

GAHC010073462021



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

Case No. : WP(C)/3534/2021

MUNNA BALMIKI @ MUNNA KUMARI BALMIKI
D/O. RAJU BALMIKI, R/O. URDAY NAGAR, P.O. AND P.S. CHAPAKHOWA,
SADIYA, DIST. TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, JUDICIAL
DEPTT., DISPUR, GUWAHATI-06.

2:THE CHIEF JUDICIAL MAGISTRATE

TINSUKIA DISTRICT
TINSUKIA
ASSAM
PIN-786125.

3:THE SUB DIVISIONAL JUDICIAL MAGISTRATE

SADIYA
CHAPAKHOWA
DIST. TINSUKIA
ASSAM
PIN-786155.

4:THE COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY.-06.

5:THE TREASURY OFFICER

SADIYA
CHAPAKHOWA
DIST. TINSUKIA
ASSAM
PIN-786155

Advocate for the Petitioner : MR B SINHA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 22.03.2023

Heard Mr. D. Talukdar, learned counsel appearing on behalf of Mr. B. Sinha, learned counsel for the petitioner. Also heard Ms. D.D. Barman, learned Addl. Senior government advocate appearing for respondent no.1, Ms. N. Newme, learned counsel appearing on behalf of Mr. U.K. Nair, learned standing counsel for the Gauhati High Court, representing respondent nos. 2 and 3 and Mr. A. Chaliha, learned standing counsel for the Finance Department, representing respondent nos. 4 and 5.

2. The case projected by the petitioner, in brief, is that he was appointed as sweeper in the establishment of Sub-Divisional Judicial Magistrate, Sadiya, Chapakhowa vide order dated 09.12.1986 on a fixed pay of Rs.250/- per month, which was enhanced to Rs.4500/- in course of time. The service of the petitioner was not regularized till date.

3. It is projected in this writ petition that in the meanwhile this Court by

its judgment dated 08.06.2017 passed in WA 45/2014 (*State of Assam Vs. Upen Das & Ors.*) had directed that the benefit of minimum pay scale should be extended to the casual employees w.e.f. 01.08.2017 and accordingly, in compliance of the said judgment, it is projected that the Finance Department, Govt. of Assam had issued notification no. FEC(II)4/2014/413 dated 08.03.2019, by which a minimum pay scale and other benefits were provided. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioner is seeking a direction upon the respondent authorities for payment of minimum pay scale i.e. PB-1, 12000-37500 and Grade Pay of Rs.3900/- along with other allowances be granted to the petitioner.

4. At this stage, the learned standing counsel for the Finance Department has submitted that there is a notification subsequent to notification dated 08.03.2019 by virtue of which the medical allowance, house rent allowance and other allowances were withdrawn and benefits only to the extent of direction contained in the case of *Upen Das & Ors. (supra)* was extended to such employees.

5. Having heard the learned counsel for all sides, the Court is of the considered opinion that in the present case as the petitioner has been able to demonstrate that he was appointed as sweeper in the establishment of Sub-Divisional Judicial Magistrate, Sadiya, Chapakhowa (respondent no.3) w.e.f. 09.12.1986, the petitioner is otherwise entitled to benefit of the ratio laid down by this Court in the case of *Upen Das & Ors. (supra)*.

6. In the absence of any affidavit by the respondent authorities, the

Court is inclined to invoke the doctrine of non-traverse and presume that all the respondent authorities have admitted the statement made in the writ petition as true and that they have also admitted the prayer made therein. Resultantly, the Court is inclined to allow this writ petition by directing the respondent no.3 to forward a proposal in respect of the petitioner for his entitlement to the benefit flowing from the ratio of the case of *Upen Das & Ors. (supra)* to the learned Chief Judicial Magistrate, Tinsukia (respondent no.2) and the said authority shall process the entitlement of the petitioner by sending it to the concerned competent authority for examining and determining the claim of the petitioner.

7. The said exercise shall be done by the respondent nos. 2 and 3 within a period of 6(six) weeks from the date of service of the certified copy of this order in the office of the respondent no.3. Consequently, the other competent authorities shall process the claim of the petitioner and dispose of the same within an outer period of 3(three) months from the date of receipt of final proposal from the respondent nos. 2 and 3.

8. In the meantime, the learned Addl. Senior Govt. Advocate and the learned standing counsel for the Finance Department shall forward a downloaded copy of this order to the concerned authorities so as to bring the order to their notice so that later on the decision making process would brook no delay.

9. Accordingly, this writ petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant