

GAHC010231112022



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

Case No. : WP(C)/7368/2022

HEMANTA DAS
S/O LATE MANURAM DAS, R/O VILL- BHEBLA, P.S.-SIMLA, P.O.-
JALAHGHAT, DIST- BAKSA, ASSAM, PIN-781327

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SOIL CONSERVATION DEPARTMENT, DISPUR, GUWAHATI-6

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

3:THE DIRECTOR OF SOIL CONSERVATION
ASSAM
R.G. BARUAH ROAD
GUWAHATI-5

4:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-29

5:THE DIVISIONAL OFFICER
BARPETA SOIL CONSERVATION
BARPETA
ASSAM
PIN-781301

6:THE TREASURY OFFICER
BARPETA TREASURY
BARPETA
DIST-BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. K R PATGIRI

Advocate for the Respondent : SC, SOIL CONSERVATION DEPTT.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

16.02.2024

Heard Mr. K.R. Patgiri, learned counsel for the petitioner. Also heard Mr. S.K. Medhi, learned Standing Counsel, Accountant General for the respondent no.4 and Ms. R.S. Deuri, learned Standing Counsel, Soil Conversation.

The grievance of the petitioner is that the petitioner has not been paid pensionary benefits as the authorities had deducted 6 (six) years of initial service while calculating the qualifying period of service for grant of pensionary benefit.

It has been submitted by the learned counsel for the petitioner that the petitioner's father was earlier serving as a Muster Roll Worker in the office of the Divisional Officer, Barpeta Soil Conservation Division, Barpeta, who was initially appointed in the year 1972 and his service was regularized as Chowkidar

(Grade-IV) w.e.f. 22.07.2005. Thereafter, the petitioner's father retired from service on attaining the age of superannuation on 28.02.2008 and as such, the petitioner's late father had rendered service for more than 35 years. However, the authorities by deducting 6(six) years of initial service has denied grant of pension on the ground that the petitioner's father has not completed 20 years of qualifying service. The petitioner's father died on 23.02.2022 without receiving any pensionary and retiral benefits.

Learned counsel for the petitioner submits that the said deduction of 6(six) years of service has been held impermissible by this Court in WP(C) No.1089/2015 (Sanjita Roy vs. the State of Assam & Ors.) decided on 04.12.2018, and the respondent authorities were directed to determine the continuous length of service of the petitioners as muster Roll Workers and if such service meets the bench marks of 20 years without any deduction the benefit of pension should be made available to them. This view was also upheld by a Division Bench of this Court by judgment and order dated 26.02.2021 passed in W.A. No.18/2021 (Binapani Das vs. the State of Assam & Ors.) disposed of the said appeal with the following observations:

“9. 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, they only interpret an existing law. This is unlike the laws made by the State Legislature and the

Parliament, which are always prospective in nature, unless again, the law itself makes it retrospective. The original judgement (dated 04.12.2018), passed in WP(C) 1089/2015 (Sanjita Roy vs. State of Assam and Others), does not give benefit to the petitioners from a prospective date. Therefore, in our considered opinion, the order dated 04.12.2018 was retrospective in nature and it would include all similarly situated muster roll workers irrespective of their dates of retirement, provided they are covered by the benefits given to them earlier, and were already availing pension.”

This legal position is not controverted by the learned counsel for the respondent authorities. From the pleadings it is seen that there are averments that the petitioner's mother expired on 14.03.2005. The petitioner is aged about 52 years on the date of filing the writ petition. The petitioner has 7 (seven) siblings, all of whom are major. An affidavit dated 21.10.2022 executed by the siblings of the petitioner is enclosed as Annexure-9 to the writ petition. As per the said affidavit the petitioner's siblings, who are also legal heirs of late Manuram Das, have waived their claims for the arrear of pension in favour of the petitioner. However, the said affidavit is not a registered document. From the writ petition it is also seen that the mother of the petitioner predeceased his father.

In view of the above, this Court is of the opinion that the petitioner's late father was entitled to the pensionary benefit as he had rendered more than 35 years of service from the date of joining in service. The petitioner's late father

however having expired on 23.02.2022, his legal heirs will be entitled to the arrears of pension.

The decisions rendered in *Sanjita Roy (supra)* and *Binapani Das (supra)* will be squarely applicable to the facts of the case.

Accordingly, this petition is disposed of with the direction to the respondent authorities to work out the pensionary benefits in favour of the petitioner and release the same, within a period of 3(three) months from the date of receipt of a certified copy of this order. The respondent authority will however verify the claim of the petitioner that the other legal heirs namely, his siblings have waived their claims in favour of the writ petitioner and upon such verification, the arrears of pension found to be payable in respect of the petitioner's father shall be released to the petitioner.

It is also made clear that if any terminal benefit had been granted to the petitioner's father earlier, it may be adjusted at the time of finalization of the pension.

With the above observation the writ petition stands disposed of.

JUDGE

Comparing Assistant