

GAHC010135212023



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

Case No. : Review.Pet./78/2023

ALOK ADITYA

S/O- LT ARABINDA ADITIYA, R/O- VILL- SUBHAS NAGAR, NETAJI ROAD,
H.NO. 53, P.O. AND P.S. SILCHAR, DIST- CACHAR, ASSAM, PIN- 788004

VERSUS

THE STATE OF ASSAM AND 4 ORS.
THROUGH THE SECY., TO THE GOVT. OF ASSAM, PUBLIC HEALTH
ENGINEERING DEPTT., DISPUR, GHY-6

2:THE CHIEF ENGINEER (PHE)
ASSAM
HENGRABARI
GHY-36

3:THE DIRECTOR OF PENSION
HOUSEFED COMPLEX
CENTRAL BLOCK
6TH FLOOR
GHY-06

4:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON

BELTOLA
GHY-29

5:THE EXECUTIVE ENGINEER (PHE)
SILCHAR SUB DIVISION NO. I
SILCHAR
CACHA

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

29.11.2023

1. Heard Mr. L.R. Mazumder, learned counsel for the petitioner. Also heard Mr. R.R. Gogoi, learned counsel for the respondent nos.1, 2, 5, 6 & 7; Mr. J.K. Goswami, learned counsel for the respondent no.3 and Mr. R. Dhar, learned counsel for the respondent no.4.

2. The review petitioner has sought for a review of the order dated 01.10.2019 passed in WP(C) No.7446/2019, on the ground that the direction passed for payment of pensionary benefits to the review petitioner from 04.12.2018, was not in consonance with the decision of the Division Bench of this Court in WA No.18/2021 (Binapani Das vs. The State of Assam & 12 Others), wherein it was held that pensionary benefits should be given from the date the regularized Government employee retires, which in this case would be 28.02.2017.

3. The brief facts of the case is that the review petitioner, as petitioner no.2, had filed WP(C) No.7446/2019 praying for payment of pension, as he was a regularized Muster Roll Worker. This Court disposed of WP(C) No.7446/2019, vide order dated 01.10.2019 by directing the State respondents to pay the pensionary benefits of the petitioners from 04.12.2018, in line with the directions passed in various writ petitions, one of which was WP(C)

No.1089/2015.

4. The case of the petitioner herein is that as he had retired on 28.02.2017, he should be given his pensionary benefits including monthly pension from 28.02.2017 and not from 04.12.2018.

5. As stated earlier, this Court had disposed of a batch of writ petitions, one of them being WP(C) No.1089/2015, wherein the claim of the regularized Muster Roll Workers was that the initial 6 years of service rendered by the Muster Roll Workers as Muster Roll Workers, would have to be counted as qualifying service for the purpose of grant of pension. This Court in WP(C) No.1089/2015, had accordingly held that the entire length of service of a regularized Muster Roll Worker, i.e. the period prior to regularisation and the period after regularisation of service, would have to be counted as qualifying service for the purpose of grant of pension. However, this Court in WP(C) No.1089/2015 had held that the pensionary benefits would only be payable from 04.12.2018. This Court on disposing of WP(C) No.7446/2019 had also mechanically applied the date for grant of pension to the petitioner herein from 04.12.2018.

6. However, in the case of Binapani Das vs. The State of Assam & 12 Others, WA 18/2021, which was disposed of by a Division Bench of this Court, vide order dated 26.02.2021, it was held that putting a condition that the benefit of the order passed in WP(C) No.1089/2015 would be effective only from 04.12.2018 is not correct, particularly when there was no such embargo in the order dated 04.12.2018 passed in WP(C) No.1089/2015 (Sanjita Roy vs. State of Assam & Others), which held that the deduction of six years of service was wrong. The Division Bench also held that an order of the Court is always retrospective in nature, unless it is specifically made prospective in the order

itself. It thus held that the order dated 04.12.2018 passed in WP(C) No.1089/2015 was retrospective in nature and it would include all similarly situated Muster Roll Workers irrespective of their dates of retirement, provided that they were covered by the benefits given to them earlier and were already availing pension.

7. In view of the above, it is quite clear that the petitioner, who is a regularized Muster Roll Worker and who has been given pension w.e.f. 04.12.2018, though having retired on 28.02.2017, is entitled to be given the grant of pension and other retirement benefits, with effect from the date of his retirement. Consequently, the impugned order dated 01.10.2019 passed in WP(C) No.7446/2019 is modified, to the extent that the monthly pension and other pensionary benefits should be granted to the petitioner, with effect from the date of his retirement, i.e. 28.02.2017.

8. The review petition is accordingly allowed and disposed of.

JUDGE

Comparing Assistant