

GAHC010145852023



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

Case No. : WP(C)/3923/2023

SHRI SUKUMAR BASUMATARY
S/O LATE GAURISWAR BASUMATARY, R/O VILL-DWIKHORGURI, P.O.-
BALLIMARI, GOSSAIGAON, DIST-KOKRAJHAR, ASSAM

VERSUS

STATE OF ASSAM AND 7 OTHERS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
WPT AND BC DEPARTMENT, JANATA BHAWAN, DISPUR, GUWAHATI-06

2:JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
WPT AND BC DEPARTMENT
JANATA BHAWAN
DISPUR
GUWAHATI-06

3:PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
JANATA BHAWAN
DISPUR
GUWAHATI-06

4:JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE (EC-II) DEPARTMENT
ASSAM
DISPUR
GUWAHATI
PIN-781006

5:THE DIRECTOR OF WPT AND BC DEPARTMENT
RUKMINI NAGAR
GUWAHATI

PIN-781006
ASSAM

6:THE PRINCIPAL SECRETARY
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM
PIN-783370

7:THE ADDL. DIRECTOR
WPT AND BC DEPARTMENT
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM
PIN-783370

8:THE PROJECT DIRECTOR
INTEGRATED TRIBAL DEVELOPMENT PROJECT
GOSSAIGAON
P.O.-GOSSAIGAON
DIST-KOKRAJHAR
ASSAM
PIN-78336

Advocate for the Petitioner : MR. B K DAS, MR H P GUWALA,H P NEOG

Advocate for the Respondent : SC, WPT AND BC, SC, BTC,SC, FINANCE

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri BK Das, Advocate,
Shri HP Guwala, Advocate.

For the Respondents : Shri P Nayak, SC, BTC,
Shri R Dhar, SC, WPT&BC Deptt., and
Shri A Chaliha, SC, Finance Deptt., Assam.

Date of Hearing : 31.07.2024.

Date of Judgment : 31.07.2024.

JUDGMENT & ORDER

Heard Shri BK Das, learned counsel for the petitioner and Shri P Nayak, learned Standing Counsel, BTC. Also heard Shri R Dhar, learned Standing Counsel, WPT&BC Department as well as Shri A Chaliha, learned Standing Counsel, Finance Department, Assam.

2. Considering the subject matter in dispute and as agreed to by the learned counsel for the parties, the writ petition is taken up for disposal at the admission stage.

3. As per the facts projected in the writ petition, the petitioner was engaged as a Muster Roll worker in the office of the Project Director, Integrated Tribal Development Project, Gossaigaon on 02.01.1999. The petitioner's services were upgraded to full-time on 01.04.2010. The claim of the petitioner is based on a notification of the Finance Department dated 03.10.2019 as per which, fixed pay / remuneration on the dearness allowance was held to be admissible with revision of pay as per the judgment rendered by the Hon'ble Division Bench in the case of ***State of Assam Vs. Upen Das***, reported **(2017) 4 GLR 493**. In the case of ***Upen Das (supra)***, while the claim for regularization of service of Work Charged, Muster Roll and Casual Workers was negated, minimum scale of pay was directed to be given to them.

4. Shri Das, learned counsel for the petitioner has submitted that the date of the initial appointment being 02.01.1999, the petitioner meets the requirement of getting the benefit of minimum pay scale as laid down in paragraph 22 of the case of ***Upen Das (supra)***. It is submitted that the petitioner has completed more than 10 years as on the date of passing of the judgment of ***Upen Das (supra)***.

5. Shri Nayak, learned Standing Counsel, BTC has, however, points out that the case of *Upen Das (supra)*, the benefits of minimum pay scale were given to the Muster Roll and Work Charged workers and similarly placed employees. He submits that the petitioner was initially appointed as a part-time basis and only from 01.04.2010, his services was upgraded to full-time. He submits that the period of 10 years has to be reckoned from the date when such upgradation was made as full-time service and therefore, would not come under ambit of the notification dated 03.10.2019.

6. Shri Dhar, learned State Counsel and Shri Chaliha, learned Standing Counsel, Finance Department endorse the submissions of Shri Nayak, learned Standing Counsel, BTC.

7. The petitioner was admittedly appointed initially on 02.01.1999 which, however, was on part-time basis at a fixed salary of Rs.300/- per month. He was, however, upgraded to full-time basis w.e.f. 01.04.2010. The petitioner has been presently getting a fixed pay of Rs. 3000/- per month. The notification dated 03.10.2019 issued pursuant to the direction of the Hon'ble Division Bench in the case of ***Upen Das (supra)*** contemplates a fixed wage / remuneration of Rs. 15,900/- with ancillary benefits of pay enhancements along with medical allowance of Rs. 600/- per month. At this stage, it would be relevant to refer to the observations made by the Hon'ble Division Bench in the case of ***Upen Das (supra)***:

“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 10 years (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.”

8. In the instant case, the initial induction of the petitioner in service was on 02.01.1999. If the date of upgradation of his service to full-time which is on 01.04.2010 is taken into consideration, the petitioner would not fulfill the requirement of completing of 10 years of continuous service w.e.f. 01.08.2017 as laid down in the case of **Upen Das** (*supra*). However, the intention of the Hon'ble Division Bench while rejecting the claim for regularization was to give certain benefits so far as the minimum pay scale is concerned. The use of the expression “similarly placed employees” would indicate that even a part-time employee who was continuously working for a period of more than 10 years as on 01.08.2017 is to be given such benefits. In any case, the State Government in the Finance Department had issued the notification on 03.10.2019 to give such benefits. Depriving the petitioner from such benefits on the only ground that his initial appointment was on part-time basis may not be fair, more so when it is not in dispute that the employment was continuous. This Court has noticed that though the petitioner was working on part-time basis from 02.01.1999 and was made full-time on 01.04.2010, there is no dispute regarding the continuity in service and when the objective of the aforesaid observation by the

Hon'ble Division was to give certain benefits regarding the pay, the petitioner would be entitled to have the same benefits.

9. In that view of the matter, it is directed that the benefits of the notification dated 03.10.2019 which was issued as per the direction of this Court in the case of ***Upen Das (supra)*** is to be given to the petitioner. Such benefits would accrue from the date when the benefits were given to the other Muster Roll and Work Charged employees.

10. The writ petition accordingly stands allowed.

JUDGE

Comparing Assistant