

GAHC010128822023



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

Case No. : WP(C)/3446/2023

ANAL KR BHAGABATI
S/O- LATE RUP RAM SUT,
R/O- H. NO. 12, RUPALI PATH,
JANAKUR, NEAR JOURNALIST COLONY,
KAHILIPARA, GUWAHATI,
DIST- KAMRUP(M), ASSAM,
PIN- 781019.
P.S. DISPUR.

VERSUS

THE ASSAM POWER GENERATION CORPORATION LIMITED AND 4 ORS
REPRESENTED BY ITS CHAIRMAN
HAVING ITS REGISTERED OFFICE AT BIJULEE BHAWAN,
PALTAN BAZAR, GUWAHATI- 781001.

2:THE MANAGING DIRECTOR
ASSAM POWER GENERATION CORPORATION LTD
BIJULEE BHAWAN
PALTANBAZAR

GUWAHATI- 781001.

3:THE MANAGING DIRECTOR
ELECTRICITY GRID CORPORATION LIMITED
BIJULEE BHAWAN
PALTANBAZAR

GUWAHATI- 781001.

4:THE CHIEF GENERAL MANAGER (HR)
ASSAM POWER DISTRIBUTION COMPANY LTD.

BIJULEE BHAWAN
PALTANBAZAR

GUWAHATI- 781001.

5:THE GENERAL MANAGER (HR)

OFFICE OF THE CHIEF GENERAL MANAGER (GEN)

ASSAM POWER GENERATION CORPORATION LTD

Advocate for the Petitioner : MR S MUKTAR

Advocate for the Respondent : SR. SC, APGCL

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

16.6.2023

Heard Mr. SK Muktar, learned counsel for the writ petitioner. Also heard Mr. B Choudhury, learned counsel for the respondent No. 4, Mr. H R Das, learned standing counsel for the APGCL and Mr. S Kataki, learned counsel for the respondent No. 3.

The petitioner herein, was an employee of the APGCL and he retired from service on attaining the age of superannuation w.e.f. afternoon of 31-03-2016. As per the notification dated 12-12-2017 issued by the APGCL covering the cases of the employees of all the three units created after bifurcation of the ASEB including the AEGCL, the revised pay scale will be applicable in case of those employees who were in service on 31- 03-2016 or who may have been appointed on or after 01-04-2016. The petitioner's case is that he was in service on 31-03-2016, therefore, would be entitled to the benefits of the revised pay

rules, 2017 as notified by the OM dated 12-12-2017, which has been denied to him.

Mr. Muktar has also invited the attention of this Court to the decision of the learned Single Judge rendered on 03-11-2022 in connection with W.P.(C) No. 1607/2020 wherein a similar issued was decided by holding that the employee who was in service on 31-03-2016 would be entitled to the benefit of revised pay rules, 2017.

Mr. Das, on the other hand, submits that the judgment and order dated 03-11- 2022 has been taken in an appeal before the Division Bench, which is pending disposal. The learned counsel for the respondents has, however, fairly submitted that there is no stay order operating in respect of the judgment and order dated 03-11-2022.

The operative part of the judgment and order dated 03-11-2022 would be relevant in this case and therefore, is extracted here-in-below:-

“20. From a conjoint reading of the provisions of the Revised Pay Rules, 2017, more particularly, Rule 1, Rule 2, Rule 4[a] and Rule 32[1][a] & [b] together, this Court is of the unhesitant view that the petitioner who was in service on 31.03.2016 and who retired from service on reaching the age of superannuation also on 31.03.2016, cannot be categorized and bracketed in the category of existing pensioner on 31.03.2016 as he acquired the status of pensioner only on and from 01.04.2016. In such view of the matter, the benefits under the Revised Pay Rules, 2017 cannot be worked out by resorting to Rule 32[1][a] & [b] of the Revised Pay Rules, 2017 but his entitlements are to be worked out in terms of the provisions laid down in Rule 4[a] of the Revised Pay Rules, 2017. Rule 4[a]

has made the revised pay structure [Pay Band with Grade Pay] applicable to an employee who was in service on 31.03.2016 and the petitioner falls in that category of employee. Therefore, this Court is of the view that the respondent authorities shall have to work out the entitlements of the petitioner as pensioner under different heads like pension, Commuted Value of Pension [C.V.P.], Death – cum- Retirement Gratuity, leave encashment benefits, etc. and if after such exercise, the petitioner is found entitled for an enhanced amount that what had been worked out by the Office Order no. ASEB/PLT/438/1979/268 dated 31.03.2016 and/or by any exercise by resorting Rule 32[1][a]&[b] of the Revised Pay Rules, 2017, the same should be disbursed to the petitioner in an expeditious manner. It is observed that the entire exercise shall be undertaken and completed within 6 [six] weeks from the date of submission of a certified copy of this order by the petitioner at the office of the respondent no. 2.”

Having regard to the undisputed facts and circumstances of the case as well as the decision rendered in the case of W.P.(C) No. 1607/2020, this Court is of the unhesitant opinion that the petitioner’s case is squarely covered by the judgment of this Court rendered in W.P.(C) No. 1607/2020. I have also perused the order dated 22-03-2023 passed by the Hon’ble Division Bench in W.A. No. 107/2023 and find that no stay order suspending the operation of the judgment and order dated 03-11-2022 has been passed.

In view of the above, this writ petition stands disposed of by holding that petitioner’s case is covered under the judgment dated 03-11-2022 passed in connection with W.P.(C) No. 1607/2020. Therefore, he be extended the benefit of revised pay Rules of 2017.

However, in view of the observation made in the final paragraph of the

order dated 22-03-2023 passed by the Division Bench on 22-03-2023, it is made clear that so as to avail the benefit under this order, the writ petitioner would give a undertaking to the effect that if the judgment and order dated 03-11-2022 is set aside by a superior Court, then in that event, he would be open to refund of the excess amount paid to him on the strength of the present order.

Writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant