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

Case No. : WP(C)/3822/2023

NARAYAN CHANDRA BORA
S/O LATE PRIYA RAM BORA, R/O ADDITIONAL CHIEF ENGINEER COLONY (IRRIGATION), P.O. AND P.S.-DIPHU, DIST- KARBI ANGLONG, ASSAM, PIN-782460

VERSUS

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

2:THE PRINCIPAL SECRETARY KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU
KARBI ANGLONG
ASSAM

3:THE CHIEF ENGINEER
IRRIGATION DEPARTMENT
ASSAM
CHANDAMRI
GUWAHATI-3

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

5:THE ACCOUNTANT GENERAL (A AND E)
ASSAM

MAIDAMGAON
BELTOLA
GUWAHATI-781029

6:EXECUTIVE ENGINEER
IRRIGATION DIVISION
KARBI ANGLONG
ASSA

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV, MR K J SAIKIA,MS M NIROLA

Advocate for the Respondent : SC, IRRIGATION, SC, K A A C,SC, AG,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 07.10.2026

Heard Ms. M. Nirola, learned counsel for the petitioner. Also heard Mr. D. Bora, learned Standing counsel, Irrigation Department; Ms. S. Kemprai, learned Standing counsel, KAAC for respondent Nos. 2 and 6; Mr. P. Saikia, learned State counsel for respondent No.4 and Mr. R. K. Talukdar, learned Standing counsel Accountant General for respondent No.5.

2. By filing this writ petition, the petitioner has challenged the non-extension of pensionary and other retiral benefits to the petitioner. The petitioner has challenged the communication dated 18.05.2023 issued by the Chief Engineer, Irrigation, Assam, whereby the pension proposal of the petitioner was returned.

3. The case of the petitioner is that he was initially engaged as a Muster Roll Worker in the year 1986 in the Office of the Asst. Executive Engineer, Horguti Sub-Division (Irrigation), Phuloni. Subsequently, the petitioner was appointed as Work Charged Section Assistant under the Diphu Sub-Division, Karbi Anglong,

Irrigation Department on 21.05.1991. His service was terminated on 24.09.1991, following which he, along with 17 other similarly situated persons, approached this Court by filing Civil Rule No.4919/1991. The Civil Rule was disposed of by Judgment and order dated 29.01.1993, by which this Court directed the respondents to verify the vacancy position and frame a fair and just scheme for regularisation of the 18 petitioners, taking into consideration of their length of service and qualifications, with waiver of the age bar and compliance with the reservation requirements, and the scheme was required to be framed within six months.

4. The petitioner contends that pursuant to the aforesaid judgment and order, he was appointed/re-appointed as a Work Charged Section Assistant on 27.07.1993. It is his case that despite the judgment dated 29.01.1993 and the subsequent communications concerning regularisation, his service was never formally regularised. He continued in service and ultimately retired on superannuation on 31.12.2022. Thereafter, his pension papers were submitted by the concerned authorities and were forwarded to the Executive Engineer, Karbi Anglong Division, Irrigation, Assam on 19.04.2023. The pension proposal was thereafter returned by the communication dated 18.05.2023. Aggrieved, the petitioner has approached this Court by filing the present writ petition.

5. Ms. M. Nirola, learned counsel for the petitioner submits that the petitioner was among the 18 petitioners in Civil Rule No.4919/1991 and that their cases stand on a different footing from a claim based merely on long continuation as Work Charged employees. It is submitted that by judgment and order dated 29.01.1993, this Court directed the respondents to verify the vacancy position and frame a fair and just scheme for regularisation of the 18 petitioners, having

regard to their length of service and qualifications, with waiver of the age bar and compliance with the reservation requirements. Pursuant thereto, the petitioner was appointed on 27.07.1993 and continued in service till his retirement.

6. Learned counsel submits that the judgment dated 29.01.1993 attained finality and was never set aside or modified in any subsequent proceeding and therefore, the Judgment which has attained finality between the parties cannot subsequently be reopened or rendered ineffective. Learned counsel submits that the subsequent change in the legal position, if any, cannot, by itself, dilute the binding effect of the judgment dated 29.01.1993. It is contended that the said judgment continues to bind the parties unless set aside in a manner known to law.

7. Learned counsel further submits that the authorities continued to deal with the question of regularisation after the judgment dated 29.01.1993. Learned counsel relied on the communications proposing regularisation of Work Charged, Muster Roll, Casual and similarly situated workers engaged prior to 01.04.1993, in which the petitioner claims that his name was also included. It is contended that despite these steps, the service of the petitioner was never formally regularised.

8. Learned counsel submits that the Finance Department O.M. dated 16.06.2012 and the Notification dated 03.10.2019 cannot be relied upon without first examining the effect of the judgment dated 29.01.1993, pursuant to which the concerned employees were appointed/re-appointed on 27.07.1993, and their subsequent service history. It is contended that the subsequent Government instructions cannot be applied in isolation without examining the rights and

obligations flowing from the earlier judgment and the manner in which the authorities dealt with the question of regularisation thereafter.

9. Learned counsel further submits that the decision in ***State of Assam v. Upen Das***, reported in ***2020 (5) GLT 605***, relied upon by the respondents, cannot be applied without examining the distinguishing feature of the present case, namely, the judgment dated 29.01.1993 passed in respect of the employees and their appointments pursuant thereto. It is contended that the petitioner had approached this Court much before the subsequent decisions governing regularisation of Work Charged and Muster Roll employees.

10. Learned counsel also submits that the petitioner continued in service for several decades and was extended the regular scale of pay and other service-related benefits. The petitioner was also maintaining a GPF account and his pension papers were processed and forwarded to the Chief Engineer. The petitioner was allowed to continue in service until his retirement. Learned counsel submits that the service records and the manner in which the petitioner was continued in service for such a long period require consideration for his claim for pensionary benefits.

11. Learned counsel submits that the petitioner do not rest his claims merely on the length of service of the concerned employees as Work Charged employees, but seek examination of his claims in the backdrop of the judgment dated 29.01.1993, the subsequent steps taken towards regularisation and his service history.

12. On the other hand, Mr. D. Borah, learned Standing Counsel for the respondent Irrigation Department, submits that the employees concerned were

appointed as Work Charged employees and that their appointments were purely temporary. It is contended that the appointment/re-appointment dated 27.07.1993 pursuant to the judgment dated 29.01.1993 did not amount to appointment against a regular sanctioned or permanent post and that there was no subsequent order regularising their services. Learned Standing Counsel submits that the judgment dated 29.01.1993 required verification of the vacancy position and framing of a scheme for regularisation and did not itself confer regular status upon the 18 petitioners.

13. Learned Standing Counsel further submits that the service of the concerned employees has to be considered in the context of the administrative arrangement applicable to the Karbi Anglong area under the Sixth Schedule and the transfer of subjects, including Irrigation, to the Karbi Anglong Autonomous Council. It is contended that there is no material to show that the concerned employees were appointed against sanctioned regular posts and that long continuation in Work Charged service or payment of salary in a particular scale cannot alter the nature of their appointments. Reliance is placed upon Secretary, ***State of Karnataka v. Umadevi (3),*** reported in ***(2006) 4 SCC 1***, and ***State of Assam v. Upen Das***, reported in ***2020 (5) GLT 605***, in support of the contention that mere continuation in Work Charged service does not confer regular status or consequential pensionary benefits.

14. Learned Standing Counsel submits that the pension proposals were returned in the course of examination under the applicable pension provisions and Government instructions. The pension proposal of the petitioner was returned with the observation that the petitioner is not entitled to pensionary benefits except terminal gratuity as per the rules. It is contended that the claim

has to be examined with reference to the applicable rules and the nature of the appointment held by the petitioner.

15. Learned Standing Counsel submits that the judgment dated 29.01.1993 required the authorities to verify the vacancy position and frame a scheme and did not amount to an order of automatic regularisation. It is contended that the subsequent appointment/re-appointment of the petitioner as Work Charged employee did not confer substantive or permanent status upon him and that his claim must therefore be tested against the statutory conditions governing qualifying service under the Assam Services (Pension) Rules, 1969.

16. Learned Senior Advocate and Standing Counsel for the Karbi Anglong Autonomous Council submits that the service of the petitioner and other employees in the Karbi Anglong area has to be examined in the context of the constitutional and administrative framework applicable to the Sixth Schedule area and the transfer of subjects to the Council. Learned counsel adopts the submission advanced on behalf of the State respondents insofar as the legal entitlement is concerned.

17. I have considered the submissions advanced by learned counsel for the parties and have perused the materials available on record.

18. The grievance of the petitioner has its origin in the judgment and order dated 29.01.1993 passed by this Court in Civil Rule No.4919/1991. The petitioner was among the 18 petitioners in the said proceeding and, following the judgment, he was appointed on 27.07.1993. It is noticed that the direction issued by this Court was to verify the vacancy position and to frame a fair and just scheme for regularisation, having regard to the length of service and

qualification of the petitioner, with waiver of the age bar and compliance with the reservation requirements. The said judgment did not itself regularise the services of the employees, but it was followed by their appointment/re-appointment and by further correspondences concerning their regularisation.

19. The authorities thereafter continued to deal with the question of regularisation of Work Charged and similarly situated employees engaged prior to 01.04.1993. The communication, referred to by the petitioner, proposed regularisation of Work Charged, Muster Roll, Casual and similarly situated workers and the petitioner claims that his name was included in the relevant proposal. The communication dated 10.07.2015 issued by the Executive Engineer, Karbi Anglong Division, Irrigation, Diphu, forwarding the list of Work Charged Khalasis and Section Assistants under the Division under the subject of regularisation, further shows that the question of regularisation continued to be dealt with by the authorities. The petitioner, however, continued in service without any formal order of regularisation and ultimately retired from service.

20. The subsequent legal developments concerning Work Charged employees in the State of Assam have to be considered in this factual background. In ***Sukhendu Bhattacharjee & Ors. v. State of Assam & Ors.***, reported in ***2026 SCC OnLine SC 909***, against the ***Upen Das (Supra)*** case, the Hon'ble Supreme Court examined the claims of Work Charged and similarly situated employees in the context of the State's policy for regularisation of employees engaged prior to 01.04.1993. The Hon'ble Supreme Court considered the Government decisions and communications concerning such employees, including the O.M. dated 16.06.2012, and dealt with the objection that regularisation could not be granted merely on the ground of continuation in

service in the absence of sanctioned posts. After consideration, the Hon'ble Supreme Court directed the State to undertake the process of regularisation of the eligible appellants and directed consequential pensionary and post-retiral benefits in respect of the employees who had already retired.

21. The judgment in ***Sukhendu Bhattacharjee (Supra)*** would not be construed and mean that every Work Charged employee is entitled to regularisation or pension merely by reason of long service. The entitlement continues to depend upon the facts of the individual case and the applicable policy. The petitioner who has been engaged prior to 01.04.1993, had approached this Court in Civil Rule No.4919/1991, obtained a direction concerning their regularisation and were thereafter appointed on 27.07.1993. His case therefore cannot be examined merely by treating them as person who continued in Work Charged service for a long period. The Hon'ble Supreme Court has clarified that the Work Charged employees shall be treated as a distinct class and their entitlement to pension and their post-retiral benefits shall not be adversely affected by the observations made in the ***Upen Das's (Supra)*** case and also granted liberty to agitate before the State Government as regards their claim for pensionary and other consequential benefits.

22. The judgment dated 29.01.1993 cannot be treated as having become irrelevant merely because the employees were not thereafter formally regularised. The judgment continues to bind the parties in respect of the directions issued therein. The subsequent Government instructions and the later legal developments may govern the manner in which the claims are to be dealt with, but the earlier judgment, the appointment/re-appointment made pursuant thereto and the subsequent regularisation exercises form part of the service

history of the petitioner. These circumstances have to be considered together while determining his entitlement.

23. The principles relied upon by the petitioners concerning the finality of the judgment dated 29.01.1993 have to be considered in this background. The judgment was never set aside or modified in any subsequent proceeding. At the same time, the judgment did not itself direct automatic regularisation, but required the respondents to undertake the process contemplated therein. That apart, the subsequent legal position and Government instructions may have a bearing upon the ultimate entitlement of the petitioner, but they cannot be applied without examining the effect of the earlier judgment and the subsequent steps taken by the authorities pursuant thereto.

24. The impugned communication dated 18.05.2023 do not disclose such an examination but simply returned the pension proposal rejecting the claim of the petitioner. It does not show consideration of the judgment dated 29.01.1993, the subsequent appointment/re-appointment dated 27.07.1993 or the subsequent correspondence relating to regularisation.

25. The records further disclose differing positions regarding the nature of the appointments. While the Department has referred to the absence of information regarding the availability of a regular post and the subsequent regularisation of the petitioner, the affidavit of the concerned Executive Engineer proceeds on the basis that the appointment was not against regular sanctioned post. The original service records and the records relating to the proceedings arising out of Civil Rule No.4919/1991 would therefore have to be examined to determine the precise nature of the appointment and the steps taken thereafter in relation to regularisation.

26. In view of the above, the claim of the petitioner cannot be rejected merely by applying the general proposition that long service as a Work Charged employee does not by itself confer a right to pension. His claim has to be examined in the factual and legal background in which the petitioner was engaged prior to 01.04.1993, approached this Court, obtained the judgment dated 29.01.1993 and was thereafter appointed and continued in service. The applicability of the Government policy and instructions, the Assam Services (Pension) Rules, 1969 and the effect of the judgment of the Hon'ble Supreme Court in ***Sukhendu Bhattacharjee (Supra)*** will have to be considered on the basis of the complete service records.

27. Accordingly, the communication dated 18.05.2023 issued by the Chief Engineer, Irrigation, Assam, cannot be sustained and is set aside. The competent authority shall reconsider the claims of the petitioner after examining the original service records, the records relating to Civil Rule No.4919/1991, the judgment and order dated 29.01.1993, the subsequent appointment order and the records concerning the subsequent regularisation exercises. The competent authority shall further consider the applicable Government policy and instructions, the Assam Services (Pension) Rules, 1969, and the decision rendered by the Hon'ble Supreme Court in ***Sukhendu Bhattacharjee (Supra)***.

28. The aforesaid exercise shall be completed within a period of 3 (three) months from the date of receipt of a certified copy of this judgment. The competent authority shall pass a reasoned order dealing with the claim of the petitioner and communicate the same to the petitioner. If, upon such examination, the petitioner is found entitled to pensionary and other

retiral/consequential benefits, same shall be granted to the petitioner, in accordance with law.

29. The writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant