

GAHC010139712024



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

Case No. : WP(C)/3647/2024

PARASHMONI HAZARIKA AND ANR
W/O- PRADIP DEKA, R/O- VILL.- KOMARCHUBURI, ANIRUDHA PATH, P.O.
TEZPUR, DIST. SONITPUR, ASSAM

2: BINARANI DAS SAIKIA
W/O- LATE DULON CH. SAIKIA
R/O- VILL.- ERAGAON
BALIPARA
P.O. BALIPARA
DIST. SONITPUR
ASSA

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT, DISPUR, GUWAHATI-781006.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GHY-781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
DISPUR
GHY-781006.

4:THE COMMISSIONER

PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
JURIPAR
PANJABARI
GHY-781037.

5:THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GHY-29.

6:THE DIRECTOR OF PENSION
HOUSEFED COMPLEX
DISPUR
GHY-781006.

7:THE CHIEF EXECUTIVE OFFICER
SONITPUR ZILLA PARISHAD
TEZPUR
DIST. SONITPUR
ASSAM
PIN- 784001.

8:THE TREASURY OFFICER
SONITPUR
TEZPUR
DIST. SONITPUR
ASSAM
PIN- 784001

Advocate for the Petitioner : MR. M KHAN, MS J AKTAR

Advocate for the Respondent : GA, ASSAM, SC, FINANCE,SC, AG,SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

01.08.2024

Heard Shri M. Khan, learned counsel for the petitioners. Also heard Shri P. Handique, learned Standing Counsel, P & RD Department; Shri A. Chaliha, learned Standing Counsel, Finance Department; Shri D. Bhattacharyya, learned Standing Counsel, Accountant General, Assam and Shri D. Bora, learned State Counsel.

2. The petitioners, who are two in numbers, have joined together in this writ petition pertaining to a claim for release of their pension and other post retirement benefits. It is the case of the petitioners that they were appointed respectively as LDA on 06.12.1996 and Peon on 18.03.1996. The said appointments have been contended to be made against the valid sanctioned post. Vide an order dated 01.06.2013, 51 nos. of employees of the Department were given the benefit of regularization of service which included the petitioners. The petitioners have retired from service on attaining the age of superannuation on 31.07.2022 and 29.02.2020 respectively. The grievance of the petitioners is that they have not been paid their pension and other post retirement benefits. It is contended that the petitioners have been regularized w.e.f., 01.06.2013 i.e. after 01.02.2005, their services fall under the New Pension Scheme.

3. On this issue, the learned counsel for the petitioners has referred to the judgment and order dated 13.05.2024 passed in WP(C)/1517/2023 and WP(C)/1903/2023 whereby directions were given for release of pension and other post retirement benefits. It is submitted that the petitioners are similarly placed with the petitioners in those two cases and therefore a similar order may be passed. In this regard, the he has referred to the judgment which has been annexed as Annexure 15 to the writ petition.

4. Shri Handique, learned Standing Counsel, P & RD Department has submitted that though on principle he would not raise any issue on the judgment rendered on 13.05.2024, he submits that a verification exercise be allowed to ascertain the entitlement of the petitioners. The learned counsel for the other respondents have also endorsed the said submission made on behalf of the Department.

5. When the matter had come up for consideration on the earlier occasion i.e. 24.07.2024, the matter was adjourned to enable the learned Standing Counsel of the Department to verify with regard to the submission as to whether the aforesaid judgment and order dated 13.05.2024 would be applicable.

6. After hearing the learned counsel for the parties and also taking into consideration the submission made on behalf of the Department, this Court has noticed that the aforesaid two writ petitions which were disposed of vide a judgment and order dated 13.05.2024 contains the following observations and directions-

“19. The law laid down by the Apex Court as well as this Court is that services rendered by any employee prior to their regularization should be counted towards their pensionary benefits if there is any shortfall in their services rendered after being regularized. Under such circumstances, when there is no dispute that the petitioners have rendered services in ad-hoc capacity continuously against valid sanctioned posts without any break in service and they came to be subsequently regularized by the Government and at the time of their superannuation, the employees did not have qualifying services from the date of their regularizations, then in the opinion of this Court and as has been held by several decisions as discussed above, the period of services rendered in ad-hoc capacity against valid sanctioned posts can also be counted for the purposes of satisfying the qualifying period of service prescribed under Rule 31 of the Assam Service (Pension) Rules, 1969.

20. Accordingly, the respondents are directed to forthwith the

process the pension papers and forward them to the competent authority by considering the balance period of service required to W.P(C) No. 1517/2023 & W.P.(C) No. 1903/2023 satisfy the qualifying period of service under the pension Rules from the services rendered earlier in their ad-hoc capacity against the vacant sanctioned posts.

21. The respondent authorities will thereafter release the pensions and the other retiral benefits to the writ petitioners as expeditiously as possible within the outer limit of 90 (ninety) days from the date of receipt of a certified copy of this order.”

7. The facts projected being similar to the facts in those two cases, this Court directs that the observations and directions made in the judgment and order dated 13.05.2024 would also be applicable to the present petitioners. The authorities are however given the liberty to verify on the factual aspect and thereafter take action in accordance with law.

8. The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant