

GAHC010058852018



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

Case No. : WP(C)/1852/2018

SMT. RAMRATI SINGH
W/O. LT. MAHADEV SINGH, VILL. SILGURI, HOUSE NO.-22, P.S. HOJAI, P.O.
HOJAI, DIST. HOJAI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, PUBLIC WORKS
DEPARTMENT, ASSAM SOCHIBALAYA, DISPUR, GUWAHATI-06, ASSAM.

2:THE CHIEF ENGINEER
P.W.D. (ROADS)
CHANDMARI
GUWAHATI-3
DISTRICT- KAMRUP(M)
ASSAM.

3:THE EXECUTIVE ENGINEER
PWD (ROADS)
NAGAON EAST DIVISION
DISTRICT- NAGAON
ASSAM.

4:THE ACCUOUNTANT GENERAL (A AND E)
MAIDAMGAON
BELTOLA
GUWAHATI-29
ASSAM

Advocate for the Petitioner : MR. M CHANDA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER(ORAL)

Date : 30-01-2023

Heard Mr. S. Choudhury, the learned counsel appearing on behalf of the petitioner and Mr. R. K. Talukdar, the learned counsel appearing on behalf of the respondent No.4. I have also heard Mr. P. Nayak, the learned Standing counsel appearing on behalf of the Public Works Department.

2. The instant writ petition has been filed by the petitioner with a prayer seeking a Mandamus thereby directing the respondents to consider the period of service rendered by the deceased Government employee Late Mahadev Singh as Muster Roll worker for the purpose of pensionable service from the date of his joining as Muster Roll worker as being done to the similarly situated other Government servants who have served for the State as work charge employee/Muster Roll worker in accordance with Office Memorandum dated 14.12.1989 and further directions being issued to release the pension and the retirement dues of the late husband of the petitioner w.e.f. 01.09.2004 to 28.05.2005 and thereafter to release the family pension to the petitioner since 29.05.2005 onwards till date with immediate effect along with 18% from the date of actual entitlement.

3. The case of the petitioner herein is that her husband one Mahadev Singh (since deceased) was appointed as the Muster Roll labour on 01.10.1984 in the Office of the P.W.D. (R), Lanka Section under P.W.D. (R) Dabaka Sub-Division. A Service Book was prepared on 25.08.1994 and after rendering almost 20 years

of service, her husband retired from service on 31.08.2004 after attaining the age of 58 vide Office Order No.36 dated 31.08.2004. It was further mentioned that the husband of the petitioner expired on 28.05.2005 but during his lifetime, the husband of the petitioner did not receive any pension or retirement benefits as due and admissible. Further to that, it was mentioned that after the death of her husband, the petitioner has not received the family pension though on several occasions the petitioner had made communications with the appropriate authority for release of the same. It is also relevant to take note of that the Office of the Executive Engineer, P.W.D. Nagaon Rural Road Division issued an Order No.515 dated 06.10.2005 whereby in pursuance to the letter of the Under Secretary to the Government of Assam, Public Works Department (Audit Branch) bearing No.ADT.71/2005/133 dated 30.09.2005, a list was prepared whereby some work charge staff/M.R. labourers were brought to the regular establishment w.e.f. 22.07.2005 without any interruption or break in service. In the said list, the name of the husband of the petitioner appeared at Serial No.133. Taking into account that the respondents have not paid the pension as well as the pensionary benefits to the husband of the petitioner and after the death of the husband of the petitioner, the family pension have not been made, the petitioner submitted representations from time to time and as the respondents have failed to release the dues to the petitioner, the petitioner has approached this Court by filing the instant writ petition.

4. It appears from the records that this Court vide an order dated 02.04.2018 had issued notice.

5. Pursuant to the said notice, the respondent No. 2 had filed an affidavit-in-opposition on 03.03.2022. In the said affidavit-in-opposition, it has been

mentioned that the husband of the petitioner was appointed as M.R. labour on 01.10.1984 and retired from service on 31.08.2004 as M.R. labour and not as a work charged employee. It was mentioned that no service book was prepared against the M.R. labour as per the Government Rules and only a Muster Roll was maintained. In that regard, an Identity Card was issued by the Division on 25.08.1994 to the husband of the petitioner and the same cannot be said to be a Service Book of the husband of the petitioner. It was further mentioned that the husband of the petitioner joined the Division as M.R. labour on 01.10.1984 and retired from service on 31.08.2004. As his total length of service was 19 years 11 months and as such as per Rule 152(1) of the Assam Services (Pension) Rules, 1969 (referred to as the Rules of 1969), Terminal Gratuity amounting to Rs.16,296/- only was admissible and paid to the M.R. labour vide the Office Order No.342 dated 08.10.2004 and Hand Receipt No.23/45 dated 15.10.2004.

6. In paragraph No.6 of the said affidavit-in-opposition, it was mentioned that vide the Government regularization Order No.ADT.71/2005/133 dated 30.09.2005 and the Office Order No.515 dated 06.10.2005, the husband of the petitioner was regularized w.e.f. 22.07.2005 but the incumbent had already retired on 31.08.2004 as M.R. labour. A distinction was drawn between a Muster Roll labour and a work-charged employee by stating in paragraph No.8 that the Muster Roll labour receives his wages on daily basis and on the other hand, a work charged employee receives scale of pay and as such there was no similarity between a Muster Roll labour and work charged employee.

7. To the said affidavit-in-opposition, a reply was filed wherein it was mentioned that the Government of Assam had issued an Office Memorandum

wherein it was decided to regularize the services of work charged employees of different works department including PWD, Flood Control, Public Health Department on completion of services of 5 years of service as work charged employee. It was further mentioned that after rendering 3 (three) years of service beyond the initial period shall qualify for the purpose of pension/DCRG subject to certain conditions laid down in the said Office Memorandum dated 14.12.1989.

At this stage this Court would take note of that a perusal of the said Office Memorandum dated 14.12.1989 relates to work charged employees and not to Muster Roll labourers. Further to that, in the said Office Memorandum, it has been mentioned that the Governor of Assam was pleased to order that *after regularization* of the services of work charged services beyond the initial period of 3 (three) years of work charged services shall qualify for the purpose of pension/DCRG subject to the fulfillment of the conditions.

8. It was further mentioned that the Government servant is entitled to pensionary benefits if he completes ten years of regular and continuous service but the husband of the petitioner had completed more than 19 years 11 months of continuous service without any break and yet he has been deprived of the pensionary benefits during his lifetime on the ground that he has not completed ten years of qualified service as per the Pension Rules. A further reference was made to the Office Memorandum dated 20.10.1992 which relates to the regularization of the services of Muster Roll labourers and entitlements of all benefits.

A perusal of the said Office Memorandum which have been enclosed as Annexure-II, it shows that the Under Secretary to the Government of Assam

directed the various officials of the PWD that on being regularized, the Muster Roll labourers become at par with Grade-IV employees in all matters including the benefits such as G.P.F., G.I.S., Pension Gratuity, Leave etc.

9. Upon perusal of the materials and hearing the learned counsels for the parties, it transpires that the claim of the petitioner is two fold. The First claim is the claim pertaining to the pension and pensionary benefits of her husband and the second is the family pension upon the death of her husband. Let this Court first take into consideration the first claim of the petitioner. The facts in the instant case are admitted to the effect that the husband of the petitioner has rendered 19 years 11 months of continuous service without any break as a Muster Roll worker. This Court finds it relevant to take note of the Office Memorandum No.PPG(P)196/92/61 dated 06.09.2003. For the purpose of convenience, the said Office Memorandum is reproduced hereinbelow:

“GOVERNMENT OF ASSAM

PENSION & PUBLIC GRIEVANCES DEPARTMENT

DISPUR : GUWAHATI : 6

No.PPG(P)196/92/61

Dated Dispur, the 6th September, 2003

OFFICE MEMORANDUM

In continuation of this Deptt. O.M. No. PPG(P)196/92/35 dated 12/9/96, it is reiterated that said O.M. clearly lays down that a Govt. Servant rendering 20 years of continuous service without being confirmed shall be eligible for pensionary benefits. The focus is on 20 years of continuous service. After rendering 20 years of Service if the Govt. Servant is superannuated or incapacitated or dead is not the moot point. Any confusion in this regard is against the spirit of the O.M. referred to above.

It is therefore, clarified that pensionary benefit as contemplated in the above O.M. shall be admissible to a Govt. Servant who died after rendering 20 years of continuous service. Other terms and conditions for eligibility of Pension shall remain

same as usual.

*Sd/- A. AHMED
Secretary to the Govt. of Assam
Pension & Public Grievances Deptt."*

10. A perusal of the above quoted Office Memorandum would show that in continuation to the Office Memorandum dated 12.09.1996, it was reiterated that a Government servant rendering 20 years of continuous service without being confirmed shall be eligible for pensionary benefits. It was mentioned that the focus is on 20 years of continuous service. Further, it was mentioned that after rendering 20 years of service, if the Government servant is superannuated or incapacitated or dead is not the moot point and any confusion in that regard is against the spirit of the Office Memorandum dated 12.09.1996. Further to that, it was clarified that the pensionary benefit as contemplated in the said Office Memorandum dated 12.09.1996 shall be admissible to a Government servant who died after rendering 20 years of continuous service.

11. In view of the above Office Memorandums, a Government servant rendering 20 years of continuous service without being confirmed shall be eligible for pensionary benefits. In the instant case, the petitioner's husband was a Government servant who has admittedly rendered 19 years 11 months but not 20 years as required in terms with the aforementioned Office Memorandum.

12. This Court in the case of ***Sanjita Roy Vs. State of Assam and Others reported in (2019) 4 GLR 97*** was dealing with an issue pertaining to the Office Memorandum dated 20.05.2009 which directed that the 6 years of service rendered prior to regularization would be deducted from the total length of service while calculating 20 years of continuous service to be entitled for

pension. In paragraph No.29 of the said judgment, it was observed that it was wholly unfair and unreasonable to deny a Muster Roll worker who admittedly completed 20 years of continuous service of pension in terms with the Office Memorandum dated 06.09.2003. It was further observed that the entire exercise of issuing the notification should be in a positive manner so as to ensure that the maximum benefit is given to the incumbents who undoubtedly belong to the economically lower strata of the society. Furthermore, it was also observed that the endeavour should be made by the State not to make a further classification of the Muster Roll workers who have completed 20 years of continuous service by introducing the condition of deduction of 6 years of casual service. In paragraph No.31 of the said judgment, the Coordinate Bench disposed of the said batch of writ petitions thereby directing the respondent authorities to determine the continuous length of service of the petitioners therein as Muster Roll workers and if such service meets the benchmark of 20 years without any deduction, the benefit of pension should be made available to them. Further the respondent authorities were directed to take recourse to Rule 67 for those petitioners who fail to meet the benchmark of 20 years by 12 months or less. Paragraph 31 of the said judgment being relevant is reproduced hereinbelow:

“31. In view of the above discussion and by taking into consideration the various judicial pronouncements on the subject, the writ petitions are disposed of directing the respondent-authorities to determine the continuous length of service of the petitioners as a muster roll workers and if such service meets the bench mark of 20 years without any deduction, the benefit of pension should be made available to them. While carrying out said exercise, the respondent-authorities are also directed to take recourse rule 67 for those petitioners who fail to meet

the bench mark of 20 years by 12 months or less. No order as to cost.”

13. It appears from a perusal of Rule 67 that the Governor shall upon such conditions as may deemed fit in each case to impose, condone a deficiency not exceeding 12 months in the qualifying service of an officer. At this stage, it may be relevant for this Court to take note of the submission of Mr. P. Nayak, the learned Standing counsel appearing on behalf of the PWD that in terms with Rule 66(b) of the Pension Rules of 1969, the Governor had delegated the power to the Departmental Head for the purpose of condoning the deficiency and in the instant case, it would be the Secretary to the Government of Assam, PWD.

