

GAHC010045312017



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

Case No. : WP(C)/6384/2017

SHOBALAL MALLA
S/O. LT. RAM KHELAN MALLA @ RAM KHILLON MALLAH, R/O. VILL.
HAWARGAON, P.O. BIJNI, DIST. CHIRANG, BTAD, ASSAM.

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, PWD DEPTT.,
DISPUR, GUWAHATI-6.

2:THE COMM. and SECY. TO THE GOVT. OF ASSAM

FINANCE DEPTT.
DISPUR
GUWAHATI-6.

3:THE ACCOUNTANT GENERAL A and E
ASSAM

BELTOLA
GUWAHATI-29.

4:THE EXECUTIVE ENGINEER
PWD

RURAL ROAD DIVISION
BONGAIGAON
PIN-783380.

5:THE ASSTT. EXECUTIVE ENGINEER
PWD

BONGAIGAON RURAL ROAD SUB-DIVISION-I
BONGAIGAON
DIST. BONGAIGAON ASSAM
PIN-783380.

6:THE TREASURY OFFICER
BONGAIGAON

PIN-783380

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri K.R. Patgiri, Advocate

Advocates for the respondents :Shri R. Dhar, SC, PWD,
Shri A. Chaliha, SC, Finance Department
Shri B. Sharma, SC, AG, Assam.

Date of hearing : 29.07.2024

Date of judgment : 29.07.2024

Heard Shri K.R. Patgiri, learned counsel for the petitioner.

2. Also heard Shri R. Dhar, learned Standing Counsel, PWD, Shri A. Chaliha, learned Standing Counsel, Finance Department and Shri B. Sharma, learned Standing Counsel, AG, Assam.

3. The subject matter pertains to certain benefits accruing to the deceased father of the petitioner who was employed with PWD. The claim relates to (i) Arrear of pay, (ii) Death benefits and (iii) Family pension till the death of the mother of the petitioner.
4. As per the facts projected, the father of the petitioner was a Muster Roll Worker in the Department who was appointed in the year 1985 and had joined on 01.05.1985. An exercise for regularisation of service was undertaken in the year 2005 and in the list published on 26.10.2005, the name of the father of the petitioner had figured against Serial No. 28. However, the father of the petitioner was not given the benefit of scale payment and it came to be known that certain verification regarding the age of the father of the petitioner was undertaken.
5. Shri Patgiri, the learned counsel has drawn the attention of this Court to the communication dated 25.10.2010 issued by the Executive Engineer, PWD to the District Elementary Education Officer, Bongaigaon / Chirang for verifying the school certificate of the father of the petitioner regarding his age. As no further development came to be noted, the father of the petitioner, through his counsel had made an RTI application and in response to that, it came to be known that till that date, no verification exercise was done and the monthly salary was also a fixed payment and not in the scale meant for regularised employees. The verification was ultimately done by the Principal of the concerned school on 13.10.2011 and was communicated by the District Elementary Education Officer to the Executive Engineer, PWD on 14.12.2011. It has been stated that the age was verified and found to be correct.
6. It is submitted that while the father of the petitioner was still in service, he had passed away on 28.07.2012 and at that time he was not getting the regular

scale of pay which gave an indication that the benefit of regularisation was not given to his father. It is also submitted that on 15.12.2015, the mother of the petitioner had also passed away. The petitioner has accordingly filed this present petition mainly for the aforesaid three reliefs as indicated above. The learned counsel for the petitioner has also referred to the affidavit filed by the two brothers of the petitioner expressing no objection if the benefits are released in the name of the petitioner.

7. Shri R. Dhar, the learned Standing Counsel for the Department has however submitted that the impugned action is based on certain reasons. By drawing the attention of this Court to the affidavit-in-opposition filed on 19.07.2024, the learned Standing Counsel has referred to the averments made in paragraph 5. It is submitted that the deceased father of the petitioner was asked to bring a fitness certificate from the Health Officer, Bongaigaon which was not submitted and in the meantime on 28.07.2012, he had passed away. It is submitted that the fitness certificate is required to give effect to an order of regularisation and in absence of the same, the effect could not be given.

8. The learned Standing Counsel, Finance Department and the A.G., Assam have however submitted that the *lis* being between the petitioner and the Department, they would not have much role to play.

9. The regularisation of the father of the petitioner relates to an order dated 26.10.2005. A bare reading of the said order would, without any ambiguity, establish that the incumbents whose names had appeared in the list were brought under the regular cadre of Grade-IV Muster Roll Labourers w.e.f. from 22.07.2005 in the scale of pay of Rs. 2455 - 3670. It is not in dispute that the name of the father of the petitioner figured in the said list against Serial No. 28. The said regularisation order being of the year 2005, it is not known as to why

about 5 years were taken to make a verification on the age of the petitioner. In any case, though such verification of age would be relevant for calculating the date of superannuation, such necessity would not arise for giving effect to the regularisation order in terms of the office order dated 26.10.2005. Be that as it may, the verification exercise had also culminated in a communication dated 14.12.2011 by the District Elementary Education Officer to the Executive Engineer whereby the particulars of the deceased father of the petitioner pertaining to his date of birth was found to be correct. Unfortunately, within a year thereof, the father of the petitioner had passed away while still in service.

10. The only defence which has been put forwarded is that vide an order dated 03.01.2012, the father of the petitioner was asked to produce a fitness certificate which he had not done. As noted above, within a period of about 7 months from the said date, the father of the petitioner had passed away on 28.07.2012. Requiring the deceased father of the petitioner to produce a fitness certificate cannot in any way be connected with the issue of giving the benefit of regularisation of service which was done vide the order dated 26.10.2005. Such certificate may be relevant for any other purpose but not for the purpose of giving benefit of an order passed in the year 2005. The period from 2005 to 2011 was also on account of certain verification exercise done on the age of the father of the petitioner which was itself initiated after about 5 years from the date of regularisation as mentioned above. This Court is of the considered opinion that the aforesaid cannot be a reason to deny the benefit of the order of regularisation passed on 26.10.2005 for the father of the petitioner.

11. The writ petition is accordingly allowed by directing the respondent in the PWD to compute and pay the arrears of pay from the date of regularisation i.e., 26.10.2005 till the date of the death of the father of the petitioner i.e.,

28.07.2012 in the appropriate scale of pay along with the increments which he would have earned during his lifetime. It is also directed for payment of the death benefits accruing to the father of the petitioner as he was a regular employee. The respondents have also directed to compute the family pension which would have accrued to the mother of the petitioner till her death which is 15.12.2015.

12. The aforesaid benefits be released expeditiously and in any case within an outer limit of two months from the date of receipt of the certified copy of this order.

13. Writ petition accordingly stands allowed.

JUDGE

Comparing Assistant