

GAHC010107632011



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

Case No. : WP(C)/4209/2011

DALIMI TAYE PATIR and ORS.
W/O LAKHYANATH PATIR, PO. HENGRBARI, P.S. DISPUR, GHY-6, KAMRUP,
ASSAM.

2: JAYANTA PEGU

S/O SHYAMANTA PEGU
PO. DISPUR
CAPITAL COMPLEX
PS. DISPUR
GHY-6
KAMRUP
ASSAM

3: JYOTI RUPA PAYENG

D/O BATIRAM PAYENG
HENGRABARI
P.S. DISPUR
GUWAHATI-6
KAMRUP
ASSA

VERSUS

STATE OF ASSAM and 5 ORS.
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
REVENUE S DEPTT, DISPUR, GHY-6.

2: THE JT. SECRETARY TO THE GOVT. OF ASSAM

REVENUE AND DISASTER MANAGEMENT SETTLEMENT DEPTT
DISPUR
GHY-6

3:THE DY. SECY. TO THE GOVT. OF ASSAM

REVENUE AND DISASTER MANAGEMENT DEPTT S
DISPUR
GHY-6

4:THE DIRECTOR OF LAND RECORDS AND SURVEYS ETC.

RUPNAGAR
ASSAM
GUWAHATI-781032

5:THE COMMISSIONER

FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

6:THE JT. DIRECTOR TO THE LAND RECORDS AND SURVEYS

DAKSHIN GAON
GUWAHATI
ASSA

Advocate for the Petitioners : None appears

Advocate for the Respondents : Mr. R. Borpujari, Advocate
: Mr. S. Dutta, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 20-07-2023

1. The Petitioners who are three in numbers have joined together to file the instant writ petition challenging the actions of the Respondent Authorities in refusing to grant the benefits of the Petitioners' past service and also the benefit of the pension and other pensionary benefits in terms

with the Assam Services (Pension) Rules, 1969.

2. The case of the Petitioners herein is that the Petitioner Nos.1, 2 and 3 were appointed in different Grade III and Grade IV post in the Office of the Director of Land Records and Surveys, Assam in the year 1999. Thereupon, on 17.12.1999, the Petitioners were terminated from their services. The Petitioners were terminated on the ground of being appointed dehors the recruitment rules. The Petitioners approached this Court by filing a writ petition being WP(C) No.6516/1999. On the basis of the interim orders, the Petitioners continued to render their services. Vide an order dated 13.06.2008, the said writ petition i.e. WP(C) No.6516/1999 was disposed of thereby dismissing the petition. It was further provided that in the event of initiating any regular process of selection as per the recruitment rules, it would be open to the Petitioners to participate in the said selection and the Respondents were directed to consider the condonation of the age bar of the Petitioners if same is required to be done. It further appears that thereupon the Petitioners had approached the Division Bench of this Court by filing a Writ Appeal which was registered and numbered as WA No.166/2008. Vide an order dated 20.06.2008, the Division Bench of this Court taking into account that the Petitioners have been working for the last more than 10 years permitted the Petitioners to continue their services till the regular selection process is over inasmuch as at that relevant point of time the authorities was contemplating to hold the selection proceedings.

3. Subsequent thereto, it further reveals from the records that the selection process was initiated by the Respondent Authorities and vide separate order dated 10.12.2008, the Petitioners were again terminated. The said order dated

10.12.2008 was challenged in WP(C) No.525/2009. It was the case of the Petitioners in the said writ proceedings that the advertisement dated 16.04.2008 was not in respect to the posts which the Petitioners were holding and as such the termination of the Petitioner vide the order dated 10.12.2008 was not in conformity with the order dated 20.06.2008 passed in Writ Appeal No.166/2008. It was therefore the submission that till the posts which were held by the Petitioners were advertised, the Petitioners should be allowed to continue their services. This Court vide an order dated 25.02.2009 disposed of the said writ petition holding inter alia that the principle underlying the Division Bench order dated 20.06.2008 passed in Writ Appeal No.166/2008 should be continued and the Petitioners should be allowed to continue until the posts held by them are duly advertised and filled up in accordance with the recruitment rules in force after obtaining the requisite approval of the Finance (SIU) Department. It further reveals from the records that on 25.07.2010, the posts held by the Petitioners were advertised along with other post. The Petitioners participated in the said selection proceedings and vide separate orders dated 13.12.2010, the Petitioners were appointed to the services and posts in connection with the affairs of the State Government of Assam which are born on pensionable establishment. In the said orders of appointment, it was mentioned that the Petitioners would be covered under the new pension Scheme which was brought into effect w.e.f. 01.02.2005 on the basis of an Office Memorandum dated 06.10.2009.

4. The Petitioners joined pursuant to the appointment orders. However the Petitioners sought for that their past service should be taken into account for the purpose of their pensionary benefits and they should be granted the benefit under the Old Pension Scheme in terms with the Assam Services

(Pension) Rules, 1969.

5. I have perused the materials on record. Mr. R. Borpujari, the learned counsel appearing on behalf of the Finance Department had submitted that the issue involved in the instant case is duly covered by the judgment of this Court in the case of ***Purnima Hore and Another Vs. State of Assam reported in (2023) SCC Online Gau 1165***. Mr. R. Borpujari, the learned counsel has further submitted that the initial appointment of the Petitioners in the year 1999 were illegal and de hors the recruitment rules and the Petitioners continued to remain in service on the basis of an interim order being passed at the time of filing of the writ petition i.e. WP(C) No.6516/1999 and thereupon on the basis of the order dated 20.06.2008 passed in Writ Appeal No.166/2008 and the order dated 25.02.2009 in WP(C) No.525/2009. The learned counsel further drawing the attention of this Court to the order dated 25.02.2009 further submitted that it has been all along the case of the Petitioners that they should be allowed to continue till the selection is being carried out. He submitted that the Petitioners were brought within the affairs of the State for the first time on their selection and appointment and as such the Petitioners cannot claim the benefits of the past service.

6. Upon hearing the learned counsels for the parties and upon perusal of the materials on record, this Court is of the opinion that it is only on the basis of a regular selection initiated pursuant to an advertisement dated 25.07.2010 which was followed by orders of appointment made on 13.12.2010 that the Petitioners were for the first time brought within the affairs of the State of Assam in post borne out of pensionable establishment and as such the case of the Petitioners would be squarely covered under the New Defined Contributory

Pension Scheme, 2009 in terms with Rule 2A of the Assam Services (Pension) Rules, 1969 which was given effect from 01.02.2005. This Court further would like to observe that as the services of the Petitioners were only continued on the basis of an interim order passed by this Court in WP(C) No.6516/1999 and thereupon vide an order dated 20.06.2008 in Writ Appeal No.166/2008, the Petitioners' past service could not have qualified in terms with the Rule 31 of the Assam Services (Pension) Rules, 1969 and as such past services of the Petitioners prior to 13.12.2010 under no circumstances can be taken into account for the purpose of computing the pension and pensionary benefits of the Petitioners.

7. Under such circumstances, this Court does not find any merit in the instant writ petition for which the petition stands dismissed.

JUDGE

Comparing Assistant