

GAHC010266932017



2024:GAU-AS:8353

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

Case No. : WP(C)/1177/2017

SMT. GEETA BARMAN
W/O LT. SUTKU BARMAN R/O VILL- PADMABIL P.O. GOSSAIGAON P.S.
GOSSAIGAON DIST. KOKRAJHAR, ASSAM PIN - 783361.

VERSUS

THE STATE OF ASSAM and 6 ORS.
REP. BY COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
PUBLIC WORKS DEPARTMENT, ASSAM SACHIVALAYA, DISPUR,
GUWAHATI -6.

2:THE SECRETARY TO THE GOVT. OF ASSAM

PENSION AND PUBLIC GRIEVANCES DEPARTMENT
ASSAM SACHIVALAYA
DISPUR
GUWAHATI-6.

3:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT ROAD CHANDMARI
GUWAHATI-3.

4:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT
KOKRAJHAR RURAL ROADS DIVISION
P.O. KOKRAJHAR
PIN - 783361 DIST. KOKRAJHAR
ASSAM

5:THE ASSISTANT EXECUTIVE ENGINEER

PUBLIC WORKS DEPARTMENT GOSSAIGAON ROADS SUB-DIVISION

P.O. GOSSAIGAON
PIN- 783361 DIST. KOKRAJHAR
ASSAM

6:THE SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF FINANCE
ASSAM SACHIVALAYA
DISPUR
GUWAHATI - 781006.

7:THE ACCOUNTANT GENERAL Aand E
MAIDAMGAON
BELTOLA
GUWAHATI-781029
ASSA

Advocate for the Petitioner : MR.K DAS, MR.H GOGOI,MR.N BARUAH,MR.S DAS

Advocate for the Respondent : SC, FINANCE, SC, PWD,MR. D NATH (R-1 TO 5),SC, AG,GA,
ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri S. Das

Advocate for the respondents : Shri P. Nayak, SC-Finance & BTC
Shri R. Dhar, SC-PWD
Shri C. Boruah, SC-AG

Date of hearing : **22.08.2024**

Date of Judgment : **22.08.2024**

JUDGMENT & ORDER

This petition has been instituted under Article 226 of the Constitution of India with a claim for family pension. As per the facts projected, the husband of the petitioner was initially appointed as a Muster Roll Worker in the Public Works

Department (PWD), Assam on 17.09.1981. Thereafter, vide an order dated 08.08.1996, his services were upgraded to Work Charged Chowkidar and was paid regular salaries in scale. It is also the case of the petitioner that her husband was given GPF. While in service, the husband of the petitioner expired on 02.11.2011 after serving about 30 years. The Service Book was also opened for the services rendered by her husband. After his demise, there was a recommendation on 15.05.2012 for regularization of his service. There was a further communication dated 26.11.2012 by the PWD whereby the application of the petitioner claiming GPF was forwarded to the Office of the Accountant General. The claim of the petitioner is that by dint of serving for a long period of time over 30 years, appropriate orders for regularization be issued so that the petitioner is entitled to the family pension.

2. I have heard Shri S. Das, learned counsel for the petitioner. I have also heard Shri R. Dhar, learned Standing Counsel for the Public Works Department and Shri P. Nayak, learned Standing Counsel both for the Finance Department and the BTC. Shri C. Boruah, learned Standing Counsel, Accountant General, Assam is also present.

3. Shri S. Das, learned counsel for the petitioner has submitted that by serving for 30 years, the husband of the petitioner has accrued a right for consideration of regularization of his service. He submits that even the Service Book was opened and after his upgradation as Work Charged Chowkidar in 1996, the husband of the petitioner was paid salary regularly in scale payment. It is also submitted that contribution and payment of GPF would indicate that for all practical purposes, the husband of the petitioner was deemed as a regular employee. The learned counsel for the petitioner accordingly submits that appropriate orders be passed for deeming the services rendered by the

husband of the petitioner as regularized service and consequently family pension be released to her.

4. In support of his submission, the learned counsel for the petitioner has relied upon an order dated 22.01.2009 passed by this Court in WP(C)/1328/2008. In the said case, a direction was given for consideration of the case of an incumbent who had rendered about 30 years of service and was not getting the pensionary benefits.

5. The learned counsel for the petitioner has also relied upon a judgment of the Hon'ble Supreme Court in the case of ***Prem Singh Vs. State of Uttar Pradesh and Ors.*** reported in ***(2019) 10 SCC 516***. It is submitted that in the said case, a direction was given for regularizing the services rendered for a long period of time in terms of the principles laid down in the case of ***Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors.*** reported in ***(2006) 4 SCC 1***. It is the case of the learned counsel for the petitioner that the appointment of the husband of the petitioner was against a sanctioned post and therefore he meets the requirement laid down in the case of ***Umadevi (3)*** (supra) and therefore an order of regularization be passed by which the petitioner would be entitled to family pension.

6. *Per contra*, Shri Nayak, the learned Standing Counsel, Finance Department and BTC has, at the outset, submitted that opening of a GPF account does not conclusively indicate that the services of an incumbent was regularized. So far as payment of scale pay is concerned, it is submitted that all Work Charged Employees get their salaries in terms of scale with regular increments. He has also drawn the attention of this Court to the so-called Service Book by stating that it is the Service Roll, which is opened for every Work Charged Employees and unless their services are regularized, the question of payment of pension or

family pension will not arise. It is submitted that the case of the petitioner is squarely covered by the judgment rendered by the Hon'ble Division Bench in ***State of Assam Vs. Upen Das*** reported in ***2017 4 GLR 493***. So far as the case relied upon by the petitioner, Shri Nayak has submitted that in the paragraph containing the direction, only one aspect of the principles laid down in ***Umadevi (3)*** (supra) has been taken into consideration and the other aspects have been ignored. He also points out that in a subsequent decision of ***Uday Pratap Thakur versus State of Bihar*** reported in ***AIR 2023 SC 2971***, the aforesaid aspect has been dealt with and it is clarified that the directions should be confined to the case in which it was passed. The learned Standing Counsel has also relied upon the case of ***Uttar Haryana Bijli Vitran Nigam Ltd. and Ors. Vs. Surji Devi*** reported in ***(2008) 2 SCC 310***. It is submitted that the Rules which were taken into consideration were same as that of the ***Upen Das*** (supra). The Hon'ble Supreme Court in the said case had clearly laid down that when the entitlement of pension is governed by a set of Rules, there will be hardly any scope for the sentiments and sympathy to creep in the aforesaid matter. He has also cited the case of ***State of Nagaland versus Nishevi Achumi*** reported in ***2022 SCC OnLine SC 818***, wherein the Hon'ble Supreme Court has interfered with the decision for one-day regularization and creation of supernumerary post to give pensionary benefits. He has also cited the judgment rendered by the Hon'ble Division Bench in the case of ***Ujala Narzary versus State of Assam [WA/1/2022 decided on 13.03.2023]*** wherein the claim for family pension was rejected as the husbands of the petitioners in those cases were not regularized in their services. Reliance is also placed upon the case of ***State of Assam and Ors. versus Anjali Thapa and Ors.*** reported in ***(2013) 3 GLR 522***. The learned Standing

Counsel reiterates that the communication dated 03.06.2006, as mentioned in the affidavit-in-opposition would show that the name of the husband of the petitioner, though sent for regularization, such regularization could not materialize during his lifetime. He has also pointed out that on 16.06.2012, the Finance Department had issued a notification that there would not be creation of any more supernumerary post. Though the aforesaid communication dated 16.06.2012 was interfered with by the learned Single Judge, the said decision was the subject matter of challenge in the case of **Upen Das** (supra) wherein the appeal was allowed. The learned Standing Counsel has specifically referred to paragraphs 11, 12 and 13 of the case of **Upen Das** (supra).

7. Shri Dhar, learned Standing Counsel, PWD and Shri C. Boruah, learned Standing Counsel, Accountant General, Assam have endorsed the submission made on behalf of the Finance Department.

8. In his rejoinder, the learned counsel for the petitioner has submitted that a communication was issued by the Public Works Department on 03.09.2005 on the aspect of creation of a number of posts of Work Charged Employees to accommodate persons who were engaged prior to 01.04.1993. He submits that due to certain inaction and negligence of the Office, the services of the husband of the petitioner could not be regularized and such inaction should not lead the petitioner to suffer any prejudice. The copy of the communication dated 03.09.2005 has been placed before this Court.

9. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

10. The claim for family pension is on the basis of the services rendered by the husband of the petitioner. Though the services of the husband of the

petitioner, which was initially as Muster Roll Worker from 17.09.1981, was subsequently upgraded to Work Charged Chowkidar on 08.08.1996, there is no order of regularization of the services. Opening of a GPF account and a Service Roll would not be conclusive on the aspect of regularization of service. In fact, as per the admitted case of the petitioner, such regularization of the husband of the petitioner in service was not affected during his lifetime, though there were certain communications. In the affidavit-in-opposition filed by the respondent no. 4 in paragraph 6, there is a clear mention about a communication dated 03.06.2006 where the name of the husband of the petitioner was sent for regularization. Unfortunately, such regularization did not materialize and in the meantime, the husband of the petitioner had passed away on 02.11.2011.

11. Under those circumstances, this Court is required to examine as to whether a case for grant of family pension can be made out. Pension or for that matter Family Pension is governed by a set of rules namely the Assam Pension Rules, 1969 which lay down that the incumbent is required to serve in a regular capacity. Though for Master Roll / Work Charge employees who were engaged prior to 01.04.1993, a policy decision was initially taken to regularize their services in which many incumbents got the benefit, subsequently, a number of similarly situated persons had approached this Court in which there was also a challenge to the notification dated 16.06.2012 of the Finance Department whereby it was decided that there would be no more creation of supernumerary post for the purpose of regularization of service and consequent payment of pension. Though there was interference by the Single Bench, the Hon'ble Division Bench in the case of **Upen Das** (supra) had allowed the appeal. While doing so, certain observations have been made which would be relevant in the present case and are accordingly extracted.

“13. However, notwithstanding the above statement made before the Court, the State Government filed MC No.597/2012 in WP(C) (Taken Up) No.24/2007 seeking leave to implement its policy of regularization and the Division Bench, having regard to the decision of the Supreme Court in [Umadevi](#) case, vide order dated 27.3.2012, declined to grant the leave. Immediately, thereafter, the Finance Department, Government of Assam, issued Office Memorandum dated 16.6.2012 stating therein that there shall be no further regularization of services of Muster Roll/Work Charged or similarly placed workers, even if such workers were engaged prior to 1.4.1993. The Office Memorandum dated 16.6.2012 also stated that there would be no more regularization by creating supernumerary posts for one day in respect of those Muster Roll/Work Charged workers, who were engaged prior to 1.4.1993, but have died or had attained the age of superannuation.”

12. Further, in paragraph 22, it has been clearly observed that on a concession made by the State, the aspect of payment of minimum pay as per the Minimum Wages Act and certain other facilities have been directed. However, the claim for regularization was rejected.

13. The Hon'ble Supreme Court in the case of **Uttar Haryana** (supra), in clear terms, has reflected that sentiments and sympathy alone cannot be a ground for taking a different view from what is permissible in law. For ready reference, the relevant observation which has been made with a similar claim for Family Pension is extracted herein below-

“16. The Scheme relating to grant of family pension was made

under a statute. A person would be entitled to the benefit thereof subject to the statutory interdicts. From a bare perusal of the provisions contained in the Punjab Civil Services Rules, Vol. 2 vis-à-vis the Family Pension Scheme, it would be evident that the respondent was not entitled to grant of any family pension. The husband of the respondent was a work-charged employee. His services had never been regularized. It may be unfortunate that he had worked for 11 years. He expired before he could get the benefit of the regularization scheme but sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law."

14. The Hon'ble Supreme Court in the case of **State of Nagaland** (supra) has also interfered with the action for effecting one-day regularization. As observed above, the direction made in the case of **Prem Singh** (supra) has been held to be confined to the facts of the case as observed by the Hon'ble Supreme Court in the subsequent decision of **Uday Pratap Thakur** (supra).

15. Further, when the Hon'ble Division Bench in the case of **Upen Das** (supra) has in clear terms rejected the claim for regularization of service which would be a pre-condition for an entitlement for family pension, this Court is of the considered opinion that no relief can be granted to the petitioner.

16. The writ petition accordingly stands dismissed.

17. No order as to costs.

JUDGE

Comparing Assistant