

GAHC010007182013



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

Case No. : WP(C)/2936/2013

TAPAN KUMAR DEB

S/O- LT. TARAK CHANDRA DEB, SECURITY GUARD, OFFICE OF THE CHIEF
SECURITY OFFICER, ASSAM POWER DISTRIBUTION COMPANY LTD. LAZ,
BIJULEE BHAWAN, PALNTABAZAR, GHY- 1.

VERSUS

THE ASSAM POWER DISTRIBUTION COMPANY LTD. and 5 ORS
REP. BY IT'S CHAIRMAN CUM MANAGING DIRECTOR, BIJULEE BHAWAN,
PALTANBAZAR, GHY- 1.

2:THE CHAIRMAN CUM MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LTD. ASEB
BIJULEE BHAWAN
PALTANBAZAR
GHY- 1.

3:THE CHAIRMAN
ASSAM STATE ELECTRICITY BOARD
BIJULEE BHAWAN
PALTANBAZAR
GHY- 1.

4:THE DIRECTOR PERSONNEL
ASSAM STATE ELECTRICITY BOARD
BIJULEE BHAWAN
PALTANBAZAR
GHY- 1.

5:THE CHIEF SECURITY OFFICER
ASSAM STATE ELECTRICITY BOARD
BIJULEE BHAWAN

PALTAN BAZAR
GHY- 1.

6:THE GOVT. OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
DEPTT. OF POWER ELECTRICITY
DISPUR
GHY- 6

Advocate for the Petitioner : MR.S NATH

Advocate for the Respondent : SC, APDCL

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner :Mr. S Nath, Advocate

For the Respondents : Mr. SP Sarma, Advocate

Date of Hearing : 13.06.2023

Date of Judgement : 13.06.2023

JUDGEMENT & ORDER (ORAL)

1. Heard Mr. S Nath, learned counsel for the petitioner. Also heard Mr. SP Sarma, learned standing counsel for the APDCL.
2. The present petitioner along with another person approached this court by way of WP(C) No. 8449/2003. The grievance raised was that though the petitioner was initially appointed on contract basis, the appointment order clearly provided that they would be paid in the scale of Rs. 910-20-1110-25-1235-27-1370/- per month. However, it was their case that they were given Rs. 910 per month without giving any increment and the petitioner

was entitled to yearly increment as admissible under Rules as such the payment of Rs. 910 only per month to the petitioner for the period from 1989 to 1997 (i.e. the period under which the petitioner was contractual employee).

3. A conclusion was arrived by this court in the aforesaid writ petition that the petitioners were appointed on contract basis for one year in the scale of Rs. 910-20-1110-25-1235-27-1370/- per month and that services of the petitioners in the aforesaid scale of pay continued in said status up to 1997 when they were appointed on regularization.
4. It was a contention by the respondent Board in the said writ petition that the service condition of the petitioner as regards contractual period from 1989 to 1997 would be governed by the terms of the contract agreement entered into between the petitioner and the Board as well as by the terms of appointment order.
5. Thereafter, this court concluded on the aforesaid factual matrix and determination that the increment claimed by the petitioner can be examined by the Board by referring to the term of contract agreement stated to have been entered into by the petitioner and the Board and the appointment order. Accordingly, by an order dated 21.02.2012 said writ petition was disposed of with a direction to the appropriate authority to examine the claim of the petitioner in light of the appointment order read with the contract agreement entered into the petitioner and respondent Board at the relevant point of time. Subsequent to such direction, by an order dated 12.04.2012, the claim of the petitioner was rejected, which is impugned in the present writ petition.

6. The claim of the petitioner was rejected on the ground that the contractual engagement had no direct relation with the subsequent appointment, therefore, claim of increment benefit for the past broken period of service in the present post is not tenable.
7. From the aforesaid, it is clear that the Director (Personnel), ASEB while issuing the impugned order dated 12.04.2012 has not considered the determination made and the direction issued by this court under its order dated 21.02.2012 in WP(C) 8449/2003 inasmuch as it was a mandate in that case that a determination was to be made regarding entitlement of the increment taking note of the agreement as well as the order of appointment. However, while issuing the impugned order, such consideration has not even been taken note of and the rejection was made on the ground that the engagement in contractual basis and the appointment after regular selection is having different aspect. Therefore, such order is not sustainable under law in the given litigational background.
8. The fact also remains that it is an admitted position that the petitioner was appointed on contractual basis on a definite scale of pay and the petitioner continued to serve in the similar circumstances till the date of regularization though it is alleged that there are certain service break in between. Even if it is assume that there are certain service break, however, the claim of the petitioner for entitlement of his incremental due is to be determinate in terms of the scale granted under the contract and not on the basis of his subsequent regular appointment.
9. That being so there is no nexus between the regular appointment and the contractual period so far same relates to issue of determination of entitlement of increment during the service rendered under the contract.

Further, in view of the order passed by this court passed WP(C) 8449/2003, the respondent authorities are having a bounded duty to examine whether the petitioner is entitled for such incremental benefit in term of the contractual agreement and in term of the appointment order on contract basis. Such exercise has not been done by the authorities. Accordingly, the impugned order dated 12.04.2012 is set aside and quashed and it is directed that a fresh decision be taken in terms of the order dated 21.02.2012 passed in WP(C) 8449/2003 and determination made by this court in the present order.

10. The petitioner is given liberty to file a fresh representation detailing his claim. Such determination be made within a period of three months from the receipt of a certified copy of this order along with a representation to be filed by the petitioner within a period of 15 days from today.
11. In the aforesaid term, this writ petition stands disposed of.

JUDGE

Comparing Assistant