

GAHC010183062020



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

Case No. : WP(C)/5484/2020

BUBUL NATH
S/O LATE RAJEN CH. NATH
RESIDENT OF VILLAGE MAJAIRMUKEH
PO SRIJANGRAM
PS ABHAYAPURI, DIST BONGAIGAON, 783386, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM, GENERAL ADMINISTRATION DEPARTMENT, DISPUR,
GUWAHATI 6

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

3:THE CHIEF ELECTORAL OFFICER

ASSAM
DISPUR
GUWAHATI 06

4:THE DEPUTY COMMISSIONER
BONGAIGAON
ASSAM
783380

5:THE SUB DIVISIONAL OFFICER (CIVIL)
NORTH SALMARA

ABHAYAPURI
ASSAM
L 78338

Advocate for the Petitioner : MR H TALUKDAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : **20.02.2023**

Heard Mr. H. Talukdar, the learned counsel appearing on behalf of the petitioner and Mr. B. Gogoi, the learned Standing counsel appearing on behalf of the respondent Nos. 1 and 2. I have also heard Mr. D. Bora, the learned Standing counsel appearing on behalf of the respondent Nos. 3, 4 and 5.

2. The case of the petitioner herein is that he was appointed as an Election Godown Chowkidar under the Office of the respondent No.5 vide an order dated 31.12.2003 at a fixed salary of Rs.1,200/- per month and accordingly, he joined on 02.01.2004. The petitioner upon his joining was entrusted with many works i.e. (i) vide order dated 29.05.2005, he was entrusted to work as Bungalow Peon, Quarter of S.D.O.; (ii) vide order dated 06.01.2010, he was entrusted to work with Bakijai; (iii) vide order dated 04.03.2011, to work at personal Cell of Election Work; (iv) vide order dated 09.01.2012, he was engaged with Route Officer, in connection with T.E.T. Examination; (v) vide order dated 31.07.2012, he was attached with S.D.O (Civil), North Salmara, Abhayapuri. To the said effect, the petitioner has enclosed the required documents as Annexure B, C, D, E and F to the writ petition.

3. It is the further case of the petitioner that from time to time, proposals were submitted before the Higher Authorities but his service was not regularized despite rendering more than 10 years of service. It is the further case that the Division Bench of this Court in its judgment and order dated 08.06.2017 in Writ Appeal No.45/2014 (***State of Assam Vs. Upen Das***) disposed of the said Writ Appeal with certain directions and more particularly referred to paragraph No.22 of the said judgment which is quoted hereinbelow:

*“22. It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken as welfare measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in **State of Punjab Vs. Jagjit Singh, (2017) 1 SCC 148**, also direct the State Government to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 1.8.2017.”*

4. It is the case of the petitioner that as on 08.06.2017, the petitioner had more than 10 years of service in a non-sanctioned post for which he is entitled to the minimum of the pay scale. However, the respondent authorities have not paid the petitioner his fixed salary w.e.f. 01.07.2014 to 30.07.2017 and also the minimum of pay scale w.e.f. 01.08.2017 in terms with the notification dated

08.03.2019 which was issued in pursuance to the judgment of the Division Bench of this Court in the case of ***Upen Das (supra)***. It is under such circumstances that the petitioner has approached this Court under Article 226 of the Constitution of India.

5. The learned counsel appearing on behalf of the petitioner has submitted that very recently, the petitioner has received his fixed salary w.e.f. 01.07.2014 to 30.07.2017 and in that regard the learned counsel has also produced the Wages Bill before this Court. The said Wages Bill in respect to the petitioner in question is kept on record and marked with the letter "X".

6. In view of the above, the issue therefore arises as to whether the petitioner would be entitled to minimum of pay scale in terms with the judgment of the Division Bench of this Court in the case of ***Upen Das (supra)*** coupled with the notification dated 08.03.2019.

7. The learned Standing counsel appearing on behalf of the respondent Nos. 3, 4 and 5 has submitted that the proposal as regards the payment of the minimum of pay scale to the petitioner has already been forwarded to the Finance Department. The learned Standing counsel appearing on behalf of the Finance Department has also submitted that a direction may be issued to the Finance Department to verify the petitioner's entitlement within a particular period and pass appropriate orders in terms with the judgment of the Division Bench of this Court in the case of ***Upen Das (supra)*** as well as the notification dated 08.03.2019 and/or subsequent amendments to the said notification.

8. Upon hearing the learned counsels for the parties, it appears that the Division Bench of this Court in paragraph No.22 as quoted hereinabove had

directed the State Government to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 01.08.2017. The question of verification therefore arises as to whether the petitioner has been working for the last 10 years (not in sanctioned post) in the department under which the petitioner is presently working. The learned Standing counsel has submitted that the proposal in respect to the petitioner to be paid the minimum of the pay scale have already been forwarded to the Finance Department meaning thereby that the department in which the petitioner has been rendering service agrees that the petitioner is entitled to the benefits in terms with the judgment of the Division Bench of this Court in the case of ***Upen Das (supra)***. In that view of the matter, this Court therefore disposes of the writ petition with a direction to the Finance Department to verify the proposals so submitted by the Election Department of the Government of Assam and also taking into account the judgment of the Division Bench of this Court in the case of ***Upen Das (supra)*** shall pass appropriate orders for release of the minimum of pay scale to the petitioner for the period w.e.f. 01.08.2017.

9. With the above, the instant petition stands disposed of and the said exercise be completed within a period of 60 days from the date a certified copy of the instant order is served upon the Secretary to the Government of Assam in the Finance Department.

JUDGE

Comparing Assistant