

GAHC010101322023



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

Case No. : WP(C)/2696/2023

URBASHI NATH
W/O- LATE SANDHI RAM NATH @ SANDHIRAM NATH,
R/O- VILLAGE SAKIAPAR,
P.O- CHAMATIAPAR,
DIST- DARRANG, ASSAM, PIN-784147

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC WORK (ROADS) DEPARTMENT, DISPUR, GUWAHATI-
781006.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCE DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE CHIEF ENGINEER
PWD ROADS
2ND BLOCK-B
KRISHNA NAGAR
CHANDMARI
GUWAHATI-03

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

5:THE EXECUTIVE ENGINEER

MANGALDAI RURAL ROAD DIVISION
PWD
MANGALDAI
DIST- DARRANG
ASSAM
PIN-784125

6:THE ASSTT EXECUTIVE ENGINEER
SIPAJHAR RURAL ROAD SUB-DIVISION
PWD
SIPAJHAR
DIST- DARRANG
ASSAM
PIN-784145

7:THE TREASURY OFFICER
MANGALDAI
DIST- DARRANG
ASSAM
PIN-78412

Advocate for the Petitioner : MR. K R PATGIRI

Advocate for the Respondent : SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 19.05.2023

Heard Mr. K.R. Patgiri, the learned counsel appearing on behalf of the petitioner. Mr. Rahul Dhar, the learned counsel appears on behalf of the respondent Nos. 1, 3, 5 & 6, Mr. Rupak Dhar, the learned counsel appears for the respondent No.4, Mr. R. Borpujari, the learned counsel appears for the respondent No. 7 and Ms. A. Talukdar, the learned counsel appears for the respondent No. 2.

2. The instant writ petition is taken up for disposal at the motion stage.

3. The case of the petitioner herein is that the husband of petitioner was initially appointed as a Muster Roll Worker under the Office of the Assistant Executive Engineer, Sipajhar Rural Road Sub-Division, PWD in the district of Darrang, Assam. The husband of the petitioner joined his service on 12/7/1992. On 30/9/2005 the service of the petitioner was regularised w.e.f. 22/7/2005. Thereupon the husband of the petitioner retired upon attaining the age of superannuation on 31/1/2017. It is the case of the petitioner that the total period of service of the husband of the petitioner was 24 years 6 months 19 days. However, on the basis of an Office Memorandum dated 20/5/2009, 6 years was deducted for which the husband of the petitioner did not have 20 years of qualifying service. Accordingly, the husband of the petitioner was only given terminal gratuity.

4. The learned counsel for the petitioner submitted that the Office Memorandum on the basis of which 6 years have been deducted had already been held to be illegal and arbitrary by the Coordinate Bench of this Court in the case of **Sanjita Roy and Ors. Vs. State of Assam** reported in **2019 (2) GLT 805**. It is therefore the case of the petitioner that if 6 years is not deducted, the petitioner would be entitled to the arrear of the pension which her husband would have received as well as also the family pension.

5. I have heard the learned counsels for the parties.

6. From a perusal of Annexure-1 to the writ petition, it is apparent that the service of the husband of the petitioner alongwith other employees were regularised w.e.f. 22/7/2005. Annexure-2 to the writ petition is the

communication issued by the Executive Engineer, PWD whereby the husband of the petitioner was issued the superannuation notice intimating him that he would retire on 31/1/2017.

7. Accordingly, as the husband of the petitioner was regularised in service from 22/7/2005 and he rendered service till 31/1/2017, the husband of the petitioner in view of Rule 31 of the Assam Service (Pension) Rules, 1969 (for short 'the Rules of 1969') read with Rule 108(b) of the said Rules of 1969 would be entitled to pension. The judgment of the Coordinate Bench in the case of **Sanjita Roy (supra)** would be applicable in respect to those cases coming within the ambit of the Office Memorandum dated 6/9/2003. Under such circumstances, the action of the respondent authorities in not granting pension to the husband of the petitioner as well as also the family pension to the petitioner would be contrary to the Rules of 1969.

8. However, as this Court is disposing off this writ petition at the motion stage, this Court finds it relevant to give the authority concerned an opportunity to make necessary verification as regards the order of regularisation/the order of superannuation of the husband of the petitioner.

9. Accordingly, this Court disposes off the instant writ petition directing the respondents in the PWD Department as well as the Office of the Accountant General (A & E) to make necessary verification as regards the authenticity of the order of regularisation of the husband of the petitioner as well as the notice of superannuation so issued to the husband of the

petitioner and upon such verification, if it is found that the husband of the petitioner had the qualifying service in terms with Rule 108(b) of the Rules of 1969, the petitioner be paid the arrear pension alongwith the pensionary benefits to which the husband of the petitioner would have been entitled to as well as also the arrear family pension and the regular family pension to the petitioner. In doing so, the Respondent Authorities shall deduct the amount paid to the petitioner as terminal gratuity.

10. The said exercise be completed within a period of 4 (four) months from the date a certified copy of the instant order is served upon the respondent Nos. 1 and 4 respectively.

JUDGE

Comparing Assistant