

GAHC010120942022



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

Case No. : WA/249/2022

TARANI KANTA RAY AND 10 ORS.

S/O - LATE CHEMRU RAY, VILLAGE AND P.O- MALANDUBI, DIST- DHUBRI,
ASSAM, PIN-783334

2: DABESWAR DAS

S/O - LATE PASIN AS

VILLAGE -UDMARI

P.O- LAKHIGANJ

DIST- DHUBRI

ASSAM

PIN-783345

3: MOZIBAR RAHMAN

S/O - LATE KASHEM ALI SK

VILLAGE- BAGHARCHAR

JHOWDANGA-II

P.O- JHOWDANGA

P.S- MANKACHAR

DIST- SOUTH SALMARA MANKACHAR

ASSAM

PIN-783131

4: ABDUS SATTAR ALI SHEIKH

S/O - LATE MOHAMMAD ALI SHEIKH

VILLAGE -DIGHALGAON

P.O- RUPSHI

DIST- DHUBRI

ASSAM
PIN-783331

5: SADHANA ROY
W/O - LATE SAMARENDRA ROY

VILLAGE - KHERAJ DAOBHANGI

P.O- RUPSHI
DIST- DHUBRI

ASSAM
PIN-783331

6: DINOBALA BARMAN
W/O - LATE BANESWAR MAHATO
VILLAGE - LALKURA PART-I
P.O- SAHEBGANJ
DIST- DHUBRI

ASSAM
PIN-783331

7: HAMELA KHATUN
W/O - LATE HANIFUDDIN SHEIKH

VILLAGE- BENGERVITA
P.O- KALAPANI
DIST- SOUTH SALMARA MANKACHAR

ASSAM
PIN-783135

8: PIYASUDDIN SHEIKH
S/O - LATE MOHIRUDDIN SHEIKH
VILLAGE-DARCHUKA
P.O- SHILAIRPAR
DIST- DHUBRI

ASSAM
PIN-783331

9: AMITA RAY
W/O - LATE PRABIN CHANDRA RAY

VILLAGE AND
P.O- MALANDUBI
DIST- DHUBRI

ASSAM
PIN-783334

10: RINA ROY
W/O - JANEN MARAK
VILLAGE-JALDIBA
P.O- PAGLAHAT
DIST- DHUBRI

ASSAM
PIN-783334

11: RATIMA BRAHMA
S/O - LATE SAMAR SINGH BASUMATHARY

VILLAGE AND P.O- BANNYAGURI

DIST- KOKRAJHAR
ASSAM
PIN-78333

VERSUS

THE STATE OF ASSAM AND 7 ORS. F
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT, DISPUR, GUWAHATI-06

2:THE COMMISSIONER AND SECRETARY
THE GOVT OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI-06

3:THE COMMISSIONER AND SECRETARY
THE GOVT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GHY-06

4:THE ADDITIONAL PRINCIPAL SECRETARY
BTC
KOKRAJHAR
P.O AND DISTRICT- KOKRAJHAR
ASSAM
PIN-783370

5:THE PRINCIPAL CHIEF CONSERVATOR

OF FOREST AND HOFF
ASSAM
ARANYA BHAWAN
PANJABARI
GHY-37

6:THE ADDITIONAL PRINCIPAL CHIEF CONSERVATOR
OF FORESTS CUM CHD
BTC
KOKRAJHAR
ASSAM.
P.O AND DISTRICT- KOKRAJHAR
ASSAM
PIN-783370

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

8:THE DIVISIONAL FOREST OFFICER
PARBATJHORA FOREST DIVISION
P.O- PARBATJHORA
DIST- KOKRAJHAR
BTC
ASSAM
PIN-78334

Advocate for the Petitioner : MR. M ISLAM

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 24-05-2023

Heard the learned counsel for the parties.

The instant writ appeal is directed against the judgment and order dated 21.02.2022, passed by the learned Single Bench in WP(C) No. 7372/2021 rejecting the

writ petition preferred by the petitioners/appellants herein seeking a direction to the respondent authorities to grant pension and other pensionary benefits to the petitioners.

Learned counsel Mr. S. Islam, representing the appellants has placed reliance on the order dated 18.02.2022 passed by the Hon'ble Supreme Court in **Special Leave to Appeal No. 1109/2022 (*The State of Gujarat & Ors. Vs. Talsibhai Dhanjibhai Patel*)**, whereby the Hon'ble Supreme Court dismissed the appeal preferred by the State of Gujarat affirming the order of the High Court conferring benefits of pension upon the respondents.

Mr. D. Gogoi, learned counsel representing the Forest Department; Mr. P. Nayak, learned counsel representing the Finance Department and Ms. R.B. Bora, learned Government counsel and Standing counsel, BTC, have vehemently and fervently opposed the submissions advanced by the appellants' counsel. They contended that the appellants herein were engaged as Fixed pay employees/Muster Roll workers/Skilled labourers/Casual labourers/Plantation watchers etc. and they never worked on any encadared post so as to be treated as in government service and, thus, they are not entitled to lay claim for pension and other pensionary benefits since they do not satisfy any of the conditions prescribed under Rule 31 of the Assam Services (Pension) Rules, 1969 (hereinafter referred to as "Pension Rules of 1969" for short). They pointed out that in the case of ***Talsibhai Dhanjibhai Patel*** (supra), the facts were totally different because in the said case the respondents had rendered *ad hoc* services to the State for 30 years, whereas in the present case the appellants were never in *ad hoc* service but were Muster Roll workers/Casual labourers/ Daily wage labourers in the entire span of duties performed by them. Reliance was placed by the learned counsel representing the respondents on the judgments rendered by this Court in the cases of ***State of Assam vs. Upen Das & Ors*** (Writ Appeal 45/2014) and ***Ujala Narzary vs. The State of Assam & Ors.*** (Writ Appeal No. 1/2022 and connected appeals, decided on 13.03.2023).

We have given our thoughtful consideration to the submissions advanced at the Bar and have considered the material available on record.

There cannot be two views that in order to qualify for pension and other pensionary benefits, a person must fulfil the conditions as stipulated under Rule 31 of the Pension Rules of 1969, which reads as follows:

“31. The service of an officer does not qualify for pension unless it conforms to the following three conditions:

Firstly, the service must be under Government;

Secondly, the employment must be substantive and permanent;

Thirdly, the service must be paid by Government;

Provided that the Governor may, even though either or both of conditions (1) and (2) above are not fulfilled,

(i) Declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension, and

(ii) In individual cases and subject to such conditions as he may think fit to impose in each case allow service rendered by any officer to count for pension.”

The petitioners/appellants herein would have to satisfy all conditions of the Pension Rules of 1969 to be entitled for pension and other pensionary benefits. Admittedly, the appellants herein were working as Muster Roll workers/Casual workers/Daily wage labourers and, hence, they do not satisfy any of the three conditions stipulated in the above Rule so as to lay claim for pension and other pensionary benefits. In the two Division Bench judgments relied upon by the respondents, this Court has clearly held that the service of temporary nature, viz. Service rendered by Muster Roll workers/Casual labourers/Plantation Watchers, does not qualify the person/persons concerned for pension and other pensionary benefits. We have no reason to take a different view of the matter.

As a consequence of the above discussion, we are of the considered opinion that the learned Single Judge was perfectly justified in rejecting the writ petition filed by the petitioners staking claim for pension and other pensionary benefits under the

Pension Rules of 1969. The writ appeal lacks merit and is dismissed as such.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant