

GAHC010266092013



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

Case No. : WP(C)/1451/2013

ON THE DEATH OF JITEN BORBARUAH
S/O- LT. SULESWR BORBARUAH HIS DAUGHTER (LEGAL HEIR) MRS.
MAMONI BARBORUAH BORGHAIN D/O- LATE JITEN BARBARUAH R/O-
GHORAMARA, BARSAJAI, P.S. and P.O.- BASISTHA, DIST.- KAMRUP M,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, DEPTT.
OF PUBLIC ENTERPRISE, DISPUR, GHY- 6, ASSAM.

2:THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
DEPTT. OF INDUSTRY AND COMMERCE
DISPUR
GHY- 6
ASSAM.

3:THE SECY.TO THE GOVT. OF ASSAM
FINANCE A DEPTT.
DISPUR
GHY- 6.

4:THE DIRECTOR OF INDUSTRY AND COMMERCE
UDYOG BHAWAN
BAMUNIMAIDAM
GHY- 21.

5:THE MANAGING DIRECTOR
ASSAM POWERLOOM DEVELOPMENT CORPORATION LTD.
REP. BY ITS MANAGING DIRECTOR
MR. KAMAL GOSWAMI

R.G. BARUAH ROAD
GUWAHATI
PIN- 781005.

6:AS PER HON'BLE COURT ORDER DATED 19.09.2013

NAME OF RESPONDENT NO.6 HAS BEEN DELETED

Advocate for the Petitioner : MR.T DEURI

Advocate for the Respondent : SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of hearing and
Date of Judgement/Order :1.6.2023

JUDGMENT & ORDER (ORAL)

None appears for the petitioner on call. Heard Mr. A. Kalita, learned counsel appearing on behalf of the respondent Nos. 1,2,4 and 5 and Mr. A. Chaliha, learned counsel for respondent No.3.

2. The instant writ petition was filed by the petitioner challenging the order dated 1.11.2011 passed by the Managing Director of the Assam Powerloom Development Corporation Ltd. and for direction to the concerned respondent to treat the alleged period of absence of the petitioner w.e.f. 1.6.2003 to 31.3.2006 as on duty as reflected from the endorsement dated 4.7.2011 made in the concerned file and/ or directing the respondent authority to rescind, forbear and cancel the order dated 1.11.2011 passed by the Managing Director

of the Assam Power loom Development Corporation Ltd. and for directing the respondent authority to release the outstanding salaries for the period w.e.f. 1.6.2003 to 31.3.2006 alongwith consequential service benefits.

3. It appears from record that prior to filing of the instant writ petition the petitioner had earlier filed another writ proceeding which was registered and numbered as W.P.(C) No. 1808/2008. The said writ petition was disposed of by an order dated 28.1.2010 directing the respondent therein to consider the case of the petitioner for providing the benefits under the very same scheme. It was further directed that the said exercise be carried out as expeditiously as possible preferably within a period of four months facilitating which the petitioner may approach the authorities with appropriate application alongwith with the copy of the order.

4. It appears on record that pursuant thereto an order dated 1.11.2011 was passed wherein it was observed that the petitioner shall not be entitled for salary and other allowances for the period of his absence from his duties that is from 1.6.2003 to 31.3.2006. Subsequent thereto it appears that a Contempt Case was filed which was registered and numbered as Contempt Case(C) No. 66/2011. In pursuance to the said proceedings it was found that the petitioner was entitled to an amount of Rs 5,92,550/- being the revised VRS etc dues payable to the petitioner. It further appears that although the said amount was payable to the petitioner but there were certain house building advance as well as interest charges on house building advance which comes to a total of Rs. 2,22,552/- and accordingly, upon deducting the same the total entitlement of the petitioner was found to be Rs. 3,66,523/-.

5. It further appears that the said payment was duly made to the petitioner

by cheque bearing No. 0160140006 and same was duly received by the petitioner. The petitioner had further given an undertaking on 15.5.2012 that he had no other entitlement from the said respondent Corporation. After receipt of the said amount the petitioner there upon filed the instant writ petition in the year 2013 alleging further entitlement on the basis of the unpaid salary for the period from 1.6.2003 to 31.3.2006.

6. It is the considered opinion of this Court that the petitioner having received the said amount without any demurrer, filing of the instant writ petition in the facts of the instant case is misconceived and accordingly there being no merit in the instant writ petition, the same stands dismissed.

JUDGE

Comparing Assistant