

GAHC010071092018



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

Case No. : WP(C)/2538/2018

ENGKAM LIENTHANG
S/O MANGPU LIENTHANG
R/O VILL- PANGMAL, P.S.MAHUR
P.O. MAHUR, PIN - 788830,
DIST.DIMA HASAO.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
PENSION AND PERSONNEL DEPARTMENT,
DISPUR, GUWAHATI-781006.

2:PRINCIPAL SECRETARY PENSION AND PUBLIC GRIEVANCES
DEPARTMENT

DISPUR
GUWAHATI - 781006.

3:PUBLIC WORKS ROADS DEPARTMENT

REP. BY THE COMMISSIONER DISPUR
GUWAHATI- 781006.

4:UNDER SECRETARY TO THE GOVT. OF ASSAM

PUBLIC WORKS ROAD DEPARTMENT (AUDIT) BRANCH
GUWAHATI - 781006.

5:EXECUTIVE ENGINEER

PUBLIC WORKS ROADS DEPARTMENT

MAHUR ROADS DIVISION
MAHUR.

6:THE ACCOUNTANT GENERAL (A AND E) ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI - 781029

Advocate for the Petitioner : MR A DASGUPTA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER(ORAL)

Date : 10.05.2023

Heard Mr. A. Dasgupta, the learned Senior Counsel assisted by Mr. A. Kundu, the learned counsel appearing on behalf of the petitioner. Mr. Rahul Dhar, the learned counsel appears on behalf of the respondent No. 3 to 5, Mr. Rupak Dhar, the learned counsel appears for the respondent No. 6 & Mr. D. Borah, the learned counsel appears for the respondent No. 1 and 2.

2. The case of the petitioner herein is that the petitioner was initially appointed on 1/4/1989 as a Muster Roll Worker in the Public Works Department, Mahur Road Division. Thereupon his service was regularised on 7/10/2005 w.e.f. 22/7/2005. The petitioner retired from service on 30/6/2007. However, the respondent No. 6 have rejected the pension proposal of the petitioner on the ground that the petitioner had served only for a period of 12 years 2 months 29 days after deducting 6 years which is less than 20 years. The case of the petitioner is that the petitioner's service was regularized w.e.f. 22/7/2005 and

the same therefore dates back to the date of the petitioner's initial appointment i.e. from 1/4/1989 and as such the service period of the petitioner for pension is 18 years 2 months 29 days. This Court vide an order dated 19/4/2023 had sought for instructions as to why the petitioner was not entitled to pension as claimed.

3. The learned counsel appearing on behalf of the respondent Nos. 3 to 5 submitted an instruction from the Executive Engineer, PWD wherein it has been mentioned that the total length of service of petitioner from the date of his joining till his date of retirement was 18 years 2 months 29 days and as per Rule 108 of the Assam Service (Pension) Rules, 1969 the petitioner would be entitled to get pensionary benefits as the remaining service period after deducting 6 years is 12 years 2 months 29 days. It was submitted that the petitioner was not given any benefit besides the amount received as terminal gratuity granted by the respondent No. 6 in the month of December, 2017.

4. The said instructions is kept on record and marked with the letter "X".

5. At this stage, it is relevant to take note of that this Court in the case of **Sanjita Roy & Ors. Vs. State of Assam** reported in **2019 (2) GLT 805** had categorically held that deduction of 6 years in respect to Muster Roll Workers was violative of Article 14 of the Constitution. Accordingly under such circumstances the deduction of 6 years while computing the pensionable service of the petitioner is contrary to the law laid down by this Court in the case of **Sanjita Roy(supra)**. It would further be seen that if the period of 6 years is being taken then the total service of the petitioner would be 18 years 2 months 29 days.

6. The question therefore arises as to whether the entire service period of

the petitioner would be taken into consideration for the purpose of pension. For that purpose this Court finds it relevant to refer to a recent judgment of the Supreme Court dated 28/4/2023 in the case of **Uday Pratap Thakur and Anr. Vs. The State of Bihar and Ors.** reported in **2023 SCC Online SC 527** wherein also the question arose as to whether the entire services rendered as work charged should be considered and/or counted for the purpose of pension/quantum of pension is concerned. The Supreme Court while drawing a distinction between a person who has been regularly appointed on a substantive post and a work charged employee working under work charged establishment observed that giving the benefit from the date of their initial appointment would be regularizing the service of the person concerned on casual basis who has been appointed at a work charged establishment and subsequently regularized from the date of their initial appointment. The Supreme Court further took another aspect into consideration that after rendering of services as a work charged for a number of years and thereafter when their services have been regularized such persons cannot be denied pension on the ground that they have not completed the qualifying service for pension. It is under such circumstances, the Supreme Court held that if pursuant to the regularization, a person does not have the qualifying service, his so much of the earlier period of service should be counted so that he has the qualifying service for pension. Paragraphs 22, 23 and 24 of the said judgment being relevant are quoted herein under :

“**22.** Insofar as the submission on behalf of the appellants that their entire services rendered as work charged should be considered and/or counted for the purpose of pension/quantum of pension is concerned, the same cannot be accepted. If the same is accepted, in that case, it would tantamount to regularizing their services from the initial appointment as work charged. As per the catena of decisions of this Court, there

is always a difference and distinction between a regular employee appointed on a substantive post and a work charged employee working under work charged establishment. The work charged employees are not appointed on a substantive post. They are not appointed after due process of selection and as per the recruitment rules. Therefore, the services rendered as work charged cannot be counted for the purpose of pension/quantum of pension. However, at the same time, after rendering of service as work charged for number of years and thereafter when their services have been regularized, they cannot be denied the pension on the ground that they have not completed the qualifying service for pension. That is why, the service rendered as work charged is to be counted and/or considered for the purpose of qualifying service for pension, which is provided under Rule 5(v) of the Rules, 2013.

23. Now, insofar as the reliance placed upon the decision of this Court in the case of *Prem Singh* (supra) by the learned counsel appearing on behalf of the appellants is concerned, the reliance placed upon the said decision is absolutely misplaced. In the said case, this Court was considering the validity of Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, under which the entire service rendered as work charged was not to be counted for qualifying service for pension. To that, this Court has observed and held that after rendering service as work charged for number of years in the Government establishment/department, denying them the pension on the ground that they have not completed the qualifying service for pension would be unjust, arbitrary and illegal. Therefore, this Court has observed and held that their services rendered as work charged shall be considered/counted for qualifying service. This Court has not observed and held that the entire service rendered as work charged shall be considered/counted for the quantum of pension/pension. The decision of this Court in the case of *Prem Singh* (supra), therefore, would be restricted to the counting of service rendered as work charged for qualifying service for pension.

24. In view of the above and for the reasons stated above, present appeals lack merits and the same deserve to be dismissed and are accordingly dismissed. It is observed and held that the service rendered as work charged after their services have been regularized under the regularization scheme, namely, the Rules, 2013 and the Circular

shall be counted for the purpose of qualifying service for pension only as per Rule 5(v) of the Rules, 2013.”

7. In the instant case although the petitioner herein was appointed on 1/4/1989 as a Muster Roll Worker in a Public Works Department but he was regularized on 7/10/2005 w.e.f 22/7/2005. By the time the petitioner retired on 30/6/2007, the petitioner did not have the qualifying service pursuant to his regularization. Taking into account the judgment of the Supreme Court in the case of **Uday Pratap Thakur(supra)**, this Court in the peculiar facts of the present case is of the opinion that the ends of justice would be met if the earlier period of service rendered by the petitioner is taken into consideration only for the purpose of attaining the qualifying service in terms with Rule 108 (b) of the Assam Service(Pension) Rules, 1969.

8. In that view of the matter, this Court therefore disposes of this writ petition holding inter alia that the petitioner having minimum qualifying service i.e. the period of service of 10 years, the petitioner would be entitled to pension in terms with Rule 108 (b) of the Assam Service (Pension) Rules, 1969 and the respondents shall do the needful in that regard upon submission of a certified copy of the instant order to the respondent No. 3. The concerned respondents shall further process the pension proposal and sent the same to the respondent No. 6 who shall do the needful as expeditiously as possible taking into account that for the last 16 years after the retirement of the petitioner, the petitioner has not received any pension.

9. This Court further makes it clear that while ascertaining the arrear pension of the petitioner, the amount paid on account of terminal benefits/gratuity shall be reduced.

10. The said exercise be done within a period of 4 months from the date a

certified copy of this order is served is served upon the respondent No. 3.

JUDGE

Comparing Assistant