14. Taking note of the above, this Court therefore is of the opinion that the interest of justice would be met if a direction is given to the Secretary to the Government of Assam, PWD to consider in condoning the deficiency of one month in qualifying service of the husband of the petitioner who admittedly has rendered 19 years 11 months of service.

15. Accordingly, this Court therefore directs the Secretary to the Government of Assam, PWD Department upon a certified copy of the instant order being served to consider in condoning the deficiency of one month in the qualifying service of the husband of the petitioner who has rendered 19 years 11 months of service and thereupon, upon condoning the said deficiency, take appropriate steps to release pension of late husband of the petitioner w.e.f. 01.09.2004 to 28.05.2005 as well as the other pensionary benefits entitled under law.

16. The next claim which arises is as regards the family pension to the petitioner w.e.f. 29.05.2005 onwards. At this stage, this Court finds it relevant to take note of Rule 140 of the Rules of 1969. The said provision is quoted

hereinbelow:

“140. Except as otherwise provided in rule 142, a family pension not exceeding the rate mentioned in rule 141 will be admissible in case of death of an officer while in service or after retirement on or after 1st January, 1964, if at the time of death the retired officer was in receipt of a compensation, invalid, retiring or superannuation. In case of death while in service, the Government servant should have completed a minimum period of one year of service.

Note 1: The term "one year of service" mentioned in above rule does not include broken periods of service. The service for this purposes should be continuous.

Note 2: For the purpose of computing the minimum period of completed one year of continuous service, 'boy service' and periods of extraordinary leave, if any, shall be excluded."

17. A perusal of the above provision shows that except as otherwise provided in Rule 142, a family pension not exceeding the rate mentioned in rule 141 will be admissible in case of death of an officer while in service or after retirement on or after 01.01.1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation. In case of death while in service, it is the mandate that the Government servant should have completed minimum one year of service. Note No.1 appended to the said Rule, explains the term "one year of service" mentioned in the Rule not to include broken periods of service and the service for this purpose should be continuous. In terms with Note No.2, for the purpose of computing the minimum period of completed one year of continuous service, "boy service" and periods of extraordinary leave, if any, shall be excluded. Therefore, it would be seen that an Officer while in service on or after 01.01.1964, if at the time of his death was

in receipt of a compensation, invalid, retiring or superannuation, family pension is to be payable. The question of having completed minimum of one year of service would arise only in the case of death while in service. This Court is of the opinion that if upon due consideration, the Secretary to the Government of Assam, PWD, Department condones the deficiency in service of the husband of the petitioner by one month, the husband of the petitioner would be deemed to have being in receipt of a retiring compensation or superannuation compensation at the time of his death. Under such circumstances, the petitioner being the wife of Late Mahadev Singh would therefore be entitled to the family pension also.

18. Accordingly, the instant petition therefore stands disposed of with the following observations and directions:

(i) The Secretary to the Government of Assam, PWD is directed to consider in terms with Rule 67 to condone the deficiency in service of one month in the qualifying service of Late Mahadev Singh-husband of the petitioner.

(ii) Upon such consideration, if the deficiency in service of the husband of the petitioner is condoned, the respondent authorities shall take appropriate steps to release the pension of the husband of the petitioner w.e.f. 01.09.2004 to 28.05.2005 as well as other pensionary benefits. While releasing the same, the terminal benefits which were paid on 08.10.2004 shall be duly adjusted.

(iii) In the eventuality, the Secretary to the Government of Assam, PWD is not inclined to condone the deficiency in qualifying service of one month, the said authority is directed to pass a reasoned order. The petitioner shall be at liberty to assail the said order in accordance with law.

(iv) It is further directed that in the circumstances, the deficiency in the qualifying service is condoned, it shall be deemed that the husband of the petitioner as on the date of his death was in receipt of the retirement or superannuation compensation and accordingly the petitioner shall be entitled to family pension which the respondent authorities shall release to the petitioner.

(v) The above exercise has to be completed within a period of 3 (three) months from the date a certified copy of this order is served.

JUDGE

Comparing Assistant