

GAHC010072522024



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

Case No. : WP(C)/2235/2024

KUKILA GOALA AND ANR
WIFE OF- LATE AMIR CHAND GOALA,
RESIDENT OF VILL- BOALJUR, P.S.- SONAI,
DISTRICT- CACHAR, ASSAM, PIN- 788115.

2: PINTU BHOWMICK
SON OF - LATE JATINDRA BHOWMICK

RESIDENT OF VILL- SADAGRAM

P.O. AND P.S.- DHOLA BAZAR

DISTRICT- CACHAR
ASSAM
PIN- 788114

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY SECRETARY TO THE GOVERNMENT OF ASSAM,
PUBLIC HEALTH ENGINEERING (PHE) DEPARTMENT,
DISPUR, GUWAHATI-6.

2: THE CHIEF ENGINEER (PHE) WATER ASSAM
HENGRABARI
GUWAHATI-36.

3: THE EXECUTIVE ENGINEER (PHE) SILCHAR DIVISION-II
GHUNGOOR SILCHAR

DISTRICT- CACHAR
ASSAM

PIN- 788014.

4:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 29.

5:THE DIRECTOR OF PENSION

HOUSEFED COMPLEX
CENTRAL BLOCK

6TH FLOOR
GUWAHATI- 781006

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : SC, P H E

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

29.04.2024

Heard Mr. L.R. Mazumder, learned counsel for the petitioners. Also heard Mr. A. Chakrabarty, learned counsel for the respondent No. 5; Mr. D. Bhattacharyaa, learned Standing Counsel, Accountant General and Mr. I. Borthakur, learned Standing Counsel, PHE.

This writ petition has been filed by the petitioners praying for pensionary benefits.

The learned counsel for the petitioner has been heard. Pleadings on record have been carefully perused.

Upon perusal of the pleadings on record, it is seen that a Co-ordinate Bench of this Court, by Judgment and Order dated 04.12.2018, passed in W.P(C) No. 1089/2015 (Sanjita Roy Vs. State of Assam and Ors.), held that where a Muster

Roll employee has completed 20 years of continuous service, the entire period of service should be counted for pensionary benefits and no deduction of the service period should 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 came to be 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 the connected writ petitions will be granted only from the date of the order namely 04.12.2018. This was followed in another set of writ petitions, which came to be disposed of by judgment and order dated 13.10.2019, in which the lead case being WP(C) 8713/2019 (Braza Kumar Baruah vs. the State of Assam & 6 Ors) .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, was incorrect, more particularly when there is no such embargo in the order dated 04.12.2018 itself 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 by 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 04.12.2016, 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 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 judgment 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 which are 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