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

Case No. : WP(C)/2583/2025

SABITRI DAS
W/O- LATE JOGENDRA DAS,
R/O- VILL- MANGALADAI,
P.O.AND P.S. MANGALDAI
DIST- DARANG, ASSAM,
PIN- 784125

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP 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

PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT.OF ASSAM

FINANCE DEPARTMENT
ASSAM
DISPUR
GUWAHATI-6.

4:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

5:THE DIRECTOR OF AGRICULTURE

ASSAM
KHANAPARA
GUWAHATI-22.

6:THE ACCOUNTANT GENERAL (A AND E)

ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-29.

7:THE EXECUTIVE ENGINEER (AGRICULTURE)

MANGALDAI DIVISION
MANGALDAI

DIST. DARRANG
ASSAM

PIN-784125

8:THE TREASURY OFFICER

MANGALDAI TREASURY
MANGALDAI
DIST. DARRANG
ASSAM
PIN-78412

Advocate for the Petitioner : MR. K R PATGIRI, MS. D. DEVI,MS CHITRALEKHA DAS

Advocate for the Respondent : SC, AGRI. DEPARTMENT, MR. S K MEDHI(SC,AG (A AND E)),SC, AG,SC, FINANCE DEPTT.,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 09-02-2026

Heard Mr. K.R. Patgiri, learned counsel for the petitioner. Also heard Ms. R. Bora,

learned standing counsel, Agriculture Department, Assam appearing for the respondent Nos. 1, 4 & 6, Mr. R. Dhar, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondent No. 2, Mr. P. Nayak, learned Addl. A.G. Assam appearing for the respondent Nos. 3 & 7 and Ms. A. Sarma, learned counsel appears on behalf of Mr. B. Chakraborty, learned counsel representing respondent No. 5.

2. The petitioner, by way of instituting the present writ petition, has prayed for a direction upon the respondent authorities for authorizing her family pension in respect of the services rendered by her husband late Jogendra Das as Muster Roll Employee in the establishment of the Executive Engineer (Agriculture), Mangaldoi Division, Mangaldoi, i.e. the respondent No. 6, herein. As projected in the writ petition, the husband of the petitioner late Jogendra Das was engaged as a Muster Roll Worker w.e.f. 04-10-1992 in the establishment of the respondent No. 6. The petitioner's husband having been found to have satisfied the criteria for regularization of his services, the name of the husband of the petitioner was included in the proposal so submitted by the respondent authorities for regularization of services of Muster Roll Workers. In pursuance to the approval granted by the Government in this connection, the services of the husband of the petitioner was regularized w.e.f. 22-07-2005 vide order dated 05-10-2005. The Directorate of Agriculture, Assam, i.e. the respondent No. 4 vide communication dated 02-03-2006 informed all concerned that the regularization of the services of the Muster Roll Workers would be effective w.e.f. 22-07-2005. Although the services of the husband of the petitioner was regularized w.e.f. 22-07-2005, unfortunately he passed away on 16-09-2005. The death of the husband of the petitioner having occasioned before issuance of the order dated 05-10-2005 although his services was regularized w.e.f. 22-07-2005, the same was not given effect to.

3. The petitioner being aggrieved had approached the respondent authorities on several occasions praying for authorizing to her family pension by treating the services of her husband to have been so regularized w.e.f. 22-07-2005. The said prayer of the petitioner not having been considered by the respondent authorities, she has instituted the present writ petition.

4. Mr. K.R. Patgiri, learned counsel for the petitioner submits that the husband of the petitioner was admittedly being engaged as Muster Roll Worker w.e.f. 04-10-1992, his case was covered by the policy decision as arrived at in the year 2005 by the Govt. of Assam for regularization of services of the Muster Roll Worker engaged prior to 01-04-1993. He submits that vide order dated 05-10-2005, the services of the deceased husband of the petitioner having been regularized w.e.f. 22-07-2005, notwithstanding the death of the husband of the petitioner occasioning on 16-09-2005, he is required to be deemed to be a regularized employee. Mr. Patgiri further submits that the services of the husband of the petitioner now being deemed to have been regularized w.e.f. 22-07-2005, considering the qualifying services he had rendered, the petitioner would be entitled to pension and pensionary benefits on account of services rendered by her deceased husband, pursuant to his death occasioning on 16-09-2005. Mr. Patgiri by referring to the decision of this Court rendered in the case of ***Sanjita Roy Vs. State of Assam & Ors.*** reported in ***(2019) 2 GLT 805*** submits that the qualifying service of the deceased husband of the petitioner would now be required to be reckoned w.e.f. 04-10-1992. He submits that the period of service of the petitioner if reckoned from 04-10-1992 on the date of his death he had completed more than 10 years of service. Accordingly, there would be no bar for releasing to the petitioner her due family pension.

