

GAHC010111702021



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

Case No. : WP(C)/5278/2021

SARIFUDDIN AHMED
S/O LT. ALI HUSSAIN
R/O VILL- PADMABIL
P.O. AND P.S.-GOSSAIGAON
DIST- KOKRAJHAR
BTAD (ASSAM)
PIN-783360

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
PENSION AND PUBLIC GRIEVANCE DEPARTMENT
GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS DEPARTMENT
DISPUR
GHY-6

3:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT
KOKRAJHAR RURAL ROAD DIVISION
KOKRAJHAR
ASSAM

4:THE ASSTT. EXECUTIVE ENGINEER
PWD RURAL ROAD DIVISION
KACHUGAON
DIST- KOKRAJHAR
ASSAM

5:THE DIRECTOR OF PENSION
ASSAM

DISPUR
GHY-6
6:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GHY-29

Advocate for : MR. M U MAHMUD

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

17-07-2023

Heard Mr. M. U. Mahmud, learned counsel for the petitioner and Mr. S. S. Roy, learned Government Advocate, Assam for the respondent Nos. 1 and 5. Also heard Mr. B. Choudhury, learned Standing Counsel, PWD for the respondent No.2; Mr. P. Nayak, learned Standing Counsel, BTC for the respondent Nos. 3, 4 and 7 as well as Mr. R. K. Talukdar, learned Standing Counsel, A G (A & E) for the respondent No.6.

Petitioner herein has prayed for a direction to pay him pension and other service benefits like Gratuity, Group Insurance etc., who served as Work-Charged Chowkidar in the establishment of the Assistant Executive Engineer, PWD Kachugaon Rural Road Sub-Division, Kachugaon, District Kokrajhar under BTC.

Mr. Choudhury, learned Standing Counsel, PWD as well as Mr. P. Nayak, learned Standing Counsel, BTC from the appointment order of the petitioner annexed to this petition as Annexure-I, placed before the Court that the petitioner was appointed as temporary Work-Charged Chowkidar but his temporary service was not regularized and as such, the petitioner is not entitled for any such pensionary benefits who was appointed temporarily as Work-Charged Chowkidar in the establishment of the Assistant Executive Engineer, PWD Kachugaon Rural Road Sub-Division, Kachugaon, District Kokrajhar.

Mr. Nayak also placed a copy of the order dated 13.03.2023, passed by a Division Bench of

this Court in Writ Appeal No.1/2022 (Ujala Narzary Vs. State of Assam and 4 others) arising out of WP(C) No.6193/2021 (Ujala Narzary Vs. State of Assam and 4 others) decided on 24.11.2021 whereby the Hon'ble Division Bench upheld the decision of the learned Single Judge dated 24.11.2021, passed in said WP(C) No. 6193/2021 in which the learned counsel for the petitioner Mr. M. U. Mahmud represented said Ujala Narzary came to the finding that the Assam Service Pension Rules, 1969 specified that the service of an officer does not qualified for pension unless it conforms to the three conditions, namely, the service must be under Government; the employment must be substantive and permanent and the servant must be paid by Government and further the law laid down in the case of *State of Karnataka Vs. M. L. Kesari* reported in (2010) 9 SCC 247, the appellant there was not entitled for any such benefit.

Since the service of the petitioner was not against any substantive post and his service was not permanent, the claim of the petitioner for payment of pensionary benefit to him cannot be considered in exercise of the powers under Article 226 of the Constitution of India in the present proceeding.

For the reasons above, this writ petition being without any merit stands dismissed.

JUDGE

Comparing Assistant