

GAHC010114792013



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

Case No. : WP(C)/2906/2013

SMTI PUTUL BASFORE W/O LATE SHIV PRASAD BASFORE, R/O UZAN
BAZAR, GHY-01, DIST- KAMRUPM, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GHY-06

2:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT DISPUR GHY-6

3:THE COMMISSIONER and SECRETARY GOVT. OF ASSAM
SCIENCE TECHNOLOGY and ENVIRONMENT DEPARTMENT
DISPUR GHY-06

4:THE DY. SECRETARY GOVT. OF ASSAM
SCIENCE TECHNOLOGY and ENVIRONMENT DEPARTMENT
DISPUR GHY-06

5:THE UNDER SECRETARY GOVT. OF ASSAM
SCIENCE TECHNOLOGY and ENVIRONMENT DEPARTMENT
DISPUR GHY-06

6:THE DIRECTOR GUWAHATI PLANETARIUM
SCIENCE TECHNOLOGY and ENVIRONMENT DEPARTMENT
UZANBAZAR GHY-01

7:THE PROJECT ENGINEER GUWAHATI PLANETARIUM
SCIENCE TECHNOLOGY and ENVIRONMENT DEPARTMENT
UZANBAZAR GHY-0

Advocate for the Petitioner : MR.P K BARMAN

Advocate for the Respondent : SC, FINANCE

::BEFORE::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 30.04.2024

Date of Judgment: 30.04.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. P. K. Barman, learned counsel for the petitioner. Also heard Mr. B. Deuri, learned Government Advocate; and Mr. A. Chaliha, learned standing counsel, Finance Department, Government of Assam, appearing on behalf of their respective respondents.

2. The petitioner by way of instituting the present writ petition, has raised a grievance with regard to the inaction on the part of the respondent authorities in taking up her case for regularization of her services in view of the continuous services being rendered by her under the Project Engineer, Guwahati Planetarium, Science Technology and Environment Department, Government of Assam.

3. As projected in the writ petition, the petitioner in the year 1993, was engaged for doing Grade-IV works on Muster Roll basis under the respondent No. 7. The petitioner was initially being paid her remuneration on daily wage basis. The petitioner contends that given the necessity with regard to maintaining cleanliness in the said Planetarium, the respondent No. 7 had vide communication, dated 23.05.1994, required the Government for consideration of the case of the petitioner and other persons engaged on Muster Roll basis for

regular appointment as and when regular posts are so created. The respondent No. 7, thereafter, vide communication, dated 20.09.1998, informed the Government of Assam in the Science Technology and Environment Department, that the date of joining of the petitioner, herein, was 06.04.1994. Thereafter, it is contended that the petitioner was being paid her remuneration as per the wages fixed as per the decision of the Government of Assam in this connection.

4. The petitioner, being in her services for such a long period of time and by contending that the nature of work as discharged by her to be perennial in nature, the petitioner had approached the authorities praying for regularization of her services and such prayer not having been favourably considered by the respondents; this present proceeding has been instituted by the petitioner, herein.

5. Although the petitioner has contended in the writ petition that she was working in the establishment of respondent No. 7 since the year 1993, however, from the communications as brought on record, it is seen that the engagement of the petitioner on Muster Roll basis was w.e.f. 06.04.1994. The respondents have filed affidavits in the matter and therein, also had brought on record the fact that the petitioner was engaged as a Muster Roll worker in the establishment of respondent No. 7 on 06.04.1994.

6. Mr. Barman, learned counsel for the petitioner, by referring to the materials brought on record, contends that the petitioner's case for regularization of her services in the establishment of the respondent No. 7 ought to have been given

its due consideration by the respondent authorities and the respondent authorities having not considered the case of the petitioner for regularization of her services; the petitioner, herein, has been discriminated.

7. Mr. Barman, learned counsel, further contends that the present proceeding is limited to the prayer as made by the petitioner in the writ petition for regularization of her services.

8. On a consideration of the grievance as raised by the petitioner, it is seen that in view of the decisions of the Hon'ble Supreme Court as well as this Court, a direction for regularization of the services of the petitioner, may not be permissible to be so issued. However, it is to be noted that under similar circumstances, the Division Bench of this Court in the case of ***State of Assam v. Upen Das*** reported ***in (2017) 4 GLR 493***, had proceeded to hold in terms of the concession made in the matter by the State Government that Muster Roll, work charged and similarly placed employees working since last more than 10 years (not in sanctioned post) shall be not terminated from their services till their normal date of retirement, except on disciplinary ground, or, on ground of criminal offences, to implement the said measures.

9. Noticing the said stand of the Government in the matter; this Court proceeded to dispose of the said matter by directing the State Government to implement the measures as now agreed to be so implemented without further delay. Further, it was also directed that the State Government in the light of the decision of the Hon'ble Supreme Court in the case of ***State of Punjab & ors.***

v. Jagjit Singh, reported in **(2017) 1 SCC 148**, to pay the Muster Roll workers, work charged workers and other similarly placed employees working since more than last 10 years (not in sanctioned post), the minimum of the pay scale of a comparable post existing in the regular establishments. Such benefits were directed to be so extended to the Muster Roll workers, work charged workers and other similarly placed employees w.e.f. 01.08.2017.

10. This Court further held that in view of the facts situation as emerging in the matter; the Muster Roll, work charged workers and casual workers are not entitled for regularization of their services with consequential benefits such as pension, etc..

11. The relevant paragraphs of the said decision rendered in the case of **Upen Das**(supra); being relevant to the issue arising in the present proceedings; is extracted hereinbelow :

“22. It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken as welfare measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in State of Punjab vs. Jagjit Singh, (2017) 1 SCC 148, also direct the State Government to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 1.8.2017.

23. For these reasons, we are of the view that in the fact situation of the case, Muster Roll workers, Work Charged workers and Casual workers are not entitled for regularization of their services with consequential benefits, such as, pension etc. We, accordingly, subject to our direction in paragraph 22 of the judgment, allow the appeal and set aside the impugned judgment and order dated 20.12.2013 passed by the learned Single Judge.”

12. In view of the said position and it having been brought on record that the petitioner since the date of her initial engagement, has been continuously working in the establishment of respondent No. 7 on Muster Roll basis; this Court directs the respondent authorities to forthwith extend to the petitioner, the benefits as was so provided by the Division Bench of this Court in the case of ***Upen Das***(supra).

13. The petitioner shall also be given the minimum of the pay scale as applicable for a comparable post in the regular establishment and the benefits now directed to be extended to the petitioner, would be so extended to her w.e.f. 01.08.2017, with all consequential benefits.

14. The respondent authorities shall compute the arrears of pay that would now be receivable by the petitioner in terms of the directions passed hereinabove and release the same to her within a period of 3(three) months from the date of receipt of a certified copy of this order.

15. The petitioner shall, thereafter, be regularly paid her remuneration in the manner as directed, hereinabove.

16. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant