

GAHC010129542017



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

**Case No. : WP(C)/2990/2017**

KAMAL KATAKY  
S/O. LT. NABA KOTOKY, VILL. KOTOKY CHUBURI, P.O. BASSERIA, DIST.  
SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS.  
THROUGH- THE SECRETARY, TO THE GOVT. OF ASSAM, GENERAL  
ADMINISTRATION, DISPUR, GHY.-781006.

2:THE SECRETARY

TO THE GOVT. OF ASSAM  
LAND REVENUE AND DISASTER MANAGEMENT DEPTT.  
DISPUR  
GHY.-781006.

3:THE SECRETARY  
TO THE GOVT. OF ASSAM  
FINANCE DEPTT.  
DISPUR  
GHY.-781006.

4:THE DY. COMMISSIONER

SONITPUR  
TEZPUR  
DIST. SONITPUR  
ASSAM

**Advocate for the Petitioner : MR.P BISWAS**

**Advocate for the Respondent : MR. A PHUKAN, SC, GAD**

**BEFORE  
HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**Date : 30/01/2023**

Heard Mr. S.C. Biswas, learned counsel for the writ petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel, Finance Department, Assam, representing the respondent nos. 1 and 3 and Mr. H. Sarma, learned Additional Senior Government Advocate, Assam, appearing for the respondent no. 4. Mr. S. Dutta, learned Standing Counsel, Revenue and Disaster Management Department, Assam, is present on behalf of the respondent no. 2.

By filing this writ petition, the writ petitioner has approached this Court for the second time seeking a direction to regularize his service in the post of Peon. The facts of the case, briefly stated, are as follows :-

The father of the petitioner died in harness on 14/10/1992 while he was serving as a Lot Mondal under the establishment of the Deputy Commissioner, Sonitpur, Tezpur i.e. the respondent no. 4. On the demise of the bread-earner of the family, the son i.e. the writ petitioner herein was appointed in the post of Peon on compassionate ground, at a fixed pay of Rs. 900/- per month on temporary basis, by order dated 06/08/1997, issued by the respondent no. 4. Accordingly, the petitioner had joined the post of Peon in 1997 and continued to serve as Peon at a fixed pay of Rs. 900/- per month which was subsequently enhanced to Rs.4500/-. It appears that with effect from the month of March, 2014, the salary/fixed pay of the petitioner was stopped. Aggrieved thereby, the petitioner had approached this Court by filing WP(C) 2557/2015, which was disposed of by the learned Single Judge by order dated 26/08/2016. The operative part of the order dated 26/08/2016 would be relevant in this case and, therefore, is being reproduced herein below for ready reference :-

*“It is seen that the petitioner has continued to serve in the establishment of the respondent no. 3 on and from the year 1997. The petitioner cannot claim appointment on regular basis as a matter of right. However, considering the long period of service, it is expected from the State respondents to consider if the petitioner can be accommodated on humanitarian considerations. In so far as non-payment of fixed pay salary w.e.f. March, 2014 is concerned, the same cannot be withheld if the petitioners have rendered service during the period and if the respondents concerned have also extracted service from the petitioner.*

*Let a decision for considering the case of the petitioner towards permanency in employment be done within a period of 8 (eight) weeks from today. In so far as payment of fixed salary from March, 2014 is concerned, the State respondents shall examine and make necessary verification and thereafter take a decision towards payment or otherwise within a period of 6 (six) weeks from today.*

*In view of the above, this writ petition stands disposed of.”*

Even after the order dated 26/08/2016, the petitioner was neither allowed to join his duties nor was his salary paid, as a result of which, Contempt Case (C) No. 445/2019 was instituted alleging willful violation of the directions of this Court. In the wake of the Contempt Proceeding, the petitioner was allowed to resume his duties and he has also been paid part of the arrear salary. Mr. Biswas, learned counsel for the petitioner submits that the petitioner is continuing to render his duties in the post of Peon on regular basis and drawing the minimum scale of Rs. 19,000/- per month. However, according to Mr. Biswas, his client is entitled to a higher pay scale.

Mr. H. Sarma, learned Additional Senior Government Advocate, Assam, has invited the attention of this Court to the averments made in the affidavit-in-opposition filed by the respondent no. 4 to contend that there was want of Government approval in case of the petitioner's appointment, as a result of which, there was some delay in the matter. However, ultimately the issues has been resolved and approval of the Finance Department has also been received. Accordingly, the petitioner is being paid the minimum scale applicable to Grade-IV post.

Mr. B. Gogoi, learned Standing Counsel, Finance has also confirmed that the Finance Department has given approval for payment of minimum pay scale to the petitioner and accordingly, he is receiving the basic pay of Rs. 19,000/- per month.

In the writ petition, the basic relief sought for is an order for regularization of the petitioner's service in the post of Peon. It is seen from the materials on record that the petitioner was temporarily appointed as Peon on compassionate ground. Thereafter, the Finance Department, Assam, had accorded approval for payment of regular pay scale to the petitioner and he is presently discharging his duties in the post of Peon by receiving regular salary as per the minimum pay scale. Since the appointment of the petitioner is on compassionate ground, hence, even if the same was temporary, it cannot be treated in equal footing with other employees appointed on temporary basis in so far as the process of regularization of his service is concerned. This is because all appointments made on compassionate ground are as per a scheme of the Government, aimed at providing immediate relief to the family of the deceased employee who has died in harness. Appointments on compassionate ground are made under special circumstances and therefore, the process adopted in such appointment cannot be the same as that adopted while filling up regular vacancies in a Government Department.

Coming to the facts of this case, since the petitioner has been rendering continuous service in a vacant post of Peon since 1997 and is also receiving regular pay scale on the basis of approval granted by the Finance Department of the Government of Assam, hence, this Court is of the opinion that by virtue of his long and continuous service, the petitioner can be treated as a permanent employee. As such, there cannot be any question of regularization of service of the petitioner in the Grade-IV post held by him based on any further order from the Court. In other-words, the petitioner, for all intent and purpose, is discharging his duties as a regular employee in a vacant and sanctioned post under the establishment of the respondent no. 4. To that extent, no further direction for regularization of his service is called for. If the petitioner is aggrieved by the pay scale given to him,

then in that event, it would be open for him to approach this Court agitating his grievance in the matter, by bringing proper facts on record.

For the reasons stated above, this writ petition is hereby disposed of with the above observations by granting liberty to the petitioner, to seek Redressal of his grievance, if any, as regards the pay scale granted to him.

**JUDGE**

*sukhamay*

**Comparing Assistant**