

GAHC010060842019



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

Case No. : WP(C)/1954/2019

SMT. ANUSUYA PAUL (BASU),
D/O- LATE AMIYA KUMAR BASU
C/O- DR. K. K. PAUL, HOUSE NO. 3, BYE LANE- 1, LAL GANESH,
ODALBAKRA, GUWAHATI-34.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
MINES AND MINERALS DEPARTMENT, (REPRESENTED BY THE
ADDITIONAL CHIEF SECRETARY), ASSAM SECRETARIAT, BLOCK-A, 4TH
FLOOR, DISPUR, GUWAHATI- 781006, ASSAM

2:THE JOINT SECRETARY

MINES AND MINERALS DEPARTMENT (GOVERNMENT OF ASSAM)
ASSAM SECRETARIAT
BLOCK-A
4TH FLOOR
DISPUR
GUWAHATI- 781006
ASSAM

3:THE DIRECTOR OF GEOLOGY AND MINING
GOVT. OF ASSAM
KAHILIPARA
GUWAHATI- 781019.

4:COMMISSIONER AND SECRETARY
PERSONNEL DEPARTMENT
GOVERNMENT OF ASSAM
ASSAM SECRETARIAT
DISPUR

GUWAHATI- 781006.

5:ADDITIONAL CHIEF SECRETARY
FINANCE DEPARTMENT
GOVERNMENT OF ASSAM
A-BLOCK
3RD FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI- 781006

For the Petitioner : Mr. P. Mahanta, Adv,

For the Respondents: Mr. S. Chamaria, SC, Mines & Minerals.
Mr. D. Bora, GA, Assam.
Mr. B. Gogoi, SC, Finance.

**BEFORE
THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 09/03/2023.

Date of judgement : 04/05/2023

JUDGEMENT AND ORDER (CAV)

1. The writ petitioner herein was appointed as an Assistant Geologist under the Directorate of Geology and Mining, Assam, on ad-hoc basis *vide* order dated 01/02/1993. As per the documents available on record, the service of the petitioner, as Assistant Geologist, was extended from time to time. However, despite repeated requests made by the petitioner for regularization of her service, no action has been taken in the matter to redress her grievance as a result of which the petitioner had retired from service as an ad-hoc/ temporary employee on attaining the age of superannuation. The primary grievance of the petitioner is that despite having served the department continuously for more than 25 years her services have not been regularized till today although the cases of two other similarly situated Assistant Geologists appointed along with her by following the same process have been favourably considered by the department thereby meting out a discriminatory treatment to her. The petitioner has also prayed for issuance of a Writ of Mandamus for release of her

arrear salary and other dues payable under the law for the period of service rendered with effect from 01/08/2016.

2. The facts of the case, briefly stated, are as follows :-

By the notification dated 01/02/1993, the writ petitioner herein and 3 other candidates, viz. (1) Smt. Ranjana Bora, (2) Sri Pallab Kumar Baruah and (3) Sri Prakash Bora, were appointed temporarily as Assistant Geologists in the office of the Directorate of Geology and Mining, Assam under Regulation 3(f) of the Assam Public Service Commission (Limitation and Functions) Rules, 1951 (*herein after referred to as **the Rules of 1951***) in the scale of pay of Rs. 1835-50-2035-60-2895-80-2555-EB-SC-2875-100-3575-125-4320/- per month for a period of 4 (four) months with effect from the date of their joining. A copy of the order dated 01/02/1993 was *inter-alia* forwarded to the Secretary of the Assam Public Service Commission (*herein after referred to as the **APSC***), Bhangagarh. Pursuant to the notification dated 01/02/1993, the petitioner had joined service and continued to render her duties under the department till attaining the age of superannuation. It is the undisputed position of fact that the services of the petitioner as Assistant Geologist was extended by the departmental authorities from time to time until 31/07/2016. It is the case of the petitioner that after she had joined as Assistant Geologist under the Directorate of Geology and Mining, Assam, the APSC had held an interview for the post of Assistant Geologists in the year 2000 but she could not appear in the interview due to sudden ailment of her mother. Since then, the APSC has not held any interview for recruitment of general category candidates as Assistant Geologists until the year 2018, by which time, she had crossed the age limit to participate in any regular selection process conducted by the APSC.

3. It appears from the materials on record that on 16/03/2015, the Additional Chief Secretary to the Government of Assam, Department of Personnel (B) had issued a General Circular notifying the Government's decision to regularize the services of certain appointees under Regulation 3(f) of the Regulations of 1951 as a onetime measure. In terms of the notification dated 16/03/2015, the Secretary to the Government of Assam, Mines and Minerals Department, Dispur, had issued notification dated 02/05/2015, regularizing the services of (1) Sri Pallab Kumar Baruah and (2) Sri Prakash Bora, as Assistant Geologists, who were originally appointed under Regulation 3(f) of the Regulations of 1951 along with the writ petitioner. The services of these two candidates were regularized with effect from

16/03/2015 i.e. the date of the Office Memorandum issued by the Personnel Department. However, the petitioner's name was not included in the notification dated 02/05/2015.

4. Mr. P. Mahanta, learned counsel for the petitioner has argued that the writ petitioner herein is placed on equal footing as the other two candidates, viz. Sri Pallab Kumar Baruah and Sri Prakash Bora, who were also appointed as Assistant Geologists on the same date along with the writ petitioner and that too, under Regulation 3(f) of the Regulations of 1951. Since their services were regularized in deference to the OM dated 16/03/2015, hence, there was no justifiable ground for the authorities to leave out the petitioner more so, since there are successive recommendations from the departmental authorities as well as the Departmental Minister of Geology for regularizing the service of the writ petitioner.

5. Responding to the above, Mr. D. Bora, learned Government Advocate, Assam, submits that the services of the two departmental candidates viz. Sri Pallab Kumar Baruah and Sri Prakash Bora were regularized on the basis of a Cabinet memorandum circulated to that effect as a one-time measure so as to regularize the appointees under Regulation 3(f) of the Regulations of 1951. Since the Cabinet did not recommend the case of the petitioner and in view of the fact that the petitioner had never appeared before the APSC for any interview / test, hence, she cannot claim regularization of her service at par with Sri Pallab Kumar Baruah and Sri Prakash Bora.

6. Mr. B. Gogoi, learned Standing Counsel, Finance Department, Assam, has argued that although the writ petitioner is claiming parity with Sri Pallab Kumar Baruah and Sri Prakash Bora in the matter of regularization of her service, yet, she is placed in a different footing, inasmuch as, unlike the other two candidates, the petitioner had never appeared before the APSC at any point of time. It is the submission of Mr. Gogoi that since the petitioner has not assailed the OM dated 16/03/2015 which excludes the candidates, who had not appeared before the APSC, from the purview of the OM, hence, the petitioner cannot seek a Writ of Mandamus in the facts and circumstances of the case. Mr. Gogoi has further submitted that issuing a direction for regularization of the petitioner's service would open flood-gates and, therefore, the matter be left to the discretion of the departmental authorities. Mr. Gogoi has further argued that the petitioner was not in service with effect from 31/07/2016 and therefore, the question of payment of her salary and allowances after 31/07/2016 till attaining the age of superannuation does not arise in the eyes of law.

7. Mr. S. Chamaria, learned Standing Counsel, Directorate of Geology and Mining has supported the contentions advanced by the other two departmental counsel to submit that since the petitioner did not appear before the APSC, hence, her case was rightly not considered for regularization of service.

8. I have considered the submissions advanced at the bar and have also carefully gone through the materials available on record.

9. There is no wrangle at the bar that the writ petitioner and two other candidates, viz. Sri Pallab Kumar Baruah and Sri Prakash Bora were all appointed as Assistant Geologists on ad-hoc basis , on the same date i.e. 01/02/1993 under Regulation 3(f) of the Regulations of 1951. It is also not in dispute that the petitioner was qualified to be appointed as an Assistant Geologist and her ad-hoc appointment, like the other three candidates, was against a sanctioned vacant post. It is also the admitted position in fact that the service of the petitioner was extended from time to time. However, according to the learned departmental counsel, the service of the petitioner stood terminated with effect from 01/08/2016 as there is no order of extension of her service beyond the said date.

10. I find from the records that after the notification dated 02/05/2015 was issued regularizing the services of Sri Pallab Kumar Baruah and Sri Prakash Bora with effect from 16/03/2015, the writ petitioner had filed successive representations before the Additional Chief Secretary, Department of Mines and Minerals as well as the other authorities, making a request to regularize her services but to no avail. Since it is the specific case of the departmental authorities that Sri Pallab Kumar Baruah and Sri Prakash Bora had appeared before the APSC and, therefore, their case stood on a different footing as compared to the writ petitioner, this Court had carefully examined the materials available on record and finds that the names of Sri Pallab Kumar Baruah and Sri Prakash Bora appeared in waiting list of candidates published by the APSC on 02/09/1993. It appears that these two candidates were amongst the 38 candidates who were interviewed by the APSC for recruitment to the post of Assistant Geologists in the year 1993. As a matter of fact, in the list dated 02/09/1993, it has been clearly mentioned that the names of the 11 candidates included therein including Sri Pallab Kumar Baruah and Sri Prakash Bora were recommended against few vacancies, which may occur during the period of validity of the nomination in order of preference. However, the services of Sri Pallab Kumar Baruah and Sri Prakash Bora were admittedly not regularized on

the basis of the waiting list dated 02/09/1993. The validity of the list dated 02/09/1993 was not extended beyond the statutory period of one year. There is also nothing on record to show that those two candidates had ever appeared before the APSC on any subsequent date. Therefore, the services of Sri Pallab Kumar Baruah and Sri Prakash Bora could not have been regularized on 02/05/2015 w.e.f 16/03/2015 based on the APSC panel dated 02/09/1993. On the contrary, from the language of the notification dated 02/05/2015 regularizing their services w.e.f 16/03/2015 it is amply clear that the services of Sri Pallab Kumar Baruah and Sri Prakash Bora were regularized on the strength of the O.M. dated 16/03/2015. The question is, could the department have ignored the case of the writ petitioner for regularization of her service in the post of Assistant Geologist despite the O.M. dated 16/03/2015, merely on the ground that she had never appeared for interview before the APSC ?

11. As noticed above, the Additional Chief Secretary to the Government of Assam, Department of Personnel(B) had issued the OM dated 16/03/2015 paving the way for regularization of service of some ad-hoc employees. In the said OM, it has been mentioned that many candidates initially appointed for 4 (four) months under Regulation 3(f) of the Regulations of 1951, are continuing in service year after year, on ad-hoc basis without regularization and all these candidates have already crossed the upper age limit specified for appearing in the interview/tests conducted by the APSC for the posts they are holding and, therefore, are left with no chance to get regularized in the posts. However, in the 6th paragraph of the OM dated 16/03/2015, it has been mentioned that the candidates who have not appeared before the APSC and whose cases were sub-judice before the Court, would be outside the purview of this OM. On the basis of the above observation, the OM dated 16/03/2015 had laid down the following criteria :-

VI. The list of employees appointed under Regulation 3(f) who have been considered here as an exceptional case and one time measure for regularization, as appended at Annexure-A, and who have rendered services to Government varying from 9 years to 22 years, shall be regularized with immediate effect subject to the condition that :-

i. Each such employee shall be regularized against the regular

vacant posts which they are holding currently and drawing salaries thereon.

ii. Each Department whose names have been figured in the Annexure-A against the names of the employees, shall examine and verify the cases of these employees individually with reference to their eligibility in terms of the educational and other qualifications as required at the time of their initial appointments in regard to the post that they are now holding.

iii. On such verification, the Department will issue order of regularization with immediate effect on the strength of this OM.

iv. On such regularization, such incumbents will be eligible for the regular service benefits/conditions as laid down in the respective Service Rules.

v. The seniority of the employees in their respective cadres will be counted w.e.f. the date of order of regularization.

vi. Their past services may be counted only for the purpose of calculation of pension benefits and for no other purposes.

VII. This is sought to be done as an exception case and one time measure and shall not be taken to recourse in future.

Action taken report on the matter shall be submitted to the Personnel-B Department regularly on monthly basis till such time as there exist any 3(f) appointee in any establishments under the Department."

12. A cursory reading of the OM dated 16/03/2015 *prima facie* indicates that the criteria laid down in the OM was by way of a one-time measure for regularization of service of those candidates who have been appointed under Regulation 3(f) of the Regulations of 1951 and have been continuing on adhoc basis for a period from 9 years to 22 years and have exceeded the upper age limit, thus debarring those candidates from appearing before the APSC for regularization of their services. The OM itself mentions that the necessity for issuance of the same arises on account of the fact that there has been unwarranted exercise of powers under Regulation 3(f) by the departments, failure on the part of APSC to hold

interviews in timely manner and also the failure on the part of the Departments to move the APSC for regular recruitments. Therefore, it is apparent that the OM dated 16/03/2015 *inter-alia* seeks to address the cases of those ad-hoc employees who had not appeared before the APSC and had also crossed the upper age limit specified for appearing in test/ interviews conducted by the APSC. To that extent, the condition laid down in paragraph 6 of the OM excluding those candidates, who had not appeared before the APSC, from the purview of this OM defies logic, appears to be wholly incongruous and, therefore, deserve to be read down by this Court. If the idea behind the OM dated 16/03/2015 was to give the benefit of regularization to the candidates who were over aged and hence, were not eligible to appear before the APSC for interview/test for the purpose of regularization of their services, then it is not understood as to how, candidates who had not appeared before the APSC have been treated to have been excluded from the purview of the aforesaid notification.

As a matter of fact the services of Sri Pallab Kumar Baruah and Sri Prakash Bora clearly appears to have been regularized w.e.f 16/03/2015 on such interpretation of the OM dated 16/03/2015. This Court is, therefore, of the opinion that the observations made in 6th paragraph of the OM dated 16/03/2015, excluding the over-aged candidates from the purview of the notification, is not only self-contradictory but is also superfluous and hence, is hereby read down as that is only interpretation of the Office Memorandum dated 16/03/2015 which would permit a harmonious construction of the different conditions contained there-in.

13. There is no doubt or dispute about the fact that the writ petitioner herein was appointed under Regulation 3(f) against a regular vacancy which post she continued to hold for more than 25 years at a stretch. I also find from the materials available on record that the departmental authorities have themselves recommended regularization of the services of the petitioner as Assistant Geologist from time to time. The fact that the authorities had recommended the regularization of service of the petitioner as Assistant Geologist after taking note of the fact that she has already rendered continuous service for almost 25 years in the department is evident from the communication dated 02/07/2015 of the Minister of State (Ind) Government of Assam, Mines and Minerals as well as letters dated 15/06/2016 and 20/04/2021 of the Director of Geology and Mines, Assam. As a matter of fact, the note dated 19/05/2016 of the Additional Secretary, Personnel (B) Department clearly shows that the

department was asked to take a decision as to whether the services of the petitioner was required to be regularized and explore the scope of doing so. In the aforesaid note it has also been mentioned that obtaining the Cabinet approval for regularization of her services would be the last resort.

14. I also find from the materials available on record that a Cabinet Memorandum was circulated under Rule 17 of the Assam Rules of Executive Business, 1968 wherein, the fact that the names of the writ petitioner, Sri Pallab Kumar Baruah and Sri Prakash Bora, who were appointed as Assistant Geologists under Regulation 3(f) of the Regulations of 1951, were taken note of and it was also noticed that they had gathered vast experience in the field of geological exploration and mining and these three appointees should get pension benefit after retirement. Accordingly, a proposal was also put up for regularization of their services. However, it appears that for reasons not discernable on the face of the record, the Cabinet had recommended the regularization of the services of only Sri Pallab Kumar Baruah and Sri Prakash Bora against the vacant posts of Assistant Geologists while dropping the name of the writ petitioner.

15. Mr. Mahanta learned counsel for the writ petitioner has invited the attention of this Court to the notification dated 17/11/2015 (Annexure-12) to show that by relying upon the OM dated 16/03/2015, the Government of Assam has regularized the services of as many as 38 employees who were originally appointed under Regulation 3(f) of the Regulations of 1951, although none of those candidates had appeared before the APSC. The learned departmental counsel could not deny such assertion of the petitioner's counsel by placing any cogent material before the Court.

16. For the reasons stated here-in-above, this court is of the opinion that the writ petitioner possessed the necessary educational qualification and was also placed on equal footing with the other two departmental candidates viz. Sri Pallab Kumar Baruah and Sri Prakash Bora. She fulfilled all the criteria laid down in the OM dated 16/03/2015. Therefore, her prayer for regularization in service ought to have been considered by the department without insisting on the criteria of having appeared for interview before the APSC. The respondents have adopted the same yard stick in respect of the other two departmental candidates but not in the case of the petitioner. As such, this Court is of the opinion that by extending a differential treatment to the petitioner by denying her the benefit of

regularization in service, in the facts and circumstances of the case, the authorities have treated equals unequally and therefore, have adopted an approach which militates against the fundamental principles of equality enshrined in Articles 14 and 16 of the Constitution of India. [see ***Virendra Krishna Mishra Vs. Union of India and others*** reported in **(2015) 2 SCC 712**).

17. The petitioner has also claimed that she had not been paid her salary for the services rendered since 01/08/2016 upto the date of her retirement. Although the learned departmental counsel has argued that the service of the petitioner was extended only up to 31/07/2016, yet, a perusal of the notification dated 20/04/2021 bearing No. GH/ET/452/157 (Annexure-I to the additional affidavit dated 18/11/2021) issued by the Director of Geology and Mining clearly goes to show that the services of the petitioner as Assistant Geologist was extended until 30/11/2020. There are other documents available on record suggesting that the petitioner was discharging her duties under the Directorate of Geology and Mining beyond 31/07/2016. Moreover, by the order dated 14/05/2019 passed in IA(C) 1595/2019, arising out of WP(C) 1954/2019, this Court had directed that the services of the petitioner shall not be dispensed with till the next date and it appears from the materials on record that the aforesaid order of this court has not been vacated or modified till date. Therefore, the respondents cannot be permitted to argue that the petitioner was not in service beyond 31/07/2016. However, the materials available on record are insufficient for this court to record a categorical finding as to the date till which, the petitioner had actually rendered her service in the Department as an Assistant Geologist beyond 31/07/2016.

18. In view of the foregoing discussions, this court is of the un-hesitant opinion that the writ petitioner has made out a good case for interference by this court. The respondent Nos. 1 to 5 are, therefore, directed to take necessary steps for issuing appropriate notification regularizing the services of the petitioner in the post of Assistant Geologist with effect from 16/03/2015 i.e. the date from which her colleagues appointed on the same date were regularized, by treating her at par with the two other Departmental candidate viz. Sri Pallab Kumar Baruah and Sri Prakash Bora and thereafter, issue appropriate order giving her the consequential service benefits as may be permissible under the law. In so far as the prayer of the petitioner for payment of arrear salary is concerned, the respondent Nos. 1 to 5 are to verify the claim of the petitioner, in the light of the observation made here-in-above and

thereafter, release her un-paid salary, as may be found due under the law. The aforesaid exercise be carried out and completed, as expeditiously as possible, but not later than 60 (sixty) days from the date of receipt of a certified copy of this order.

19. With the above observation, the writ petition stands disposed of.

There would be no order as to costs.

The departmental records be returned back.

JUDGE

Sukhamay

Comparing Assistant