

GAHC010124532014



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

Case No. : WP(C)/2633/2014

ASOM RAJYIK BASTRA NIGAM KARMACHARI SANTHA and ANR
REPRESENTED BY ITS PRESIDENT 1 NO. NOWAPARA, P.O. NOWAPARA,
DIST- BONGAIGAON, ASSAM, PIN-783392

2: THE GENERAL SECRETARY
ASOM RAJYIK BASTRA NIGAM KARMACHARY SANTHA
1NO. NOWAPARA
P.O. NOWAPARA
P.S. MANIKPUR
DIST- BONGAIGAON
ASSAM
PIN-78339

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GHY-6

2:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
INDUSTRIES and COMMERCE DEPTT. DISPUR
GHY-6

3:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
PUBLIC ENTERPRISES DEPARTMENT
DISPUR
GHY-6

4:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GHY-6

5:ASSAM STATE TEXTILE CORPORATION LTD.
REPRESENTED BY THE MANAGING DIRECTOR
DIandCC
BAMUNIMAIDAM
GHY-2

Advocate for the Petitioners : MR. K. R. PATGIRI

Advocate for the Respondents : MR. J. K. GOSWAMI
: MR. A. KALITA
: MR. P. NAYAK
: MR. A. JAHID

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 05-01-2023

Heard Mr. K. R. Patgiri, the learned counsel appearing on behalf of the petitioners and Mr. J. K. Goswami, the learned Additional Senior Government Advocate appearing on behalf of the respondent No.1. I have also heard Mr. A. Kalita, the learned Standing counsel appearing on behalf of the respondent Nos. 2 and 3 and Mr. P. Nayak, the learned Standing counsel appearing on behalf of the respondent No.4 and Mr. A. Jahid, the learned Standing counsel appearing on behalf of the respondent No.5.

2. The instant writ petition has been filed by the petitioners seeking a writ of Mandamus directing the respondents to pay (a) House Rent Allowances, (b) Medical Allowances, (c) Bonus (20% w.e.f. 1990 to 2007 as per Bonus Act), (d) Unpaid arrear salary w.e.f. November, 1993 to April, 1994, (d) Arrear salaries as per revised scale of pay as per ROP 2006 w.e.f. 01.01.2006 to 28.06.2007 and (f) Remaining ex-gratia for 30 days per year on completed year of service to the

members/predecessors of the members of the petitioners' association.

3. The facts of the instant case in brief is that the members of the petitioners' association were employees under the Assam State Textile Corporation Ltd, a State Government undertaking. Admittedly, the Mill has not been functioning since 1993. However, on account of the ADB's Assam Governance and Public Resource Management Programme (AGMPRP) - Reform of Public Sector Enterprises, it was decided that a policy on Voluntary Retirement Scheme for the employees of the State Level Public Enterprises of Assam be given to those employees for implementation of the Voluntary Retirement Scheme in the State Level Public Enterprises of Assam. The said policy was notified by the Government of Assam, Department of Public Enterprises, vide a notification bearing No.PE.4/2006/28, dated 15.02.2006. The entitlements in terms with the notification were (a) Ex-gratia of 15 days pay (Basic Pay + Dearness Allowance) only against each completed year of service rendered or for the months of service left whichever is less, (b) Cash payment for unutilized leave for a maximum period of 240 days (Basic Pay + Dearness Allowance only), (c) Balance of Contributory Provident Fund (CPF) dues payable as per the Regulation of the CPF, (d) Gratuity as per Gratuity Act, (e) Unpaid salary/wages (Basic Pay + Dearness Allowance) up to the date of acceptance of VRS by the employee and (f) savings of Group Insurance Scheme.

4. It is an admitted fact that the members of the petitioner No.1's association had applied for VRS in terms with the said Scheme and the VRS was approved w.e.f. 28.06.2007. Subsequent thereto, sometime in the year 2010, the members of the petitioners' association were made payments in terms with the said notification dated 15.02.2006. Admittedly, the members of the petitioners'

association had accepted the same without any demur or objection. However, subsequently, the members of the petitioners' association realized that they were further entitled to certain other amounts for which the petitioners' association submitted representations before various authorities claiming the additional amounts to which the members of the petitioners' association were entitled to. However, by the communication dated 26.12.2012, the Deputy Secretary to the Government of Assam, Industries and Commerce Department had rejected the said representations stating inter alia that the same cannot be considered as per the existing legal provisions and advised the General Secretary of the petitioner No.1's association to approach other appropriate authority if still aggrieved. It is under such circumstances that the instant writ petition was filed seeking for the Mandamus as already referred to hereinabove.

5. This Court vide an order dated 30.05.2014 had issued notice. The record reveals that the respondent No.3 as well as the respondent No.5 had filed affidavits-in-opposition.

6. In terms with the affidavits-in-opposition filed by the respondent No.3, i.e. the Public Enterprises Department, it was mentioned that on receipt of a proposal from Industries and Commerce Department (ICD) for closure of Assam State Textile Corporation Ltd. (ASTCL), the respondent No.3 being the Nodal Department for the Public Sector Undertakings reforms, placed the proposal of closure of the said Corporation before the Assam Cabinet on 22.06.2007 and 23.10.2010. The Cabinet had approved the closure of the Corporation at a total cost of Rs.2464.59 Lakhs under the revised Government VRS Policy issued by No.PE.4/2006/28 dated 15.02.2006 and the Government since then had released Rs.2088.91 Lakhs to the Corporation for payment of the VRS dues to

the employees as well as to the other trade dues. It was further mentioned that the employees' liabilities as submitted by the Industries and Commerce Department was approved by the Cabinet and the funds were accordingly released to the Corporation. Further to that, it has been mentioned that the VRS benefits were given to the employees of all closed Public Sector Undertakings including the petitioners' Corporation in the revised scale of pay based on ROP-1998. It was mentioned that the petitioners having already received the entire benefits, the instant writ petition merits no further consideration. It is however relevant to take note of that in the said affidavit, it has been mentioned that the judgment dated 03.01.2014 passed by the Co-ordinate Bench in WP(C) No.994/2007 which stipulated that the salary shall include House Rent Allowance, Medical Allowance as well as the City Compensatory Allowance while computing the salary for the VRS Scheme was at the stage of being challenged before the Division Bench of this Court.

7. The respondent No.5 i.e. the Assam State Textile Corporation Ltd. in its separate affidavit-in-opposition, apart from what has been stated by the respondent No.3 in its affidavit had stated that after closing the Mill, the Government had paid the VRS dues to the workers, those who were in the roll of Corporation at the time of closing the Mill as per the notification dated 15.02.2006. It was mentioned that the said notification had not been challenged by any of the employees rather they have received their dues without protest as full and final settlement of their claim towards the service rendered and in that regard, the workers have submitted individual undertakings that they had no other claim whatsoever from the management. It was therefore stated that the union i.e. the petitioners herein has no locus standi to file the present writ petition, claiming the further dues from the Government. Although, to the said

affidavit-in-opposition, there was no enclosure of the individual undertakings so given by the employees i.e. the members of the petitioners' association but during the course of the hearing, the learned counsel appearing for the respondent No.5 has placed on record a receipt-cum-undertaking given by one of the members of the petitioners' association while accepting the VRS amount. The same being relevant is kept on record and marked with the letter "X".

8. A perusal of the said document marked with the letter "X" shows that one Sri Abhay Chandra Das who was the member of the petitioners' association had accepted an amount of Rs.2,96,774/- without any protest and further stated that he had no further claim from the Assam State Textile Corporation Ltd on any account whatsoever. A further perusal of the said document marked with the letter "X" shows that an amount of Rs.2,22,808/- was paid against the heading "Salary including arrear salary (Basic Pay + Dearness Allowance), Rs.8,999/- being paid against "Earned Leave Encashment", Rs.35,781/- was paid against "Gratuity" and Rs.29,186/- paid against "Ex-gratia payment".

9. In the backdrop of the above pleadings and documents on record, let this Court take into consideration the relevant submissions made by the respective counsels. Mr. K. R. Patgiri, the learned counsel for the petitioners at the outset submits that the petitioners herein seek a direction upon the respondents to pay the House Rent Allowance, Medical Allowances, the unpaid arrear salary w.e.f. November, 1993 to April, 1994, as well as the arrear salary as per the revised scale of pay as per ROP 2006 w.e.f. 01.01.2006 to 28.06.2007. He further submitted that he is not claiming any direction insofar as the Bonus (20% w.e.f. 1990-2007 as per the Bonus Act) as well as ex-gratia for 30 days per year on completed year of service to the members/predecessors of the members of the

petitioners' association.

10. The learned counsel for the petitioners drawing the attention of this Court to the judgment of the Co-ordinate Bench dated 03.01.2014 passed in WP(C) No.994/2007 had submitted that in respect to the same VRS Scheme, this Honourable Court had held that the salary shall include the House Rent Allowance, Medical Allowance and the City Compensatory Allowance. He further submitted that the judgment dated 03.01.2014 was challenged in Writ Appeal No.112/2015 by the respondents therein. However, the Division Bench of this Court had also held that in terms with the VRS, the petitioners therein were entitled to the House Rent Allowance, Medical Allowance and City Compensatory Allowance. Under such circumstances, the learned counsel appearing on behalf of the petitioners has submitted that the members of the petitioners' association were entitled to the House Rent Allowance and Medical Allowance which admittedly have not been paid.

11. On the question of unpaid arrear salary w.e.f. November, 1993 to April 1994, the learned counsel submitted that this is a period when the Government of Assam had handed over the particular Mill to a private entity and during this particular period, the private entity did not make any payment. He therefore submitted, as the alleged transfer of the Mill did not actually come into effect, the respondent No.5 was therefore liable to pay the unpaid arrear salary w.e.f. November, 1993 to April, 1994 as the same is in terms with the VRS Scheme dated 15.02.2006. The learned counsel further submitted that the Government of Assam were paying the members of the petitioners' association as per the ROP Rules of 1998. However, the ROP Rules of 2010 was given effect from 01.01.2006 and as such, the members of the petitioners' association were

entitled to the revised salary scale of pay w.e.f. 01.01.2006 till the VRS was accepted i.e. 28.06.2007.

12. On the other hand, Mr. A. Jahid, the learned Standing counsel for the respondent No.5 had submitted that the members of the petitioners' association having received the entire entitlements without any protest whatsoever, the instant writ petition so filed at their behest by the petitioners' association is not maintainable. He laid stress on paragraph No.8 of his affidavit-in-opposition and further submitted that there is no denial to the fact by the petitioners in their affidavit-in-reply of receiving the said amount without protest. Further, referring to the document marked with the letter "X", he submitted that each of the members of the petitioners' association have categorically stated that they had no further claim from Assam State Textile Corporation Ltd. on any account whatsoever. Before further proceedings into the contentions raised by the learned Standing counsel appearing on behalf of the other respondents, it is relevant to take note of that in the affidavit-in-reply filed by the petitioners as well as also in the writ petition, they have categorically stated that members of the petitioners' association received the said amount without any scrutiny as because they had need of money for their livelihood but later on, upon meticulous scrutiny of the payment, it was found that the amounts so claimed have not been paid.

13. Mr. P. Nayak, the learned Standing counsel appearing on behalf of the Finance Department submitted that in view of the judgment passed in the case of ***The Official Liquidator for the Statfed-cum-Additional Registrar of Co-operative Societies B.T.C. Vs. All Assam Statfed Karmachari Aikya Manch and 23 Others*** by the Division Bench on 06.05.2015 in Writ Appeal No.112/2015, the law is well

settled that the salary would include the House Rent Allowance, the Medical Allowance as well as the City Compensatory Allowance. In that regard, he further submitted that in a subsequent judgment, the Co-ordinate Bench of this Court dated 16.05.2019 in WP(C) No.2436/2013 in the case of **Arup Kumar Das and 5 Others Vs. Union of India and 6 Others** have also observed that the petitioners therein would be entitled to House Rent Allowance and Medical Allowance and accordingly had directed the concerned respondents to release the House Rent Allowance and Medical Allowance to the petitioners. On the question of non-payment of the arrear salary as per the revised scale of pay of ROP 2006 w.e.f. 01.01.2006 to 28.06.2007, the learned Standing counsel for the Finance Department has drawn the attention of this Court to the notification dated 04.02.2010 thereby notifying the Assam Service (Revision of Pay) Rules, 2010 wherein it has been categorically mandated in Rule 2(b) that unless specifically extended under express order of the Government, the said Rules shall not apply to the officers and staff of Public Undertakings of the Assam Government. He therefore, submitted that there is no express order by which the Assam Service (Revision of Pay) Rules, 2010 has been extended, for which the question of the petitioners getting any arrear salary as per the revised scale of pay, as per the ROP 2006 w.e.f. 01.01.2006 to 28.06.2007 does not arise.

14. Mr. A. Kalita, the learned Standing counsel appearing on behalf of the Industries and Commerce Department has submitted that the question of payment of unpaid arrear salary w.e.f. November, 1993 to April, 1994 does not arise taking into account that the members of the petitioners' association have duly accepted the salary including the arrear salaries without any protest and the question as to whether the petitioners were paid the salary w.e.f. November, 1993 to April, 1994 cannot be further agitated by the instant proceedings.

15. I have heard the learned counsels for the parties and have also perused the materials on record. Let this Court first take into consideration as regards the entitlement of the members of the petitioners' association in respect to the House Rent Allowance and Medical Allowance. The learned Standing counsel for the respondent No.5 had categorically stated that the petitioners cannot claim House Rent Allowance and Medical Allowance taking into account that they have duly accepted the said amount so paid without any demur or objection. In other words, it is the submission of the learned Standing counsel for the respondent No.5 that on the principles of estoppels, the petitioners now cannot agitate non-payment of the House Rent Allowance and Medical Allowance.

16. The Co-ordinate Bench as well as the Division Bench in its judgments dated 03.01.2014 as well as 06.05.2015 respectively had categorically held that the terms of the VRS in respect to the notification dated 15.02.2006 which is also the same notification herein shall include within the term House Rent Allowance, Medical Allowance and the City Compensatory Allowance. On the ground that the petitioners have accepted the amount which have been paid without any protest and to disentitle them for that in the opinion of this Court would not be proper. Under such circumstances, this Court therefore is of the opinion that the members of the petitioners' association are entitled to the House Rent Allowances as well as the Medical Allowances in computing their salary including the arrear salary.

17. The next question which arises as to whether the members of the petitioners' association would be entitled to unpaid arrear salary w.e.f. November, 1993 to April, 1994. The petitioners have not been able to show anything on record as to on what basis it is their assumption that the petitioners

have not been paid the salary for the period w.e.f. November, 1993 to April, 1994. Under such circumstances, the acceptance of the members of the petitioners' association of the salary including arrear salary to a particular amount by giving an undertaking to that effect cannot be re-opened at this stage, merely because the learned counsel for the petitioners stated that they have not been paid salary from the month of November, 1993 to April, 1994. Under such circumstances, this Court is of the opinion that a Mandamus cannot be issued directing the respondents for payment of the unpaid arrear salary w.e.f. November, 1993 to April, 1994.

18. As regards the claimed salary as per the ROP 2006 w.e.f. 01.01.2006 to 28.06.2007, there is no materials placed on record to show that the Government of Assam by any express order had extended the Assam Service (Revision of Pay) Rules, 2010 to the officers and staff of the Assam State Textile Corporation Ltd. which is a public undertaking of the Assam Government. Under such circumstances, the question of applying the Assam Service (Revision of Pay) Rules, 2010 do not arise and consequently, the members of the petitioners' association cannot be held to be entitled to the arrear salaries as per the revised scale of pay as per ROP 2006 w.e.f. 01.01.2006 to 28.06.2007.

19. In that view of the matter, this Court therefore disposes of the instant writ petition with a direction upon the respondent Nos. 1, 2 and 5 to pay the members of the petitioners' association after making necessary verification, the House Rent Allowance as well as the Medical Allowance as a part of their salary to which they are entitled to in terms with the notification dated 15.02.2006. The said exercise be carried out within a period of 3 (three) months from the date of a certified copy of this order is served upon respondent No.2 and 5.

20. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant