

GAHC010154062021



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

Case No. : WP(C)/5051/2021

HARI CHARAN HALOI
S/O LATE JADU RAM HALOI
VILLAGE AND PO KAITHALKUCHI, DIST NALBARI, ASSAM 781370

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC HEALTH ENGINEERING DEPARTMENT, DISPUR ,
GUWAHATI 06

2:THE SECRETARY
PUBLIC HEALTH ENGINEERING DEPARTMENT
DISPUR
GUWAHATI 06

3:THE CHIEF ENGINEER (PHE)
WATER ASSAM HENGRABARI
GUWAHATI 36

4:THE EXECUTIVE ENGINEER (PHE)
NALBARI DIVISION
NALBARI

5:THE PRINCIPAL ACCOUNTANT GENERAL
ASSAM BELTOLA
GUWAHATI 29

6:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT

Advocate for the Petitioner : MRS. R DEVI

Advocate for the Respondent : SC, P H E

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

14.11.2023

Heard Mrs. R. Devi, learned counsel for the petitioner. Also heard Mr. I. Borthakur, learned counsel representing the Public Health Department (respondent Nos.1 to 4) and Mr. R.K. Talukdar, learned Standing Counsel, Accountant General, representing the respondent No.5.

2. The petitioner's case is that the petitioner was engaged as a work-charged Khalasi and posted in the office of the Assistant Executive Engineer, PHE, Greater Diphu Town Water Supply Maintenance Sub-Division vide Office Order No.Voll-II/16 dated 04.01.1990 issued by the Executive Engineer (PHE), Diphu, Urban Water Supply Division, Diphu. The petitioner was also given the regular scale of pay. Thereafter, the petitioner was deputed to the Assam Urban Water Supply and Sewerage Board on 01.04.1990 and was promoted to the post of Pump Operator on 15.03.1997 in the Assam Urban Water Supply and Sewerage Board.

3. The petitioner was again transferred to the Office of the Executive Engineer, PHE, Nalbari vide Notification dated 06.04.2011. As the petitioner was wrongly referred to as work-charged Khalasi in the Notification dated 06.04.2011, a correction was made vide letter dated 30.04.2011 issued by the Additional Chief Engineer, PHE, Assam, wherein it was shown that the petitioner had been promoted as work-charged Pump Operator on 15.03.1997.

4. On completion of 60 years, the petitioner was allowed to retire from government service w.e.f. 28.02.2019.

5. Thereafter, the Executive Engineer (PHE), Nalbari issued a letter dated 15.03.2019 showing that the petitioner had been regularized as a Khalasi w.e.f. 27.02.2019, i.e. one day prior to his retirement. The Pension Papers of the petitioner was sent for finalization. However, the office of the Accountant General, Assam (respondent No.5) returned back the petitioner's pension papers, on the ground that regularization of the petitioner as work-charged Khalasi was without the approval of the government.

6. The petitioner's counsel submits that as the petitioner's services had been regularized on 27.02.2019, i.e. one day prior to his date of retirement, the petitioner should be granted pension in terms of the judgment rendered by Hon'ble Supreme Court in the case of ***Prem Singh vs. State of Uttar Pradesh and others***, reported in ***(2019) 10 SCC 516***.

7. Mr. I. Borthakur, learned counsel for the respondent PHE department submits that though the Additional Chief Engineer (PHE), Hengrabari, Assam requested the Secretary to the Government of Assam, PHE Department, vide letter dated 17.06.2011, to regularize the services of 27 work charged labourers, including the petitioner, no decision has been taken by the Secretary to the Government of Assam, PHE Department. However, as a representation for regularization had been submitted by the petitioner to the Executive Engineer, Nalbari Division, the Executive Engineer (PHE), vide letter dated 15.03.2019, regularised the services of the petitioner in terms of Note-I of Rule 153 of the Assam Services Pension Rules, 1969 (for short '1969 Rules').

8. Mr. R.K. Talukdar, learned Standing Counsel, Accountant General submits that unless the petitioner's services are regularized, no pension can be given to the petitioner.

9. A perusal of the provisions of the 1969 Rules shows that pension can be given only to a regular government servant. As can be seen from the submission made by the counsel for the PHE and the affidavit submitted by the Executive Engineer, PHE, Nalbari Division, the State Government has not given any approval for regularization of the petitioner's service. As such, the regularization of the petitioner's service by the Executive Engineer is beyond his power and competence. In this respect, paragraphs 6 and 7 of the affidavit filed by respondent No.4 are reproduced as follows;

"6. That vide letter No.PHE-118/Estt/98/Pt-I/3734 dated 17.06.2011, the Additional Chief Engineer (PHE), Hengrabari, Assam wrote a letter to the Secretary to the Government of Assam, PHE Department requesting to regularize the services of 27 nos. of Work Charge labourers who were reverted back from the Assam Urban Water Supply and Sewerage Board. The name of the petitioner was appeared at serial no.1 in the said list.

7. That, while the regularization of service of the petitioner was under consideration, the petitioner filed a representation before the Executive Engineer, Nalbari Division. Thereafter, vide letter under Memo No.PHE-114/Estt.90/Pt-IV/E-10054-58 dated 15.03.2019, the Executive Engineer (PHE), Office of the Chief Engineer (PHE), Water, Assam, the service of the petitioner was brought under regular establishment as per Assam Service Pension Rule-153 Note-1."

10. In the case of *Prem Singh (supra)*, the appellant therein had been appointed in a work-charged establishment as a welder in the year 1965. His services were regularized in the year 2002 and he was posted as a pump operator in the regular pay scale. Prem Singh superannuated in the year 2007. He thereafter filed a writ petition praying that his service in the work-charged establishment should be counted as qualifying service for grant of pension. It was in the above context that the Supreme Court read down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, to hold that the services rendered by Prem Singh in the work-charged establishment should be treated as qualifying service for grant of pension. In the present case, the petitioner's service has

never been regularized. As such, the ratio laid down by the Supreme Court in the case of *Prem Singh (supra)* is not applicable to the present case, inasmuch as, the facts in the case of *Prem Singh (supra)* are different from the facts of this case.

11. Rule 153 of the 1969 Rules provides for grant of gratuity not exceeding six months' pay to a person who retires, after rendering many years of satisfactory service as a contingency employee or in any other non-pensionable service (other than the members of the work-charged establishment), provided that no retirement benefit is otherwise admissible to such person under any other specific rule or order applicable to him. Note 1 of Rule 153 of 1969 Rules provides as follows:

“Note: Though service in a work-charged establishment is non-pensionable, members of such establishment may, on retirement, be entitled to gratuity under Rule 329(2) of the Assam Financial Rules, Second Edition. Such staff will not be entitled to any gratuity under above rule in addition to the gratuity admissible under rule 323 of the Assam Financial Rules.”

12. As can be seen from the contents of Rule 153 and Note-1 of Rule 153 of the Assam Services Pension Rules, 1969, there is nothing to show that the petitioner can be granted pension except for gratuity, as his services have not been regularized. In that view of the matter, the prayer for grant of pension cannot be allowed. The writ petition is, accordingly, dismissed.

13. However, keeping in view paragraphs 6 and 7 of the affidavit-in-opposition filed by the respondent No.4, which is to the effect that the Additional Chief Engineer (PHE), vide letter dated 17.06.2011, requested the Secretary to the Government of Assam, PHE Department, to regularize the services of the petitioner and no decision on that count having been made, the Secretary to the

Government of Assam, PHE Department is directed to take a decision on the request for regularizing the services of the petitioner, within a period of 6 (six) weeks from the date of receipt of a copy of this order and communicate the decision to the petitioner.

JUDGE

Comparing Assistant