

GAHC010191812022



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

Case No. : WA/311/2022

SAMBHARU ROY @ SAMBARU ROY.
S/O BHABEN RAY, R/O VILL-BAHALPUR, BOROPARA, P.O.-BAHALPUR,
DIST-DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT
OF ASSAM, PWD, DISPUR, GUWAHATI-781006

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE CHIEF ENGINEER
PWD (N.H. WORKS)
ASSAM
CHANDMARI
GUWAHATI-781003

4:THE EXECUTIVE ENGINEER
PWD (NH) ABHAYAPURI CONSTRUCTION DIVISION
ABHYAPURI
DIST-BONGAIGAON
ASSAM

5:THE ACCOUNTANT GENERAL (I AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-3

Advocate for the Petitioner : MS A DAS

Advocate for the Respondent : SC, PWD

B E F O R E
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

02.02.2023

[N Kotiswar Singh, CJ (Acting)]

Heard Mr. S.C. Biswas, learned counsel for the appellant. Also heard Mr. B. Choudhury, learned Standing Counsel, PWD for respondent Nos.1, 3 and 4 as well as Mr. R. Dhar, learned Standing Counsel, AG.

2. The present appeal has been preferred against the order dated 02.09.2022 passed by the learned Single Judge in WP(C) No.5651/2022 whereby the learned Single Judge dismissed the claim for regularization of the appellant on the ground of delay.

3. Mr. Choudhury, learned Standing Counsel, PWD has submitted that apart from the delay, the appellant is over-aged and, as such, his claim cannot be considered.

4. On the other hand, learned counsel for the appellant has submitted that the appellant had given his age wrongly as 60 years, though he is younger than that.

5. Be that as it may, Mr. Choudhury, learned Standing Counsel, PWD submits that though the scheme is still in existence, the plea of the appellant cannot be considered on the ground of delay and over-age.

6. We have gone through the order passed by the learned Single Judge.

It appears that the appellant had approached this Court for a direction to the respondent-authorities to consider his claim for regularization on the plea that some other similarly situated Muster Roll workers had been regularized. However, his case was not considered due to some mistake on the part of the authorities.

7. We do not wish to go into all these factual aspects at this stage inasmuch as we find that the writ petition was dismissed without affording any opportunity to the State Government to file affidavit but if the writ petitioner-appellant has rendered his service as Muster Roll worker for a long period of time and if the writ petitioner-appellant is eligible for regularization under the scheme, the authorities are under bounden duty to consider his claim for regularization of his service.

8. Accordingly, we direct that the case of the appellant will be considered for regularization by the authorities provided he is eligible for regularization under the scheme irrespective of the delay in approaching this Court, if the scheme still continues and the appellant is still eligible to be considered. As to whether the appellant is eligible for regularization or not, is an exercise to be undertaken by the authorities by taking into consideration all the relevant records/documents without referring to the issue of delay.

9. With the above observation and direction, we allow this appeal by setting aside the impugned order dated 02.09.2022 passed by the learned Single Judge in WP(C) No.5651/2022.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant