

GAHC010208752021



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

Case No. : WP(C)/4232/2022

SMTI. BIJAYA THAKURIA
W/O LT. DHAJO RAM THAKURIA
R/O NORTH JYOTI NAGAR
P.O.-BAMUNIMAIDAM
P.S.-CHANDMARI
DIST- KAMRUP(M)
ASSAM
PIN-781021

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
PRINTING AND STATIONARY DEPARTMENT
DISPUR
GUWAHATI-6

2:THE DIRECTOR OF PRINTING AND STATIONARY DEPARTMENT
BAMUNIMAIDAM
GUWAHATI-781021

3:THE JOINT DIRECTOR OF PRINTING AND STATIONARY DEPARTMENT
BAMUNIMAIDAN
GUWAHATI-781021

4:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

5:DIRECTOR OF PENSION
HOUSEFED COMPLEX
DISPUR
GUWAHATI-781006

Advocate for : MR. I H SAIKIA

Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

Date : 28.03.2024

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT & ORDER(CAV)

1. Heard Mr. I. H. Saikia, learned counsel for the petitioner. Also heard Mr. T. C. Chutia, learned Additional Senior Government Advocate for the State respondents.

2. The present writ petition is filed with the following prayers:-

I. By holding/declaring the engagement/appointment of the petitioner as Muster Roll/Casual/Skilled worker to be a regular appointment on Compassionate ground w.e.f 04.08.1994;

II. By directing the respondents to regularize the services of the petitioner with retrospective effect i.e., from 04.08.1994;

III. By directing the respondent authorities to grant regular scale of pay to the petitioner with retrospective effect i.e., from 04.08.1994, the date on which the petitioner was appointed on Compassionate ground on Muster Roll/Casual/Skilled worker basis;

IV. By directing the respondents to pay the arrear salaries to the petitioner w.e.f., 04.08.1994 along with all admissible increments; or alternatively,

V. By directing the respondents to declare the services of the petitioner to be pensionable under Rule 31 of the Assam

Services (Pension) Rules, 1969;

VI. By holding that the petitioner is entitled to payment of pension and all other consequential benefits w.e.f, the date of her retirement, i.e., 31.10.2019;

VII. By directing the respondents to pay the pension to the petitioner and all other consequential benefits;

VIII. By holding that the petitioner is entitled to the payment of gratuity, by further directing the respondents to pay the amount of gratuity to the petitioner along with interest;

IX. By granting any other relief/reliefs.

3. Certain facts which are necessary for proper adjudication of the present writ petition are recorded herein below.

I. The husband of the petitioner was a regular employee under the Directorate of Printing & Stationary at the Assam Government Printing Press.

II. While working under the aforesaid Directorate, the husband of the petitioner died in harness on 13.10.1993.

III. On 26.11.1993, provisional family pension was sanctioned and subsequently by an order dated 06.12.1994, final family pension was granted to the petitioner.

IV. According to the petitioner, after death of her husband, she immediately applied before the competent authority in the year 1993 itself praying for her appointment on compassionate ground against Grade-IV vacant post, however, instead of appointing her on regular basis, the petitioner was allowed to work as Muster Roll/Casual/Skilled worker basis under the

respondent No. 2.

V. Thereafter, the petitioner retired from her service on attaining age of superannuation on 31.10.2019.

VI. When she was not granted any pensionary benefits for the reason that her service was not regularized, she has approached this Court by filing the present writ petition with the prayers as detailed herein above.

4. Mr. I. H. Saikia, learned counsel for the petitioner advances the following arguments:-

I. As there was no other income source except the meager amount of family pension and as her children were also minors at that time, she immediately applied before the authority in the year 1993 itself for appointment on compassionate ground against Grade-IV vacant post. But instead of appointing her on regular basis, the petitioner was allowed to work as Muster Roll/Casual/Skilled worker under the respondent authorities.

II. Having no other alternative, she had to accept her engagement in the aforesaid terms and joined her service on 04.08.1994 and continued to serve in the aforesaid capacity. She continued to represent before the respondent authorities. She was also transferred to some other offices. Subsequently, on attaining the age of superannuation, the petitioner retired from service on 31.10.2019.

III. The appointment of the petitioner being a compassionate appointment, the same could not have been made on temporary basis and the same should have been made

on regular basis against the permanent vacant post. Her repeated representations have also not given any fruitful result at the hands of her employer. The respondent has not denied that the appointment was on compassionate ground, therefore, the writ petition is liable to be allowed.

IV. Though the service of the petitioner was casual/temporary and in the event, this Court treat such appointment to be temporary, then also the petitioner is entitled for the pension in terms of Rule 31 of the Assam Services (Pensions) Rules, 1969 inasmuch as the service of the petitioner was under government and payment was also made by the government and therefore, in terms of proviso to Rule 31 of the Rules 1969, she is entitled for pension.

V. Under Rule 42 of the Rules, 1969, the Press employees like the petitioner are entitled for pension, even if temporary.

VI. Referring to an Office Memorandum dated 12.09.1996 (Annexure-14), Mr. Saikia, learned counsel contends that in terms of the aforesaid memorandum, a temporary government employee who retired after rendering 20 years of temporary service under government without being confirmed in any post, is entitled for pension/pensionary benefits as available to a retiring confirmed government employee. The said memorandum further clarifies that such payment is subject to satisfying all other conditions other than the condition of permanency against permanent post of the Government of Assam for granting pensionary benefits under the Rules of 1969.

VII. The another contention of the petitioner is that though

the petitioner is a temporary employee, she is entitled for gratuity in terms of the Payment of Gratuity Act, 1972 which has also not been granted to the petitioner.

5. Per contra, Mr. T. C. Chutia, learned Senior Government Advocate for the State of Assam submits the following:-

I. The respondents have raised a question of unreasonable delay and laches on the part of the petitioner in approaching this Court and filing the instant writ petition. According to Mr. Chutia, learned counsel, the petitioner was engaged as a Muster Roll/Casual/Skilled worker with effect from 04.08.1994. The petitioner has been initially treated as a casual worker and subsequently as a casual skilled worker and was paid wages and she continued to work in the aforesaid position since 04.08.1994 till her retirement in the year 2019 i.e. for more than 25 years and has become wise to approach this Court assailing very nature of the appointment and claiming pension and pensionary benefits. Therefore, this writ petition should be dismissed on the ground of unreasonable delay, laches and negligence.

II. The petitioner by no stress of imagination be treated as temporary employee as defined under the Pension Rules, 1969 inasmuch as she was engaged as daily wage earners/skilled worker and thus, not a temporary employee.

III. Mr. Chutia, learned Senior Government Advocate further contends that so far relating to the Office Memorandum dated 12.09.1996, the requirement of "confirmation in a post" is waived by the said notification and said notification has not been

issued to grant pension to all temporary workers including casual and muster roll worker.

IV. So far relating to the claim of gratuity, Mr. Chutia, submits that the said prayer be relegated to the employer/competent authority to determine the entitlement of the petitioner under the Payment of Gratuity Act.

6. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties.

7. The facts remain undisputed that the petitioner was appointed as a casual daily wage worker on 04.08.1994 and such appointment was made after death of her husband. The fact also remains that so far relating to her nature of appointment, she has raised the grievance after 25 years of her joining.

8. In the aforesaid backdrop, as a question of unreasonable delay has been raised, let this Court first deal with the aforesaid issue.

9. In **Union of India –Vs- Tarsem Singh** reported in **2000 8 SCC 648**, the learned Hon'ble Apex Court held that the belated service related claim will be rejected on the ground of delay and laches. It was further held that one of the exceptions to the said rule is cases relating to continuing wrong. Where a service related claim is based on a continuing wrong relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. It was further clarified in **Tarsem Singh** (supra) that, if the grievance is in respect of any order or administrative decision and relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties.

10. As explained in **Union of India –Vs- N. Murugesan** reported in **(2022) 2 SCC 25**, laches is a genus to species called acquiescence and it involves unreasonable delay or negligence in pursuing a claim involving an equitable relief causing prejudice to the other party. While dealing with the unreasonable delay, it was held that the essential factors which are required to be taken note are the length of delay and the nature of acts done during the interval and the change in position in the interregnum.

11. As regards reasonable time, the Hon'ble Apex Court in the case of **Chairman, State Bank of India –Vs- M. J. James** reported in **(2022) 2 SCC 301**, held that the reasonable time cannot be put into a straight jacket formula nor it can be judicially codified in the form of days inasmuch as it depends upon facts and circumstances of each case. It was also held that a right not exercised for a long time is non-existent.

12. In the present case, an indirect challenge is made to the order of engagement dated 04.08.1994 after long 25 years seeking a declaration that such engagement ought to have been made on regular basis under the scheme of compassionate appointment.

13. In the case in hand, the husband of the petitioner died in harness on 13.10.1993. The petitioner was engaged w.e.f. 04.08.1994. The petitioner superannuated on 31.10.2019. All throughout, the petitioner did not raise any whisper as regards nature of her engagement and she continued to survive and was paid the family pension on the death of her husband. Therefore, in the given facts of the present case, this court is of the unhesitant view that the delay in approaching this Court so far relating to the challenge to her engagement dated 04.08.1994 is unreasonable and the petitioner was negligent in pursuing

her claim involving a right of appointment under scheme of compassionate appointment and therefore, the prayer No. I, II, III and IV, as detailed in paragraph 2 of this judgment are liable to be rejected and accordingly, stands rejected.

14. Now coming to the entitlement of pension under Rule 31 of the Rules 1969, such rules prescribes certain conditions to qualify for pension. Such conditions are that (i) the service must be under government, (ii) the employment must be substantive and permanent and (iii) the service must be paid by the government. The conditions that service must be under government and that the employment must be substantive and permanent can be waived by the Governor.

15. The proviso to Rule 31 of the Rules, 1969 though empowers the Governor to relax either or both of the conditions 1 and 2, in individual cases, the power to relax is to be determined in individual cases and this Court in exercise of judicial review cannot pass a direction to the employer to grant pension to the petitioner in terms of the said proviso inasmuch as the factual determination required for allowing such a claim cannot be adjudicated in exercise of power of judicial review more particularly, when the engagement of the petitioner was neither under government nor such employment was substantive and permanent. Such discretion is vested upon the Governor of the State. It is also not the case of the petitioner that she had approached her employer to grant her pension in exercise of power as provided under the proviso to Rule 31 and such prayer has been rejected.

16. Rule 42 of the Rules 1969 makes special provision for Press employees who were paid for piece work and for temporary salaried hands in Assam Govt. Press. Note 1 of Rule 42 provides that continuous

25 years of service shall be necessary for pension in the case of all temporary piece workers and all temporary salaried hands in Assam Government Press.

17. A temporary employee has been defined under Rule 12 of the Rules, 1969 as a temporary appointment carrying a definite rate of pay sanctioned for a limited time. Pay has been defined under Rule 8, as monthly substantive pay. The appointment of the petitioner cannot be treated as a temporary appointment in terms of Rule 12 of the Rules 1969, as petitioner was not getting any monthly substantive pay in terms of Rule 8 of the Rules 1969.

18. The entitlement of pension under Rule 42 of the Rules, 1969 is also subject to the condition that the worker should not be employed casually but employed as a member of fixed establishment. However, the nature of appointment of the petitioner has been casual. A Piece Worker is one who is paid for their work based on the amount they produce, not the number of hours, they work. As discussed hereinabove, the petitioner cannot be treated either as a temporary employee or as a Piece worker or as a member of fixed establishment and "not employed as casually". Therefore, the petitioner is not entitled for grant of pension under Rule 42 of the Rules, 1969.

19. The Office Memorandum dated 12.09.1996 relied on by the learned counsel for the petitioner shall also not be applicable in the case of the petitioner as she will not come within the definition of temporary employee as determined hereinabove, inasmuch as said memorandum relates to temporary government employee and also subject to the condition of fulfilling other condition prescribed under Rules 1969 for payment of regular pension.

20. That being the position, no writ of mandamus can also be issued directing the respondent to grant pension to the petitioner under the Pension Rules 1969.

21. Now, coming to the payment of gratuity, this Court is of the opinion, let the petitioner first raise grievance before her employer claiming such gratuity and in the event such claim is rejected, petitioner shall be at liberty to approach the Controlling Authority under the Payments of Gratuity Act, 1972 inasmuch as such Authority is empowered under the Act to determine the claim of payment of gratuity.

22. Accordingly, the present writ petition stands dismissed with a liberty to the petitioner to approach the Competent Authority under the proviso to Rule 31 of the Rules, 1969 for grant of pension under the Rules 1969 and to approach the employer of the petitioner seeking payment of gratuity under the Payment of Gratuity Act, 1972 and also the Controlling Authority under the Act, 1972. In the event, petitioner approaches such authority, the aforesaid authorities shall consider the claim of the petitioner and decide the same as per law.

JUDGE

Comparing Assistant