
(2022) 12 GAU CK 0002

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3413 Of 2021

Abdul Haque Choudhury

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 01-12-2022

Acts Referred:

Citation : (2022) 12 GAU CK 0002

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : L R Majumdar

Final Decision : Allowed

Judgement

1. Heard Mr. LR Majumdar, learned counsel for the petitioner. Also heard Ms. S Baruah, learned Junior Government Advocate for the respondent No.1 being the Judicial Department, Government of Assam and Mr. HK Das, learned counsel for the respondents No.2 and 3 respectively being the Registrar (Administration) Gauhati High Court, Guwahati and the Chief Judicial Magistrate Cachar, Mr. B Chakraborty, learned counsel for the respondent No.4 being the Accountant General (A & E), Assam.

2. The petitioner was appointed as a casual employee (contingent) on a fixed remuneration of Rs.900/- per month w.e.f. 01.11.1993 as per the order of the Chief Judicial Magistrate (for short, the CJM) Cachar dated 30.10.1993. Subsequently, the services of the petitioner stood regularised as per the order dated 17.11.2015 of the CJM Cahcar and thereupon he retired from service on 31.10.2020.

3. The grievance raised in this writ petition is that the pensionary benefits of the petitioner had not been paid. In this respect, a communication dated 02.12.2020 of the Senior Accounts Officer in the Office of the Principal Accountant General (A & E), Assam has been brought to the notice of the Court which provides that as per the Assam Services (Pension) Rules 1969, an employee should have

minimum 5(five) years to earn gratuity and for the purpose of pension one has to put in a minimum of 10 (ten) years of qualifying service. The communication further provides that as the petitioner had joined his services on 18.11.2015 as Peon upon being regularised and retired from service on 31.10.2020, he has completed only 4years, 11months and 13 days of service. It is also provides that as per the new pension Rules which came into effect on 01.02.2005, the petitioner would now be governed by the New Defined Contribution Pension Scheme and not by the Assam Services (Pension) Rules 1969.

4. We take note that the petitioner was initially appointed as a casual employee on 01.11.1993 and was regularised by the order dated 18.11.2015 and retired on 31.10.2020. In respect of such casual workers/muster roll workers who have been subsequently regularized, their entitlement for pension is governed by another set of laws as provided in the OM No. dated 09.06.2009 which provides that the work charged and muster roll employees who were regularized after 01.02.2005, would not be governed by the New Defined Contribution Pension Scheme, but by the existing Assam Services (Pension) Rules 1969.

5. Further we take note that the judgment of this Court rendered in Sanjita Roy Vs. State of Assam and Others reported in 2019 (2) GLT 805 wherein it is provided that six years of qualifying service of an employee as a muster roll worker cannot be excluded for the purpose of arriving at the qualifying service for pension. The said judgment also impliedly provides that the entire service of a muster roll worker from the date of his initial appointment up to the date of his retirement should be taken into consideration for the purpose of the qualifying service period for entitlement of pension.

6. In view of the above, the communication dated 02.12.2020 of the Senior Accounts Officer in the Office of the Principal Accountant General (A & E) Assam is set aside and the matter is remanded back to the said authority for an appropriate order to be passed as per law.

7. As the matter involves payment of pension to the petitioner, the above requirement be done within two months from the date of receipt of a certified copy of this order.

8. Writ petition stands allowed in the above terms.