

GAHC010282472023



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

Case No. : WP(C)/7288/2023

ANITA DIMASA
W/O- LATE KHAGENDRA DIMASA, R/O- KHERANI, P.O. AND P.S. MANJA,
DIST. KARBI ANGLONG, DIPHU, ASSAM, PIN- 782461.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, AGRICULTURE DEPARTMENT, DISPUR, GUWAHATI-6.

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

3:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GHY-6.

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

5:THE KARBI ANGLONG AUTONOMOUS COUNCIL
REPRESENTED BY THE CHIEF EXECUTIVE OFFICER
DIPHU
KARBI ANGLONG
ASSAM

6:THE DIRECTOR OF AGRICULTURE
ASSAM

KHANAPARA
GUWAHATI-22.

7:THE ADDITIONAL DIRECTOR
AGRICULTURE (HILLS)
DIPHU
KARBI ANGLONG.

8:THE DISTRICT AGRICULTURAL OFFICER
KARBI ANGLONG
DIPHU

Advocate for the Petitioner : MR. P J SAIKIA, MS. S P DAS,MS. M PAUL

Advocate for the Respondent : GA, ASSAM, SC, AGRI. DEPARTMENT,MR. B CHOUDHURY,SC,
AG,SC, K A A C,SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 28-08-2024

Heard Mr. P.J. Saikia, learned counsel for the petitioner. Also heard Mr. CKS Baruah, learned Government Advocate, Assam appearing for the respondent No.1, Mr. B. Choudhury, learned standing counsel, Finance Department for respondent No.2, Mr. B. Sarma, learned counsel for the respondent No.4 and Mr. R.S. Ronghang, learned counsel for the respondent Nos.5, 7 & 8.

2. The present petition is instituted assailing the impugned letters dated 29.05.2019 and 15.11.2023, issued by the respondent No.4, the Accountant General (A & E), Assam, under the authority of Senior Accounts Officer, whereby the claim of the petitioner for pension has been rejected, as the petitioner has rendered less than 20 years in the Service which disentitled him for pension, in view of the O.M. dated 20.05.2009, issued by the Principal Secretary to the

Govt. of Assam, Pension and Public Grievances Department. The petitioner has prayed for granting of pension by considering the total length of service rendered by the petitioner and in terms of the judgment and order passed by this court in similar matter dated 04.12.2018 in WP(C) No.1089/2015 and other analogous Writ Petition.

3. The case of the petitioner is that she was engaged as a Muster Roll Worker under the District Agricultural Officer, Karbi Anglong, Diphu on 01.01.1993 and thereafter the service of the petitioner was regularized as Peon w.e.f. 22.07.2005. The petitioner has retired from her service on 30.08.2018 on attaining the age of superannuation.

4. After her retirement on 30.08.2018, the petitioner had submitted all the relevant documents for pension to the concerned authorities. On receipt of the said relevant documents, the Additional Director of Agriculture (Hills), Karbi Anglong, Diphu processed the pension papers of the petitioner and forwarded to the concerned authority.

5. Vide impugned letter dated 29.05.2019, the office of the Accountant General (A & E), Assam, issued a letter under the authority of Senior Accounts Officer, addressing to the respondent No.4, whereby returned the claim of pension of the petitioner on the ground that the petitioner has joined her service on 22.07.2005. It has further stated that in the matter of authorization of pension, who joined service on or after 01.02.2005, under the New Defined Contributory Pension Scheme, provisional pension may be paid by the Department and the office of the Accountant General has no role to play and as such returned the pension papers to the petitioner.

6. It is the contention of the petitioner that, in the meantime, the respondents have issued the GPF, GIS, Leave Salary and also the gratuity to the petitioner. However, the pension accrued to the petitioner on account of retirement from service as peon w.e.f. 30.08.2018, has not been sanctioned and released to the petitioner, although she fulfils all the conditions for entitlement to regular pension w.e.f. 30.08.2018.

7. Again, thereafter, the office of the Accountant General (A&E), Assam has issued the impugned letter on 15.11.2023, addressed to the concerned authority stating that the petitioner has retired from service as Peon, after rendering 19 years 8 months in the Service and as such, the petitioner is not entitled for pension but only entitled to terminal gratuity. Accordingly, the petitioner has been paid the terminal gratuity.

8. Mr. P.J. Saikia, learned counsel for the petitioner while relying on the judgment of the co-ordinate Bench of this Court in the case of ***Sanjita Roy vs. State of Assam and others***, reported in ***2019 (2) GLT 895*** and ***Taru Ch. Das vs. State of Assam***, dated 06.04.2022, passed in WP(C) No.2494/2022, submitted that both the above cases squarely cover the case of the petitioner. He submits that since the petitioner was initially engaged as a Muster Roll Worker in the year 1993, and subsequently regularized in the year 2005, she has completed more than 20 years in Service and she has retired from service on attaining the age of superannuation on 30.08.2018. Therefore, he submits that on the basis of the O.M. dated 20.05.2009, six (6) years period of Muster Roll service cannot be deducted, the submission, which is fortified by the judgment and order of this Court in the above two cases.

9. The learned counsel for the respondents, Mr. B. Sarma, Mr. B. Choudhury and Mr. C.K.S. Baruah, in unison, fairly submits that in view of the judgment and order of this Court in the case of ***Sanjita Roy (Supra)*** and ***Taru Ch. Das (Supra)***, the grievance of the petitioner as regards deduction of six (6) years service as Muster Roll Worker and her pension entitlement is squarely covered and the same cannot be denied. However, having agreed as above, Mr. B. Sarma, learned counsel for the respondent No.4, on oral instructions, submits that in view of the O.M. dated 20.05.2009, the initial six (6) years' service as Muster Roll Worker of the petitioner had to be deducted and accordingly, the petitioner has rendered only 19 years 8 months' (which is less than 20 years), to be entitled for pension. Accordingly, the respondent No.4 has to sanction only the terminal gratuity to the petitioner, in view of the Office Memorandum (Supra). He further submits, on the basis of the oral instructions from the authority, that the cases referred to and relied are only applicable to those petitioners, who were the petitioners in those cases and same would not be applied to present case. Therefore, until the time the State Government modify the O.M. dated 20.05.2009, the requirement of deduction of the 6 (six) years of service as Muster Roll Worker as envisaged in the Office Memorandum (Supra) has to be adhered to.

10. I have considered the submissions of learned counsel for the parties and perused the materials placed on record including the judgments of this Court referred to and relied upon by the parties.

11. Admittedly, the petitioner was engaged as a Muster Roll Worker under the District Agricultural Officer, Karbi Anglong, Diphu on 01.01.1993. Thereafter, her service was regularized as peon w.e.f. 22.07.2005. The minimum requirement in

terms of the Rules, to be entitled for pension is 20 (twenty) years regular service. At the first sight, when one takes the regularization of the petitioner 22.07.2005, indeed the petitioner has completed 19 years 8 months only, which is less than 20 years, to be entitled for pension. However, having considered the judgment and order passed in the case of **Sanjita Roy** (Supra) and **Taru Ch. Das** (Supra), wherein this Court has clearly held that the continuous length of service as Muster Roll Worker has to be taken without deduction of any period of service and in such case, pension should be made available to the retired employee.

12. As noted above, as the petitioner who was engaged as a Muster Roll Worker in the year 1993, if the continuous period of Muster Roll Worker is counted, certainly the petitioner has completed more than 20 years in her service, till her retirement on 30.08.2018.

13. Having considered the judgment and order passed in the case of **Sanjita Roy** (Supra) and **Taru Ch. Das** (Supra), coupled with the fair submissions of learned counsel for the parties that both the cases squarely covered the present case of the petitioner, I am of the view that if the six (6) years period of service is not deducted, the petitioner had crossed the benchmark of 20 years, to be entitled for pension. Therefore, the petitioner is entitled to the benefit of pension. Thus, I am of the view that similar direction can be issued to the respondent authorities to determine the continuous length of service of the petitioner as a Muster Roll Worker, without deduction of any period of her service.

14. Accordingly, the Writ Petition is disposed of with a direction to the

respondent authorities to determine the continuous length of service of the petitioner as a Muster Roll Worker, without deduction of any period of her service. The petitioner shall be considered for providing the benefit of pension thereafter, within a period of four (4) months from today.

15. Needless to observed that since the terminal gratuity has already been paid to the petitioner, the same shall be adjusted from the pension that would be payable to the petitioner.

16. Writ Petition stands allowed and disposed of, accordingly.

JUDGE

Comparing Assistant