

GAHC010107722024



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

Case No. : WP(C)/2822/2024

AJOY DAIMARI @ SRI AJAI DAIMARI
S/O- LATE AKHONG DAIMARI,
VILLAGE AND P.O.- BARIGAON,
P.S.- PANERI, DISTRICT- UDALGURI (BTAD),
ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM,
P.H.E. DEPARTMENT, DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
ASSAM.

4:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 781029.

5:THE CHIEF ENGINEER
P.H.E. DEPARTMENT
HENGRABARI
ASSAM.

6:THE EXECUTIVE ENGINEER
TANGLA
UDALGURI
BTAD
ASSAM.

7:TREASURY OFFICER
UDALGURI
BTAD AREA
ASSAM.

8:THE BODOLAND TERRITORIAL COUNCIL
TO BE REPRESENTED BY THE CHIEF EXECUTIVE MEMBER
UDALGURI
BTAD AREA ASSA

Advocate for the Petitioner : MR. A M BARBHUIYA, S. M. ZINNA,MS A BEGUM,MR. B SAHARIA

Advocate for the Respondent : SC, P H E, GA, ASSAM,SC, AG,SC, FINANCE

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 16/09/2024

Heard Mr. A.M. Barbhuiya, learned counsel for the writ petitioner. Also heard Ms. M. Kalita, learned Standing Counsel, PHE Department, Assam, appearing for the respondent nos.1 & 5, Mr. P. Nayak, learned Standing Counsel, Finance Department, Assam, appearing for respondent nos. 2 & 7, Ms. M. Bhattacharjee, learned Additional Senior Government Advocate, Assam, representing the respondent no. 3 and Mr. C. Barua, learned Standing Counsel, Office of the Accountant General (A&E), Assam, representing the respondent no. 4. None has appeared on behalf of the BTC authorities.

The case of the petitioner, in a nutshell, is that he was appointed as a Muster Roll Worker in the establishment of the Executive Engineer, PHE, Tongla Division, Tongla,Udalguri (BTAD), Assam, on 12/03/1991 and since then, he has rendered continuous service for more than 25 years prior to his retirement on attaining the age of superannuation with effect from 30/11/2016. It is also the case of the petitioner that he was regularized as a Khalasi with effect from 22/07/2005. The petitioner claims that he is entitled to receive pension. Notwithstanding the same, taking the plea that he had not

fulfilled the requirement of minimum 20 years of regular service so as to entitle him to receive pension, his request for payment of pension had not been accepted by the authorities.

Mr. Barbhuiya submits that since the petitioner had completed more than 25 years 8 months 18 days continuous service in the department, hence, as per the decision of this Court rendered in the case of ***Sanjita Roy & Ors. Vs. State of Assam and others*** reported in ***2019 (2) GLT 805***, the deficit in regular service ought to be offset by adjusting the same against the period of continuous service he had rendered prior to his regularization so as to complete the requirement of 20 years of service as per the Pension Rules. Mr. Barbhuiya, therefore, submits that this is a fit case where a Writ of Mandamus can be issued directing the authorities to grant pension to the petitioner.

Mr. P. Nayak, learned Standing Counsel, Finance Department, Assam, submits that in view of the decision rendered in the case of ***Sanjita Roy (Supra)***, the petitioner's case deserves consideration. Mr. Nayak, however, mentions that it may be a case where the petitioner may be entitled to only proportionate pension in view of the deficit tenure in service.

Mr. C. Barua, learned Standing Counsel, AG (A&E), Assam has also submitted that in view of the decision of this Court in the case of ***Sanjita Roy (Supra)***, the case of the petitioner deserves suitable consideration.

Similar is the stand of other departmental counsel.

In the case of ***Sanjita Roy (Supra)***, a similar issue had arisen before this Court where a number of Muster Roll Workers, despite having been regularized in service, were denied pension due to shortfall of the required length of service as regular employee.

After taking note of the facts of the case and in view of the fact that those petitioners had rendered continuous service in the department prior to their regularization, the learned Single Judge had made the following observations :-

“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.”

Since there is no dispute about the fact that the petitioner's case comes within the purview of the decision of this Court in ***Sanjita Roy (Supra)***, this writ petition is hereby disposed of with a direction that the respondents shall examine his case in the light of the decision rendered in the case of ***Sanjita Roy (Supra)*** and thereafter, pass necessary order sanctioning him pension, as may be found due and payable under the Rules, after adjusting the retirement dues, if any, already paid to him.

The aforesaid exercise be carried out and completed, as expeditiously as possible, but not later than 3 (three) months from the date of receipt of a certified copy of this Order.

All the respondents are directed to render necessary cooperation in the matter of compliance of the order of this Court.

With the above observations, the writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant