

GAHC010095172024



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

Case No. : WP(C)/2499/2024

RENU PHUKAN
W/O- LATE DILIP KUMAR PHUKAN, R/O- VILL- KATHALBARI GOAN, P.O.-
SELENGHAT, P.S. TEOK, DIST.- JORHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC WORKS DEPARTMENT, DISPUR, GUWAHATI-06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI-06

3:THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-29

4:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (ROAD) DIVISION
ASSAM
CHANDMARI
GUWAHATI-03

5:THE EXECUTIVE ENGINEER
P.W.D (ROADS)
JORHAT RURAL ROAD DIVISION
JORHAT

PIN- 78563

Advocate for the Petitioner : MR. P K GOGOI, MR J P KACHARI

Advocate for the Respondent : SC, AG, GA, ASSAM, SC, PWD

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

07.08.2024

Heard Shri P.K. Gogoi, learned counsel for the petitioner. Also heard Shri R. Dhar, learned Standing Counsel, PWD and Shri R.K. Talukdar, learned Standing Counsel, AG, Assam.

2. Considering the subject matter and the instructions obtained by Shri Talukdar, the learned Standing Counsel, AG which has been placed on record, this writ petition is taken up for disposal at the admission stage.

3. The matter pertains to a claim for post retirement benefits of the deceased husband of the petitioner.

4. It is projected that the husband of the petitioner, Dilip Kumar Phukan was appointed as a Muster Roll Worker on 01.03.1993 in the PWD Roads, Jorhat. He had retired from service on 30.06.2017 and prior to such retirement, his services was regularised on 30.09.2005. It is claimed that the husband of the petitioner had rendered continuous service of 24 years and after regularisation, he had served for 11 years 9 months. Though the pension papers were forwarded on 02.03.2019, the husband of the petitioner, during his lifetime did not receive any pension. Unfortunately, the husband of the petitioner passed away on 01.11.2020.

5. Shri Gogoi, the learned counsel for the petitioner has submitted that it is the total length of period of service which is to be taken into consideration for considering the entitlement for pension. He submits that there is no dispute with regard to the fact that the husband of the petitioner had worked for 24 years as Muster Roll Worker in the PWD and out of the said period, he had served on regular basis for 11 years 9 months. The respondent authorities were therefore duty bound to take into consideration the services rendered before such regularisation and thereafter release the post retirement benefits. The learned counsel has submitted that the issue has been settled in the judgment of ***Sanjita Roy & Ors. Vs. State of Assam & Ors.***, reported in ***2019 (2) GLT 805***.

6. Shri R. Dhar, the learned Standing Counsel, PWD has submitted that the pension papers were indeed forwarded to the Office of the AG, Assam and therefore, it is the role of the AG, Assam which would have a material bearing in the case.

7. Shri Talukdar, the learned Standing Counsel, AG Assam has submitted that he has obtained written instructions dated 08.07.2024 as per which terminal gratuity of Rs.2,12,850/- (Rupees Two Lakhs Twelve Thousand Eight Hundred Fifty) has already been released.

8. Both the learned counsel for the respondents has however fairly conceded that the observations and directions made by this Court in the case of ***Sanjita Roy*** (supra) would be applicable.

9. In the case of ***Sanjita Roy*** (supra), this Court has made the following observations in the context of Muster Roll Workers who though completed more than 20 years of qualifying service, such tenure was not wholly consisting of the

regularised service.

“30. In view of such position, it is held that deduction of 6 years from their services while calculating 20 years of continuous service does not appear to be reasonable and fair. As regards the decision of this Court rendered in the case of Monsing Tisso (Supra), this Court is in agreement with the submission of Mr. Nair that the decision should be read in the context of the pleadings. It appears that an impression was given to the Court that 10 years of continuous service was the condition precedent for being eligible for pension. However, even without taking recourse to the said decision this Court has considered the present writ petitions in the forgoing manner.

31. In view of above discussion and by taking into consideration the various judicial pronouncements on the subject, the writ petitions are disposed of directing the respondent authorities to determine the continuous length of service of the petitioners as a Muster Roll Workers and if such service meets the bench mark of 20 years without any deduction, the benefit of pension should be made available to them. While carrying out said exercise, the respondent authorities are also directed to take recourse Rule 67 for those petitioners who fail to meet the bench mark of 20 years by 12 months or less. No order as to cost”

10. In view of the above, the writ petition is disposed of by directing the respondent authorities to consider and pay the pensionary benefits including the arrears of pension pertaining to the deceased husband of the petitioner and the family pension to the petitioner in accordance with law.

11. To facilitate the above, the administrative department, namely, PWD shall make a fresh proposal. The respondents would be at liberty to make adjustments of the amount already paid as terminal gratuity. The written instructions dated 08.07.2024 placed before this Court along with the enclosure by Shri Talukdar, the learned Standing Counsel, AG is made part of the records.

12. The petitioner would submit a certified copy of this order and fulfil the necessary formalities with the Department to enable processing of her case.

JUDGE

Comparing Assistant