

GAHC010078862023



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

**Case No. : WP(C)/2065/2023**

BIREN BORAH  
S/O- LATE TUWARAM BORAH, R/O- VILL- BELTOLA (AMSHOI), P.S. RAHA,  
DIST.- NAGAON, PIN- 782103

VERSUS

THE STATE OF ASSAM AND 5 ORS.  
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DISPUR, GHY-6,  
DIST.- KAMRUP (M), ASSAM

2:THE CHIEF ENGINEER  
PWD (ROADS)  
ASSAM  
CHANDMARI  
GUWAHATI-3  
DIST.- KAMRUP (M)  
ASSAM

3:THE COMMISSIONER AND SECRETARY  
FINANCE  
GOVT. OF ASSAM  
DISPUR  
GHY-6  
DIST.- KAMRUP (M)  
ASSAM

4:THE EXECUTIVE ENGINEER  
PWRD  
DHAKUAKHANA TERRITORIAL ROAD DIVISION  
GHILAMARA  
DIST.- LAKHIMPUR  
PIN- 787053

ASSAM

5:THE ACCOUNTANT GENERAL (A AND E)  
MAIDAMGAON  
BELTOLA  
GHY-29

6:THE TREASURY OFFICER  
LAKHIMPUR  
ASSAM  
PIN- 78700

**Advocate for the Petitioner** : MR. P TALUKDAR

**Advocate for the Respondent** : SC, PWD ROAD

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 07.06.2024**

Heard Mr. P. Talukdar, learned counsel for the petitioner. Also heard Ms. A. Talukdar, learned Govt. Advocate appearing for respondent no.1; Mr. P. Nayak, learned standing counsel for the PWD, representing respondent nos.2 and 4; Mr. B. Gogoi, learned standing counsel for the Finance Department, respondent nos.3 and 6; and Ms. J. Das, learned counsel appearing on behalf of Mr. S.K. Medhi, learned standing counsel for the Accountant General, respondent no.5.

2. In brief, the case of the petitioner is that he was appointed as a Work Charge Mechanical Jugali on 03.05.1985 in the establishment of Executive Engineer, PWRD, Dhakuakhana Territorial Road Division. It is projected that the petitioner has completed more than 36 (thirty six) years of service without any break. By order dated 10.02.2022, passed by the Executive Engineer, PWRD, Dhakuakhana Territorial Road Division (respondent no.4), the service of the

petitioner was regularized for pensionary benefits. The said order was passed with reference to the Govt. Letter No. FEB.95/77/40, dated 06.03.1978. The petitioner had retired from service on 28.02.2022 and submitted all his pension papers to the respondent no.4. The respondent no.4, by letter dated 10.03.2022 had forwarded the pension papers of the petitioner to the Accountant General (A&E), Assam (respondent no.5). However, the respondent no.5, by letter dated 22.12.2022, returned the pension papers of the petitioner to the office of the respondent no.4 with a query that whether the necessary concurrence of the Finance Department of the Govt. has been obtained before regularization, was not found mentioned with further note that if concurrence of the Finance Department of the Govt. has not been obtained, the case should be forwarded through the Govt. and in this regard, the OM dated 28.12.1999, issued by the Finance Department was referred to. Accordingly, this writ petition has been filed under Article 226 of the Constitution of India for issuance of a direction upon the respondent authorities to release the pension and other pensionary benefits as well as for quashing of the communication under Memo dated 22.12.2022, issued by the respondent no.6.

3. The learned counsel for the petitioner has submitted that the respondent no.4, by an order dated 10.02.2022, had regularized the service of the petitioner. Accordingly, as a duly regularized Govt. servant, the petitioner would be entitled to all pensionary and other retiral benefits.

4. Per contra, learned standing counsel for the PWD has submitted that the Executive Engineer, PWRD, Dhakuakhana Territorial Road Division (respondent no.4) is not an empowered Govt. official to pass any order for regularization of service. It is submitted that due concurrence of the Finance Department is required as a condition precedent for regularization of service. In

this regard, by referring to statements made in paragraph-5 of the affidavit-in-opposition filed by the respondent no.2, it is submitted that in this case, there was no concurrence from the Finance Department in the name of the petitioner for regularization of service.

5. The learned standing counsel for the Accountant General (respondent no.6) has submitted that unless there is due compliance of the requisite formalities, backed by the previous consent of the Finance Department, the proposal for pension cannot be examined by the respondent no.6. He has also submitted that the pension proposal is required to be forwarded by the appropriate Govt. and not by the Executive Engineer, PWRD.

6. The learned standing counsel for the Finance Department has also submitted that the previous/prior concurrence of the Finance Department was not taken before the respondent no.5 had passed the order dated 10.02.2022 for regularization of service of the petitioner. It is also submitted that as per written instructions received by him, in view of the law laid down by this Court in the case of *The State of Assam v. Upen Das & Ors.*, WA45/2014, decided on 08.06.2017, owing to the restriction imposed on the process of regularization, it may not be possible for the State respondents to process the regularization of the petitioner.

7. In response to the stand taken by the learned departmental counsel, the learned counsel for the petitioner has submitted that the petitioner is not on fault in the manner in which the regularization order of the petitioner was issued. Therefore, it is submitted that notwithstanding there may be some irregularity in the process, but as his service has been regularized by the hereinbefore referred order dated 10.02.2022, the petitioner is entitled to pension and other retiral benefits.

8. Upon consideration of the matter in its entirety, the Court is inclined to accept the submissions made by the learned standing counsel for the PWD as well as the Finance Department to the effect that without prior concurrence of the Finance Department, it was beyond the competence of the Executive Engineer, PWRD, Dhakuakhana Territorial Road Division (respondent no.4) to issue an order of regularization of service. Therefore, such an order of regularization of service, which was passed without taking note of the decision of the Supreme Court of India in the case of *Secretary, State of Karnataka Vs. Umadevi, (2006) 4 SCC 1* as well as the case of *Upen Das (supra)*, the order under Memo No.E-263/DTRD/2019-20/2554-56, dated 10.02.2022, is *ex facie* without jurisdiction and therefore, illegal. The said order dated 10.02.2022 would not confer any right on the petitioner to claim pension and other retiral benefits.

9. Moreover, the respondent no.6 has been able to bring home the point that the pension papers are required to be sent to the office of the Accountant General (A&E), Assam only by the Govt. and that the Executive Engineer, PWRD, Dhakuakhana Territorial Road Division (respondent no.4) did not have the competence to forward the pension papers of the petitioner.

10. Therefore, on the basis of the legal position as it stands on date, the Court is unable to take cognizance of the order dated 10.02.2022 made by the respondent no.6, so as to entitle the petitioner to any relief.

11. It appears from the deliberations made at the bar that once the petitioner is not found entitled to pension and the proposal is rejected by the Accountant General (A&E), Assam, the petitioner, being a casual worker would become entitled to payment to gratuity and/or any other retiral benefit.

12. Hence, the Executive Engineer, PWRD, Dhakuakhana Territorial Road Division (respondent no.4), is directed to send an appropriate proposal to the appropriate Govt. so as to enable the competent authority to re-submit such proposal to the office of the Accountant General (A&E), Assam. In the event the competent authorities do not find the petitioner to be entitled for regular pension, the competent authorities would be required to process and grant any other financial relief to which the petitioner is found entitled to.

13. It is hoped that the entire exercise shall be carried out within an outer period of 3 (three) months from the date of receipt of certified copy of this order.

14. With the aforesaid observation, we find that the petitioner is not otherwise entitled to the pensionary benefit and accordingly, this writ petition stands closed.

**JUDGE**

**Comparing Assistant**