

GAHC010140152019



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

Case No. : WP(C)/4220/2019

NANDESWAR PAGAG
S/O- LATE TUMBAL PAGAG, R/O- VILL.- BORGURI, P.O- RANGACHAHI
(MISING GAON), P.S.- JENGRAIMUKH, PIN- 785104, DISTRICT- MAJULI,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, PWD (AUDIT BRANCH), DISPUR, GUWAHATI-6, ASSAM.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PWD (ROADS)
DISPUR
GUWAHATI-6
DIST.- KAMRUP(M)
ASSAM.

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI-6
ASSAM.

4:THE CHIEF ENGINEER

PWD (ROADS) ASSAM
CHANDMARI
GUWAHATI-6
DIST- KAMRUP(M)
ASSAM.

5:THE EXECUTIVE ENGINEER

PWD
JORHAT RURAL ROAD DIVISION
JORHAT-7
DIST- JORHAT
ASSAM.

6:THE ASSISTANT EXECUTIVE ENGINEER

PWD (ROADS) MAJULI
GAROMUR
PIN- 785104
DIST.- MAJULI
ASSAM.

7:THE ACCOUNTANT GENERAL (A AND E)

MAIDAM GAON
BELTOLA
P.O- BELTOLA
GUWAHATI- 29
DIST.- KAMRUP(M)
ASSAM.

8:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

FINANCE DEPARTMENT
DISPUR
GUWAHATI-6
ASSAM

Advocate for the Petitioner : MR. D BORAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

18.01.2024

Heard Mr. D. Borah, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Standing Counsel, P.W.D and Mr. R.K. Talukdar, learned Standing

Counsel, Accountant General, for the respondent no.7.

The petitioner is the elder son of late Tumbal Pagag, who was engaged as a Muster Roll Worker on 01.09.1962 under the P.W.D. Jorhat Road Division and worked at Majuli Rural Road Sub-Division. The service of the petitioner's father was regularized on 09.05.1984. The father of the petitioner superannuated from service on 27.07.2018. However, he did not receive any pensionary benefits as a regular Muster Roll Worker. The petitioner's father died on 27.07.2018. The petitioner, being the legal heir of late Tumbal Pagag, has approached this Court and prays to release the pension and other retiral benefits of his father which are due to his father.

Learned counsel for the petitioner submits that issues involved in this writ petition are akin to the issues which were decided by a Co-ordinate Bench of this Court in W.P.(C). No. 1089/2015 (***Sanjita Roy & Ors. Vs. State of Assam & Ors.***), reported in 2019 (2) GLT 805 as well as W.A. No.18/2021 and other connected appeals which were disposed of by the Hon'ble Division Bench of this Court vide judgment and order dated 26.02.2021 and therefore, prays to dispose of the present writ petition in terms of the order passed in WP(C) No.1089/2015.

Mr. R. Dhar, learned Standing Counsel, P.W.D. (R) submits that the petitioner's father is not entitled to any of the pensionary benefits as he was regularized under the establishment with effect from 01.03.1984 and his total length of service as daily wage labourer was 21 years 5 months and 27 days and as a regular labourer was 5 years 5 months 30 days. It is submitted that since the petitioner's father did not complete his 10 years of regular service as per the Government Rules, the department therefore did not consider him to be not entitled to get any pensionary benefits such as pension, leave salary, GIS etc.

The learned counsel for the parties have been heard. Pleadings on record

have been carefully perused.

Upon perusal of the pleadings on record, it is seen that a Co-ordinate Bench of this Court, by Judgment and Order dated 04.12.2018, passed in W.P(C) No. 1089/2015 (***Sanjita Roy Vs. State of Assam and Ors.***), has held that where a Muster Roll employee has completed 20 years of continuous service, the entire period of service would be counted for pensionary benefits and no deduction of the period of service shall be made in terms of the Office Memorandum dated 20.05.2009.

Subsequently, another Coordinate Bench of this Court by following the decision taken by this Court in ***Sanjita Roy*** (supra) disposed of WP(C) 4027/2019 (***Bahadur Pradhan vs. State of Assam and Others***) and other connected writ petitions by order dated 21.06.2019. However, the later Coordinate Bench held that since the earlier order of the Court was passed on 04.12.2018 in ***Sanjita Roy*** (supra), the benefits granted to the petitioners in ***Bahadur Pradhan*** (supra) and the connected writ petitions will be granted only from 04.12.2018. This was followed in another set of writ petitions, which came to be disposed of by judgment and order dated 13.10.2019, in which the lead case being WP(C) 8713/2019 (Braza Kumar Baruah vs. the State of Assam & 6 Ors). These bunch of writ petitions were also disposed of by granting similar reliefs that the petitioners therein would be entitled to get pension under the New Pension Scheme w.e.f. 04.12.2018. It is against this order dated 13.10.2019 passed in WP(C) 8713/2019 and other bunch of writ petitions that the petitioners therein filed intra Court appeals before this Court, the lead case being WA No. 18/2021 (Bina Pani Das vs. The State of Assam & 12 Ors). The Division Bench of this Court, by Judgment and Order dated 26.02.2021, passed in WA No. 18/2021 and other connected appeals, held that putting a condition that the benefit of the order passed by this Court in WP(C) 1089/2015 [***Sanjita Roy*** (supra)] will be effective only from the date of the

judgment, which is 04.12.2018, is not correct and, more particularly when there was no such embargo in the Judgment and Order dated 04.12.2018 itself passed by the learned Single Judge in WP(C) 1089/2015 [**Sanjita Roy** (supra)]. The Division Bench held that an order of the Court is always retrospective in nature unless it is specifically made prospective in the order itself. This is because the courts do not legislate, but only interpret an existing law. The Division Bench further held that the order dated 04.12.2018 is retrospective in nature and it would, therefore, include all similarly situated Muster Roll Workers irrespective of the dates of retirement, provided they are covered by the benefits given to them earlier, and were already availing pension. The writ appeals were accordingly allowed and the earlier orders passed by the Coordinate Benches restricting the benefit of granting pension with effect from the date of judgment rendered in the case of **Sanjita Roy** (supra) were set aside.

Having heard the learned counsel for the parties and upon careful perusal of the pleadings available on record along with the Judgment and order dated 04.12.2016, passed by the learned Single Judge in WP(C) 1089/2015 [**Sanjita Roy** (supra)] as well as the Judgment and order dated 26.02.2021, passed the Division Bench in WA No. 18/2021 and other connected appeals, this Court is of the considered view that the issues raised in this writ petition stands covered by the judgment of the Division Bench rendered in WA No. 18/2021 and other connected writ appeals.

In that view of the matter, this writ petition is allowed. It is made clear that the petitioner's father herein stands covered by the directions contained in the order dated 04.12.2018, passed by the learned Single Judge in **Sanjita Roy** (supra) as upheld by the Division Bench by the order dated 26.02.2021, passed in WA No. 18/2021 and other connected writ appeals. Accordingly, the petitioner is held entitled for grant of pension and other retirement benefits. However, it is

made clear that no interest will be provided to the petitioner for the delay in dealing with the matter. Accordingly, the Department shall release the pension and other retirement benefits that may accrue to the petitioner's father within a period of 60 (sixty) days from today after making necessary verification in this regard.

Writ petition, accordingly, stands disposed of.

JUDGE

Comparing Assistant