

GAHC010179742013



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

Case No. : WP(C)/2810/2013

ARABINDA DEKA and ANR.
S/O LT. MANI PRASAD DEKA R/O HATIAMUKH GAON P.O. HATIAMUKH
DIST. MORIGAON, ASSAM.

2: SRI DILIP DEKA
S/O LT. HIRA DEKA R/O HATIAMUKH GAON P.O. HATIAMUKH DIST.
MORIGAON
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF IRRIGATION, DISPUR, GUWAHATI- 781006.

2:THE CHIEF ENGINEER

IRRIGATION DEPARTMENT
CHANDMARI
GUWAHATI- 781003.

3:THE DEPUTY CHIEF ENGINEER

IRRIGATION DEPARTMENT
CHANDMARI
GUWAHATI- 781003.

4:THE EXECUTIVE ENGINEER

MORIGAON DIVISION
IRRIGATION DEPARTMENT
MORIGAON
ASSAM.

5:THE EXECUTIVE ENGINEER

GUWAHATI DIVISION
IRRIGATION DEPARTMENT
CHANDMARI
GUWAHATI- 781006

Advocate for the Petitioner : MS.B SARMA

Advocate for the Respondent : Mr. P. Nayak, SC (Finance)
Mr. N. Upadhyay, SC (Irrigation Department)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (ORAL)

Date : 29-01-2024

Heard Ms. B. Sarma learned counsel for the petitioners. Also heard Mr. N. Upadhyaya, learned standing counsel, Irrigation Department representing the respondent Nos. 1 to 5 and Mr. P. Nayak, learned standing counsel for the Finance Department representing respondent No. 6.

2. The petitioners herein, who were working as Work Charged employees have instituted the present proceeding raising grievances with regard to non-regularisation of their respective services in terms of the policy adopted by the Government in this connection.

3. The petitioners were initially recruited as Muster Roll workers on 01.02.1986 and 01.04.1986, respectively in the Jagiroad Lift Irrigation Scheme. The said scheme was at that relevant point of time being implemented by the Guwahati Division of the Irrigation Department. Subsequently, the scheme came to be transferred to the Sonapur Sub-Division under the Morigaon Division of the Irrigation Department. The petitioners on completion of about 8 (eight) years of

service were considered for appointment as Work Charged Helpers and accordingly, vide order, dated 30.12.1994, the petitioners were so appointed as Work Charged Helpers under the Sonapur Sub-Division (Irrigation), Sonapur. The petitioners were, vide order, dated 06.03.2000, reverted to the status of Muster Roll Skilled Labour from their engagement as Work Charged Helper and accordingly, being aggrieved, they approached this Court by way of instituting WP(C) No. 2174/2000. This Court vide order, dated 05.03.2003, on appreciating the submissions made by the petitioners was pleased to interfere with the said order, dated 06.03.2000, with further direction to allow the petitioners to continue as Work Charged Helpers in terms of the order, dated 30.12.1994. It is to be noted herein that the petitioners had earlier also instituted WP(C) No. 391/2000 against the curtailment of the wages/pay drawn by them. This Court vide order, dated 10.05.2004, on appreciating the issue involved interfered with the order by which their pay was so curtailed and allowed the said writ petition. Accordingly, vide order, dated 03.09.2001, the petitioners were reinstated as Work Charged Helpers under the establishment of Assistant Executive Engineer, Morigaon Sub-Division, Irrigation Department and such reinstatement of the petitioners were made effective w.e.f. 01.04.1999.

4. Thereafter, a process for regularisation of the services of the persons engaged as Muster Roll/Work Charged workers were taken up by the Department and accordingly, the names of the petitioners were also forwarded. However, the cases of the petitioners were not recommended for regularisation of their services on account of non-availability of certain documents, in absence of which the necessary verification of their services could not be carried out. The matter was processed departmentally and the Divisional authorities in their reports had recommended the cases of the petitioners for regularisation of their

services. However, such regularisation not having been effected the present proceeding came to be initiated before this Court.

5. It is the contention of the petitioners that persons similarly situated like them having been considered for regularisation of their services and the policy adopted by the Government in this connection being also applicable to them, their cases also ought to have been so regularised. However, on account of a delay occasion in the processing of their cases and also on account of the fact that the relevant documents were not forwarded to the competent authority by the Divisional authority along with their particulars, the cases of the petitioners came to be dropped. Accordingly, it is prayed that the services of the petitioners be also directed to be regularised with effect from the date persons similarly situated as well junior to them working as Muster Roll Workers and of Work Charged Helpers were so regularised.

6. The learned counsel for the respondents had placed reliance on a decision of this Court in the case of **State of Assam -vs- Upen Das** reported in **2017 4 GLT 49** and has contended that the persons involved in the said proceeding were also engaged as Muster Roll/Work Charged workers prior to 01.04.1993 and in their cases also regularisation of their services was not affected for which they had initiated proceeding before this Court. The writ petitions as filed by the persons so involved was allowed by the learned Single Judge and thereafter, the State had instituted the said proceedings before the Division Bench of this Court. It is contended that in terms of the direction as passed in the case of **Upen Das (supra)** further regularisation of the services with consequential benefits in respect of Work Charged Workers/Muster Roll workers was not permissible and their such cases would be governed by the policy adopted by the Government and reflected in paragraph 22 of the said judgment.

7. Paragraph 22 and 23 of the said judgment of the Division Bench of this Court in the case of **Upen Das (supra)** being relevant to the issues arising in the present proceedings is extracted herein below:

“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 without further delay. Besides this, we, in the light of decision of the Supreme Court in State of Punjab v. 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 Singly Judge.”

8. The petitioners having been working as a Work Charged employees since 30.12.1994 and drawing salaries in the scale of pay with increments, a query was raised by this Court to the learned counsel appearing for the Finance Department as to whether the pay and allowances drawn by the petitioners in a scale of pay w.e.f. 30.12.1994 along with the increments would now be curtailed in the event the petitioners are directed to be considered in terms of the

decision of this Court in the case of **Upen Das (supra)**. The learned standing counsel for the Finance Department in response has submitted that the Government had already adopted a policy decision and the same was notified initially, vide notification dated 08.03.2019 and therein, had laid down that the Work Charged category of workers who are already drawing higher pay band (PB-2)/or existing in PB-1 will continue in the existing pay structure. The said Office Memorandum was dated 08.03.2019 was superseded by the notification dated 03.10.2019 and the following prescription was made therein pertaining to the Work Charged category of workers:

“2. Work Charged categories of workers who are already drawing a higher pay band (PB-2)/or existing in PB-1 will continue in the existing pay scale.”

9. In view of the said position, the petitioners being protected and they being allowed to draw their respective payments in the scale of pay which they are presently enjoying, coupled with the benefits as extended to them by the Government and noted in paragraph-22 of the judgment in the case of **Upen Das (supra)**, the present writ petition is disposed of by directing the State respondents to extend to the petitioners the benefits as contained in paragraph-22 of the judgment of this Court in the case of **Upen Das (supra)** along with the benefits as conferred in Clause-2 of the vide notification dated 03.10.2019.

10. With the above directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant