promoted till the date of his superannuation on 31.03.2022. However, since the order of promotion lapsed with the recall of the Office Memorandum dated 28.03.2022, he

shall be deemed to have retired as an Associate Professor and his pension would be fixed on the salary of Associate Professor which he had been getting.

35. We thus order accordingly.

36. The judgment impugned is thus modified to the extent by clarifying that the appellant would only be entitled for financial benefits associated with the post of Professor from 17.05.2018 to 31.03.2022 and no further.

37. The appeals stand allowed to the extent indicated above.

JUDGE **CHIEF JUSTICE**

Comparing Assistant