

GAHC010133492023



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

Case No. : WP(C)/3542/2023

ANIMA RANI DEB
W/O- LATE SAMARENDRA DEB, R/O- LALA TOWN, WARD NO. IV, P.O.
LALA, DIST.- HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, WATER RESOURCE DEPARTMENT, ASSAM,
DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)

ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-781029.

5:THE CHIEF EXECUTIVE ENGINEER
WATER RESOURCE DEPARTMENT
ASSAM
CHANDMARI
GUWAHATI-781003

Advocate for the Petitioner : MR. N H BARBHUIYA

Advocate for the Respondent : SC, WATER RESOURCE

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 19-06-2023

1. Heard Mr. N.H. Barbhuiya, learned counsel for the petitioner. Also heard Mr. R.M Das learned counsel for the respondent Nos.1, 2 and 5, Mr. N Hasan, learned counsel for the respondent No.4, Mr. C.S. Hazarika, learned counsel for the respondent No.3.

2. The petitioner claims that she served the department for 23 years two months and her service was regularized with effect from 22.07.2005.

3. According to the petitioner she is having 23 years of service, taking her service to be 17 years 2 months, she has been refused pensionary benefits after deducting 6 years in terms of one OM dated 20.09.2005.

4. It has also been contended by the learned counsel for the petitioner that the portion of the notification which mandated deduction of initial service as Muster Roll for the purpose of calculation of pension has already been interfered by this Court in the case of Sanjita Roy and others (supra). Accordingly she claims that

her case is squarely covered by the ratio laid down in ***Sanjita Roy and others Vs. State of Assam and others***.

5. The petitioner was a helper on Muster Roll basis in the Office of the Executive Engineer, Water Resource Department, Hailakandi Division. The petitioner retired from service on 31.06.2016 on attaining superannuation. The petitioner joined the said office on 01.02.1993 as Muster Roll Worker and her service was regularized on 22.07.2005. Though the total length of service of the petitioner from her initial entry as muster roll worker was 23 years, 2 months, by virtue of office memorandum dated 20.05.2009, deduction of 6 years was allowed for calculation of pension. Accordingly, the net qualified service of the petitioner was calculated to be 17 years 2 months and accordingly, she was allowed to receive only terminal gratuity amounting to Rs.97,930/-.

6. Such decision has been taken in view of Office Memorandum dated 20.05.2009, issued by the Finance Department, Assam whereby and whereunder it was provided that initial 6 years of service of Muster Roll Worker should be deducted for counting of pensionable service.

7. The said Office Memorandum was put to challenge in a batch of writ petition and vide a common judgment and order dated 04.12.2018, passed in WP (C) No. 1089 of 2015 (***Sanjita Roy and others Vs. State of Assam and others***), this court held as follows:-

“29. Rival submissions of the parties have been duly considered. The decision to grant pension to casual Muster Roll Workers whose services were regularized and have completed 20 years of total service cannot, per se, be termed as arbitrary. The question which rises for determination is whether the decision contained in the Office Memorandum dated 20.05.2009, to deduct 6 years of service meet the test of reasonability under Article 14 of the Constitution of India. While determining the aforesaid question, the Court is reminded of the fact that the petitioners belong to the economically lower strata of the society. As has been held by various judicial pronouncements, it has been laid down that pension is not a bounty or a grace but valuable right accruing by an employee if he fulfills the conditions to be entitled for such pension. The conditions imposed in the instant case for the petitioners who are Muster Roll Workers is completion of a total period of continuous service of 20 years. While this Court, as has been observed above, does not hold that fixation of 20 years of continuous service an arbitrary, the deduction of 6 years does not appear to be reasonable and fair. This Court does not find force that the exercise, in publishing the notification dated 20.05.2009 itself was an under Rule 31 of the Rules and therefore, further exercise is not permissible. It will be wholly unfair and unreasonable to deny a Muster Roll Worker who is admittedly completed 20 years of continuous service of pension in terms of Office Memorandum dated 06.09.2003. However, deduction of 6 years or for that matter, any period to calculate 20 years of continuous service, does not appear to be reasonable. The entire exercise of issuing the notification should be in a positive manner so as to ensure that maximum benefit is given to the incumbents who undoubtedly belong to the economically lower strata of the society. It should have been the endeavour of the State not to make a further classification of Muster Roll Workers who have completed 20 years of continuous service by introducing the condition of deduction of 6 years of casual service. Admittedly, there is no difference at all between the services rendered by the petitioners while they were employed in a casual manner or after the regularization.

30. In view of such position, it is held that deduction of 6 years from their

services while calculating 20 years of continuous service does not appear to be reasonable and fair. As regards the decision of this Court rendered in the case of Monsing Tisso (Supra), this Court is in agreement with the submission of Mr. Nair that the decision should be read in the context of the pleadings. It appears that an impression was given to the Court that 10 years of continuous service was the condition precedent for being eligible for pension. However, even without taking recourse to the said decision this Court has considered the present writ petitions in the forgoing manner.

31. In view of above discussion and by taking into consideration the various judicial pronouncements on the subject, the writ petitions are disposed of directing the respondent authorities to determine the continuous length of service of the petitioners as a Muster Roll Workers and if such service meets the bench mark of 20 years without any deduction, the benefit of pension should be made available to them. While carrying out said exercise, the respondent authorities are also directed to take recourse Rule 67 for those petitioners who fail to meet the bench mark of 20 years by 12 months or less. No order as to cost.”

8. The petitioner being similarly situated as those petitioners of WP(C) 1089/2015, the present writ petition needs to be allowed and accordingly, this writ petition is disposed of in terms of the paragraph Nos. 29, 30 and 31 of the judgment and order dated 04.12.2018 as quoted above i.e. the present petitioner shall be entitled for the pensionary benefit as mandated in the paragraph 31 of **Sanjita Roy (Supra)**. However, terminal gratuity if already paid can be deducted by the authority.

9. This disposes the present writ petition.

10. No order as to cost.

JUDGE

Comparing Assistant