

GAHC010278962023



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

Case No. : WP(C)/7260/2023

RINA BHATTACHARJEE
W/O- LATE SUDARSHAN BHATTACHARJEE, R/O- HAILAKANDI TOWN
W/NO. VI, P.S., P.O. AND DIST. HAILAKANDI, ASSAM, PIN- 788151.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC WORKS (ROADS) DEPARTMENT, DISPUR, GUWAHATI-
6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE CHIEF ENGINEER

PUBLIC WORKS (ROADS) DEPARTMENT
ASSAM
CHANDMARI
GUWAHATI-3.

5:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA

GUWAHATI-29.

6:THE EXECUTIVE ENGINEER
P.W.D. RURAL ROADS DIVISION
HAILAKANDI
ASSAM
PIN- 788155

7:THE TREASURY OFFICER

HAILAKANDI TREASURY
HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN- 788151

Advocate for the Petitioner : MR. K R PATGIRI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 15-12-2023

Heard Ms. K. Barman, learned counsel appearing for the petitioner. Also Heard Mr. R. Dhar, learned Standing Counsel, PWD; Mr. J.K. Konwar, learned Additional Senior Government Advocate, Assam and Mr R. Dhar, learned Standing Counsel, Accountant General, Assam appearing for the respondents.

Upon perusal of the pleadings on record, it is seen that a Coordinate Bench of this Court, by judgment and order dated 04.12.2018, passed in WP(C) 1089/2015 (*Sanjita Roy vs. State of Assam and Others*), held that where a Muster Roll employee has completed 20 years of continuous service, the entire period of service would be counted for pensionary benefits and no deduction of the service shall be made in terms of the Office Memorandum dated 20.05.2009. The said judgment had attained finality as no appeal was preferred by the State against the said judgment.

Subsequently, WP(C) 4027/2019 (***Bahadur Pradhan vs. State of Assam and Others***) and other connected writ petitions were disposed of by order dated 21.06.2019 by another Coordinate Bench of this Court by following the decision taken by this Court in ***Sanjita Roy*** (supra). However, the later Coordinate Bench held that since the earlier order of the Court was passed on 04.12.2018 in ***Sanjita Roy*** (supra), the benefits granted to the petitioners in ***Bahadur Pradhan*** (supra) and the connected writ petitions will be granted only from 04.12.2018. This was followed in another set of writ petitions, which came to be disposed of by another Coordinate Bench of this Court by judgment and order dated 13.10.2019, the lead case being WP(C) 8713/2019. This bunch of writ petitions were also disposed of granting similar relief that the petitioners therein would be entitled to get pension under the New Pension Scheme w.e.f. 04.12.2018. It is against the order dated 13.10.2019 passed in WP(C) 8713/2019 that the petitioners therein filed an intra Court appeals before this Court, the lead case being WA No. 18/2021. The Division Bench of this Court, by judgment and order dated 26.02.2021, passed in WA No. 18/2021 and other connected appeals, held that putting a condition that the benefit of the order passed by this Court in WP(C) 1089/2015 [***Sanjita Roy*** (supra)] will be effective only from the date of the judgment, which is 04.12.2018, is not correct and, more particularly when there is no such embargo in the order dated 04.12.2018 passed by the learned Single Judge in WP(C) 1089/2015 [***Sanjita Roy*** (supra)]. The Division Bench held that an order of the Court is always retrospective in nature unless it is specifically made prospective in the order itself. This is because the courts do not legislate, but only interpret an existing law. The Division Bench further held that the order dated 04.12.2018 is retrospective in nature and it would, therefore, include all similarly situated Muster Roll Workers irrespective of the dates of retirement provided they are covered to the benefits given to them earlier and were already availing pension. The writ appeal was accordingly allowed and the earlier orders passed by the Coordinate Benches restricting the benefit of granting pension with effect from the date of judgment rendered in the case

of **Sanjita Roy** (supra) were set aside.

Having heard the learned counsel for the parties and upon careful perusal of the pleadings available on record along with the judgment and order dated 04.12.2018, passed by the learned Single Judge in WP(C) 1089/2015 [**Sanjita Roy** (supra)] as well as the judgment and order dated 26.02.2021, passed by the Division Bench in WA No. 18/2021 and other connected appeals, this Court is of the considered view that the issues raised in this writ petition stand covered by the judgement of the Division Bench rendered in WA No. 18/2021 and other connected writ appeals.

In that view of the matter, this writ petition is allowed. It is made clear that the petitioners herein stand covered by the directions contained in the order dated 04.12.2018, passed by the learned Single Judge in **Sanjita Roy** (supra) and upheld by the Division Bench by the order dated 26.02.2021, passed in WA No. 18/2021 and other connected writ appeals. Accordingly the petitioners are held entitled for grant of pension. The pension and other benefits that may accrue to the petitioners are directed to be released forthwith, without further delay.

Writ petition, accordingly, stands disposed of.

JUDGE

Comparing Assistant