5. In view of the above premises, Mr. Patgiri prays that that this Court would be pleased to direct the respondent authorities to authorize to the petitioner, herein, her due family pension by reckoning the services of the husband of the petitioner rendered w.e.f. 04-10-1992.

6. Mr. P. Nayak, learned Addl. AG, Assam as well as other counsel representing the respondents have submitted that the services of the husband of the petitioner was not regularized, although his name was included in the list of Muster Roll Workers found eligible for having their respective services provincialized, inasmuch as, on the date of issuance of the order of regularization of the services of the Muster Roll Workers, i.e. w.e.f. 05-10-2005, the husband of the petitioner had already passed on, on 16-09-2005.

7. The learned counsel for the respondents have place on record a communication dated 22-08-2005, issued by the Commissioner & Secretary to the Govt. of Assam, Finance Department, Dispur, in connection with the regularization of services of Work Charged/ Muster Roll workers of different Government departments engaged prior to 01-04-1993 and submits that in terms of the guidelines as formulated vide the said communication dated 22-08-2005, a Muster Roll worker who was engaged prior to 01-04-1993, but had either attained the age of superannuation or expired after rendering continuous service, prior to date of issuance of orders toward regularization of their services, would now be entitled for regularization of their services w.e.f. the date immediately preceding the date of superannuation/ death, as the case may be.

8. The learned counsel for the respondents have fairly submitted that the case of the husband of the petitioner is squarely covered by the guidelines as formulated vide

communication dated 22-08-2005 and accordingly, he would be also entitled to have his services regularized w.e.f. 22-07-2005.

9. Mr. Nayak has, however, submitted that the regularization of the services of the husband of the petitioner being granted in terms of the guidelines formulated vide communication dated 22-08-2005, the petitioner, herein, would not be entitled to receive her family pension, inasmuch as, the husband of the petitioner cannot be deemed to have rendered continuous service for a period of one year after his regularization in terms of the provisions of Rule 140 of the Assam Services (Pension) Rules, 1969 (in short "the Rules of 1969"). Mr. Nayak submits that in terms of the provisions of Rule 140 of the said rules of 1969, a family pension would be admissible in case of death of an officer while in service or after retirement on or after 01-01-1964, if at the time of death the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension, or in case where death had occasioned while in service, the Government servant should have completed a minimum period of one year of service. It is submitted by Mr. Nayak that the husband of the petitioner, in the facts as existing in the matter, cannot be deemed to have completed one year of continuous service as a Government servant after his regularization was so effected in the manner noticed, hereinabove, and accordingly, the petitioner, herein, would not be entitled to be authorized family pension.

10. Mr. Nayak by referring to the provisions of Rule 67 of the Rules of 1969 has submitted that condonation of deficiency not exceeding 12 months with regard to the qualifying service of an officer mandated for being authorised pension is not permissible to be so invoked for the purpose of grant of family pension. He submits that the issue arising in the present proceeding is with regard to authorising to the petitioner family pension. Accordingly, the

husband of the petitioner not having completed one year of service after his regularisation was so directed to be effected w.e.f. 22-07-2005, the petitioner would not be entitled to be authorised family pension.

11. I have heard the learned counsel for the parties and also perused the materials available on record.

12. It is not in dispute that the husband of the petitioner was engaged as Muster Roll Worker w.e.f. 04-10-1992 in the establishment of the respondent No. 6, herein, and while being in such service, he was died-in-harness on 16-09-2005. It is also brought on record that the husband of the petitioner being a prior to 01-04-1993 Muster Roll appointee, his case for regularization of his services was taken up for consideration in terms of the policy decision adopted in the matter in pursuance to the Cabinet decision dated 22-07-2005. The processing in the matter was taken to its logical conclusion and the name of the husband of the petitioner, was included in the list of Muster Roll workers, found eligible for having their services being provincialised.

13. Accordingly, the services of the petitioner vide issuance of an order dated 05-10-2005 was regularised w.e.f. 22-07-2005. However, although the said regularisation was directed to be given effect from 22-07-2005, the order in this connection have been issued only on 05-10-2005, the husband of the petitioner having passed away on 16-09-2005, i.e. before issuance of such order dated 05-10-2005, his services were not regularised.

14. However, from a perusal of the communication dated 22-08-2005, issued by the Commissioner & Secretary to the Government of Assam, Finance Department, Dispur, more particularly, the guidelines as framed, therein, it is seen that the case of the Muster Roll

workers who were otherwise have found to be eligible to have their services regularized in terms of the policy decision as arrived at, in the year 2005, would be entitled to have their services regularized, even if they had superannuated from their respective service and/ or had met with death prior to issuance of orders regularising their services. In terms of the guidelines as formulated in the said communication dated 22-08-2005, Muster Roll workers engaged prior to 01-04-1993, who had expired after rendering continuous service, prior to the date of issuance of orders towards regularising their services would be entitled to be regularized in their services for one day i.e. the day immediately preceding the date of death by creation of a supernumerary post. In the case on hand, a post having already been created for regularization of the services of the husband of the petitioner, in terms of the guidelines as formulated vide communication dated 22-08-2005, the services of the husband of the petitioner has to be deemed to have been regularized w.e.f. 22-07-2005. More so, when on the said date he was very much alive. Accordingly, the services of the husband of the petitioner, is to be deemed to have been regularized w.e.f 22-07-2005.

