

GAHC010155902023



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

Case No. : WP(C)/4384/2023

BINOD BHAGABATI
S/O LATE UDAY BHAGABATI, R/O H.NO.-46 (A), NARENGI HOUSING
COLONY, NARENGI, GUWAHATI, ASSAM, PIN-785026

VERSUS

THE ASSAM POWER GENERATION CORPORATION LTD AND 3 ORS
REPRESENTED BY ITS CHAIRMAN HAVING ITS REGISTERED OFFICE AT
1ST FLOOR, BIJULEE BHAWAN, PALTANBAZAR, GUWAHATI-781001

2:THE MANAGING DIRECTOR
ASSAM POWER GENERATION CORPORATION LIMITED
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-781001

3:THE CHIEF GENERAL MANAGER (F AND A)
ASSAM POWER GENERATION CORPORATION LTD
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-781001

4:THE GENERAL MANAGER (HR)
ASSAM POWER GENERATION CORPORATION LTD
BIJULEE BHAWAN
GUWAHATI-

Advocate for the Petitioner : MR. J PATOWARY

Advocate for the Respondent : SR. SC, APGCL

Linked Case : WP(C)/4381/2023

PRADIP KUMAR BHUYAN
S/O LATE HEM CHANDRA BHUYAN
R/O TARAJAN
GAYEN GAON
JORHAT
ASSAM
PIN-785001

VERSUS

THE ASSAM POWER GENERATION CORPORATION LTD AND 3 ORS
REPRESENTED BY ITS CHAIRMAN HAVING ITS REGISTERED OFFICE AT
1ST FLOOR
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-781001

2:THE MANAGING DIRECTOR
ASSAM POWER GENERATION CORPORATION LIMITED
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-781001

3:THE CHIEF GENERAL MANAGER (F AND A)
ASSAM POWER GENERATION CORPORATION LTD
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-781001

4:THE GENERAL MANAGER (HR)
ASSAM POWER GENERATION CORPORATION LTD
BIJULEE BHAWAN
GUWAHATI-1

Advocate for : MR. J PATOWARY

Advocate for : SR. SC

APGCL appearing for THE ASSAM POWER GENERATION CORPORATION LTD
AND 3 ORS

Linked Case : WP(C)/3979/2023

DILIP KUMAR SARMAH

S/O LATE HARENDRA NATH SARMAH

R/O HOUSE NO. 5
KARENG NAGAR
DAKHINGAON
KAHILIPARA
GUWAHATI
PIN- 781019.

VERSUS

THE ASSAM ELECTRICITY GRID CORPORATION LTD AND 4 ORS.
REP. BY ITS CHAIRMAN HAVING ITS REGISTERED OFFICE AT 1ST FLOOR
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI- 781001.

2:THE MANAGING DIRECTOR
ASSAM ELECTRICITY GRID CORPORATION LIMITED
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI- 781001.

3:THE CHIEF GENERAL MANAGER (F AND A)
ASSAM ELECTRICITY GRID CORPORATION LTD
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI- 781001.

4:THE GENERAL MANAGER (HR)
ASSAM ELECTRICITY GRID CORPORATION LTD.
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI- 1.

5:THE GENERAL MANAGER
UPPER ASSAM T AND T ZONE
ASSAM ELECTRICITY GRID CORPORATION LTD.
NAGAON
ASSAM.

Advocate for : MR. K N CHOUDHURY

Advocate for : SC

AEGCL appearing for THE ASSAM ELECTRICITY GRID CORPORATION LTD
AND 4 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

29-09-2023

Since the issue involved in this three cases are identical and this Court has also been informed that the same has been decided by this Court in an earlier case namely, WP(C) No. 1607/2020 vide judgment and order dated 03.11.2022, all the three cases are taken up for disposal at the admission stage.

2. Since the issue has already been discussed elaborately and decided by the aforesaid judgment, this Court will not further delve into the detail facts. However, the issue in brief may be narrated as follows.

3. The petitioners in the instant case had retired from their services in various capacities on 31.03.2016 (AN) from the Assam State Electricity Board (ASEB). The "ASEB and its Successor Company, Revised Pay Rules, 2017" had come into force *w.e.f.* 01.04.2016. As per Rule 4, the application of the same was notified that it would be applicable to the employees who were in service as on 31.03.2016. It is the contention of the petitioners that they being in service on the stipulated date of 31.03.2016, the said Rules would be applicable. *Per contra*, the contention of the respondents is that the Rule which would be applicable in the instant case is Rule 32 which relates to fitment benefit/revision of pensioner/family pensioners and Sub Rule (1) states that the pension/family pension of the existing pensioners/family pensioners i.e. pre 01.04.2016 shall be revised *w.e.f.* 01.04.2016 in a procedure laid down.

4. The rival submissions were taken into consideration by a Co-ordinate Bench of this Court in WP(C) No. 1607/2020 and vide the judgment dated 03.11.2022, it was held that the petitioners who had retired on 31.03.2016, which in that case was also

in the afternoon (AN) would be covered under Rule 4 and accordingly benefits were directed to be given. This Court has also been apprised that the respondent Corporation had preferred WA No. 107/2023 and the Hon'ble Division Bench vide order dated 22.03.2023 while issuing notice had made an observation that since staying of the said order would have severe adverse consequence on the pensionary benefits, the order dated 30.11.2022 was not stayed. It was however stipulated that the incumbent therein would furnish an undertaking to the effect that in case of success of the writ appeal, he shall reimburse the excess amount, if any.

5. I have heard Shri K. N. Choudhury, learned Senior Counsel assisted by Shri J. Patowary, learned counsel for the petitioners. I have also heard Shri D. Nath, learned counsel for the APGCL in WP(C) Nos.4384 and 4381 of 2023 whereas Shri S. Kataki, learned counsel has appeared for the respondent-AEGCL in WP(C) No. 3979/2023.

6. Shri Choudhury, the learned Senior counsel has submitted that similar matters were subsequently filed which were disposed of by allowing the same and adding the rider imposed by the Hon'ble Division Bench requiring the incumbent to give undertaking and in this connection, he has referred to orders dated 17.05.2023 passed in WP(C) No. 2483/2023 and 19.05.2023 passed in WP(C) No. 2465/2023 and prays for passing a similar order.

7. Shri Nath, the learned counsel for the respondents as well as Shri Kataki, learned counsel have submitted that since the issue is pending before the Hon'ble Division Bench, instead of disposing the writ petitions, the same can be adjourned till the matter is finally resolved. It is further submitted that the recovery, if any, from a retired employee would be difficult in case the appeal is allowed by the Hon'ble Division Bench and case the issue is finally resolved in favour of the Corporation.

8. After hearing the rival submissions, this Court is of the opinion that since

Coordinate Benches of this Court have taken a consistent view by incorporating the condition imposed by the Hon'ble Division Bench while not being inclined to stay the operation of the judgment dated 03.11.2022 in WP(C) No. 1607/2020, judicial propriety may not allow this Court to take another view, more so when the view appears to be just and proper.

9. In view of the above, these writ petitions stand allowed by directing that the respondent authorities would assess the entitlement of the petitioners as pensioners under the different Heads as per Rule 4 of the ROP Rules of 2017 and on such assessment, if the petitioners are found to be entitled for any enhanced amount, the same shall be paid expeditiously and within an outer limit of 3 (three) months from today. It is further directed that in terms of the order of the Hon'ble Division Bench passed in WA No. 107/2023, before receipt of the enhanced amount, if any, the petitioners would be required to submit an Undertaking that in case the issue is finally resolved in favour of the Corporation, he shall refund the excess amount.

10. Writ petitions accordingly stand allowed.

JUDGE

Comparing Assistant