15. Having drawn the above conclusion with regard to the regularization of the services of the husband of the petitioner, the objection raised by Mr. Nayak, learned Addl. AG, Assam, that the husband of the petitioner not having rendered one year of continuous service after having become a Govt. servant upon regularization of his services, the petitioner would not be entitled to family pension, would now be required to be considered.

16. The materials brought on record would go to reveal that the decision for regularization of Muster Roll workers engaged prior to 01-04-1993 having been arrived at, the respondent authorities had issued an office memorandum dated 20-05-2009 for counting of the past services of a Muster Roll workers towards pension and DCRG. A perusal of the said Office

Memorandum dated 20-05-2009, would bring to the forefront that the competent authority of the Government of Assam had directed that upon regularization of the services of Muster Roll workers, the period of Muster Roll services, beyond the initial period of 06 years of such Muster Roll service, shall qualify for the purpose of pension and DCRG subject to fulfilment of the condition, that the period of Muster Roll workers of initial 06 years will be deducted and that such Muster Roll period of service should be continuous and the worker was not employed for specific broken periods. The said Office Memorandum also had the effect of amending to the extent it was provided, therein, the provisions of the Rules of 1969.

17. The said Office Memorandum dated 20-05-2009 admittedly was issued in exercise of powers under Rule 31 of the said Rules of 1969. Accordingly, it is seen that on regularization of the service of a Muster Roll worker, the period of services rendered by him as a regularized employee is treated to be in continuation of the period of service rendered on Muster Roll basis. The said office memorandum dated 20-05-2009, more particularly, the stipulation made therein that the period of Muster Roll service would be reckoned for the purpose of pension and DCRG, subject to deduction of the initial 06 years, thereof, was put to challenge before this Court in the case of ***Sanjita Roy (Supra)***. This Court on consideration of the matter, was pleased to interfere with the said deduction, as provided for of the Muster Roll period of service in the said office memorandum dated 20-05-2009. This Court in the case of ***Sanjita Roy (Supra)*** upon considering the issue, therein, had drawn the following conclusions;

“29. Rival submissions of the parties have been duly considered. The decision to grant pension to casual Muster Roll Workers whose services were regularized and have completed 20 years of total service cannot, per se, be termed as arbitrary. The question which rises for determination is whether the decision contained in the Office Memorandum dated 20.05.2009, to deduct 6 years of service meet the test of reasonability under Article 14 of the Constitution of India. While determining the aforesaid question, the Court is reminded of the fact that the petitioners belong to the

economically lower strata of the society. As has been held by various judicial pronouncements, it has been laid down that pension is not a bounty or a grace but valuable right accruing by an employee if he fulfils the conditions to be entitled for such pension. The conditions imposed in the instant case for the petitioners who are Muster Roll Workers is completion of a total period of continuous service of 20 years. While this Court, as has been observed above, does not hold that fixation of 20 years of continuous service an arbitrary, the deduction of 6 years does not appear to be reasonable and fair. This Court does not find force that the exercise, in publishing the notification dated 20.05.2009 itself was an under Rule 31 of the Rules and therefore, further exercise is not permissible. It will be wholly unfair and unreasonable to deny a Muster Roll Worker who has admittedly completed 20 years of continuous service of pension in terms of Office Memorandum dated 06.09.2003. However, deduction of 6 years or for that matter, any period to calculate 20 years of continuous service, does not appear to be reasonable. The entire exercise of issuing the notification should be in a positive manner so as to ensure that maximum benefit is given to the incumbents who undoubtedly belong to the economically lower strata of the society. It should have been the endeavour of the State not to make a further classification of Muster Roll Workers who have completed 20 years of continuous service by introducing the condition of deduction of 6 years of casual service. Admittedly, there is no difference at all between the services rendered by the petitioners while they were employed in a casual manner or after the regularization.

30. In view of such position, it is held that deduction of 6 years from their services while calculating 20 years of continuous service does not appear to be reasonable and fair. As regards the decision of this Court rendered in the case of Monsing Tisso (Supra), this Court is in agreement with the submission of Mr. Nair that the decision should be read in the context of the pleadings. It appears that an impression was given to the Court that 10 years of continuous service was the condition precedent for being eligible for pension. However, even without taking recourse to the said decision this Court has considered the present writ petitions in the forgoing manner.

31. In view of above discussion and by taking into consideration the various judicial pronouncements on the subject, the writ petitions are disposed of directing the respondent authorities to determine the continuous length of service of the petitioners as a Muster Roll Workers and if such service meets the bench mark of 20 years without any deduction, the benefit of pension should be made available to them. While carrying out said exercise, the respondent authorities are also directed to take recourse Rule 67 for those petitioners who fail to meet the bench mark of 20 years by 12 months or less. No order as to cost."

18. Having noticed the decision as taken in the matter by the respondent authorities with regard to the manner in which the Muster Roll period of service would be reckoned in respect of a Muster Roll worker regularized in his services as well the decision of this Court in the

case of ***Sanjita Roy (Supra)***, this Court would now examine the provisions of Rule 140 of the said Rules of 1969. The Rule 140 of the said rules being relevant, the same is extracted here-in-below.

“140. Except as otherwise provided in rule 142, a family pension not exceeding the rate mentioned in rule 141 will be admissible in case of death of an officer while in service or after retirement on or after 1st January, 1964, if at the time of death the retired officer was in receipt of a compassion, invalid, retiring or superannuation. In case of death while in service, the Government servant should have completed a minimum period of one year of service.

Note 1: The terms "one year of service" mentioned in above rule does not include broken period of service. The service for this purpose should be continuous.

Note 2: For the purpose of computing the minimum period of completed one year of continuous service, "boy service" and periods of extraordinary leave, if any, shall be excluded."

19. A perusal of the said rules would go to reveal that in case of death of an officer while in service, the family members would be entitled to family pension provided such officer, at the time of his death had completed a minimum of period of one year of service. The contention of the learned Additional Advocate General, Assam is to the effect that the services of the husband of the petitioner, even if deemed to have been regularized, in terms of the guidelines formulated vide communication dated 22-08-2005, w.e.f. 22-07-2005, he having passed on, on 16-09-2005, he admittedly had not completed one year of minimum period of service and accordingly, the petitioner, herein, would not be entitled to be authorized family pension. The said contention is being considered only to be rejected, inasmuch as, the Office Memorandum dated 20-05-2009, as interpreted by this Court in the case of ***Sanjita Roy (Supra)***, would go to reveal that the competent authority had provided for reckoning the period of Muster Roll service for the purpose of calculating pension and DCRG. In the case of the husband of the petitioner, the period of Muster Roll service rendered

by him is of continuous nature and the same would now be automatically added to the regularized service rendered by him as indicated, hereinabove, and accordingly, the husband of the petitioner is found to have rendered more than one year of service on the date of his death. Accordingly, on reckoning the services rendered by the husband of the petitioner w.e.f. 16-09-2005 on Muster Roll basis, on regularization of his services, it is found that he has rendered more than 13 years and accordingly, the services rendered by the husband of the petitioner is found to be satisfying the conditions of Rule 140 of the Rules of 1969 and the petitioner is thus, eligible for being authorized family pension. The provisions of Rule 140 of the Rules of 1969 mandates only a minimum period of service of 01 (one) year. The husband of the petitioner, herein, having rendered more than 13 years of continuous service, his family would be entitled to be authorized family pension. It is reiterated that the service of the husband of the petitioner, in view of the Office Memorandum dated 20-05-2009, considered along with the interpretation placed therein by this Court in the case of ***Sanjita Roy (Supra)*** has to be now so construed w.e.f. 04-10-1992 and accordingly, he is found to have been rendered more than 13 years of continuous service and accordingly, his family members including the petitioner, herein, would be entitled to be authorized family pension. The contentions raised by Mr. P. Nayak, learned Addl. AG, Assam, with regard to the non-applicability of the provisions of Rule 67 of the Assam Services (Pension) Rules, 1969, would not mandate consideration, inasmuch as, in view of the conclusions reached by this Court, hereinabove, the husband of the petitioner has been found to have rendered qualifying service of more than one year, on the date of his death, the provisions of Rule 67 of the said Rules of 1969 would not be called to be invoked.

20. In view of the discussions made hereinabove, the respondent authorities, more

particularly, the respondent Nos. 2 & 3 are directed to process the family pension proposal of the petitioner, herein, and to forward the same to the respondent No. 5, i.e. the AG (A&E), Assam within a period of 02 (two) months from the date of receipt of a certified copy of this order. The office of the AG(A&E), Assam, on receipt of such proposal, shall verify the same and proceed to authorize to the petitioner her due family pension with retrospective effect, i.e. w.e.f. 04-10-1992 along with other due pensionary benefits. On issuance of the required Family Pension Payment Order in this case, the arrears of pension and other pensionary benefits be released to the petitioner. Thereafter, the regular family pension be released to the petitioner.

21. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant