
(2015) 05 GAU CK 0025
In the Gauhati High Court
Case No : Writ Petition (C) No. 6107 of 2014

Dhirendra Chandra Sutradhar	Vs	APPELLANT
The State of Assam and Others		RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Citation : (2015) 146 FLR 307

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : M.B. Baruah, for the Appellant; B. Goswami, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Michael Zothankhuma, J.

1. Heard Mrs. M.B. Baruah, counsel for the petitioner and Mr. B. Goswami, Standing Counsel, Water Resources Department, Govt. of Assam for the respondents.

2. Petitioner's case is that he was appointed as a Lower Division Assistant in the office of the Executive Engineer, Goalpara E and D Division under Flood Control Department vide Memo No. 2761-63 dated 19.3.65. The petitioner was transferred to Dhubri E and D Division vide Memo dated 15.5.70 and was promoted as UDA in the same Department vide Memo dated 12.11.71. The petitioner was thereafter transferred to the newly created Goalpara Investigation (FC) Division as UDA and, thereafter, promoted to the post of Head Assistant. The petitioner was subsequently transferred to the newly created Gossaigaon Investigation Division and posted as Supervisory Assistant. On creation of the Brahmaputra Board, an autonomous statutory body, the Govt. of Assam, Flood Control Department, issued Notification dated 13.5.82 placing the Gossaigaon Investigation Division and other investigation circles, divisions/subdivisions along with the incumbents on "as is where is basis" at the disposal of the Brahmaputra

Board w.e.f. 1.4.82.

3. Counsel for the petitioner submits that on learning that service condition and status of the employees of the Brahmaputra Board is not the same with the State Government employees, the petitioner by his letter dated 14.7.82 addressed to the Secretary to the Govt. of Assam, Flood Control Department (now renamed as Water Resources Department) requested for transferring him back to the Flood Control Department from the Brahmaputra Board as UDA.

4. The Govt. of Assam, Flood Control Department thereafter issued Notification dated 31.8.85 placing the services of the employees of the Flood Control Department whose services were transferred on "as is where is basis" at the disposal of the Brahmaputra Board on deputation with effect from the date of joining. On expiry of five years" term of deputation of the petitioner on 31.3.87, the Deputy Secretary, Brahmaputra Board vide letter dated 22.7.87 informed the Secretary to the Govt. of Assam, Flood Control Department that the services of the petitioner are no longer considered necessary for the Board and decided to release him on reversion by 31.7.87. The Brahmaputra Board issued order of reversion of the petitioner vide Memo dtd. 29/30th July, 1987. On receipt of the order of reversion, the petitioner addressed a letter dated 5.8.87 to the respondent No. 2 requesting for posting order before joining in his parent department. Thereafter, the Deputy Secretary to the Govt. of Assam, Flood Control Department vide Memo dated 11.8.87 requested the respondent No. 3 to retain the petitioner in the Board by extending the term of deputation. Petitioner"s further case is that he requested for reversion to his parent department vide applications dtd. 18.8.88 and 26.10.88. The petitioner retired from service on 31.1.2006 as under Secretary in the Brahmaputra Board.

5. Petitioner"s grievance in the present writ petition is that he has been sanctioned a monthly pension taking into account the services rendered by him under the Govt. of Assam from 27.3.65 to 31.3.82. The petitioner thus submits that while calculating his monthly pension the period from 1.4.82 till the date of his retirement i.e. 31.1.2006 should also be taken into account as the entire period from 1.4.82 till his retirement was under deputation. The petitioner has also submitted that his applications dtd. 16.9.2009 and 3.2.2014 have also not been considered by the State Government till date.

6. Mr. B. Goswami, counsel for the respondents has submitted that pursuant to the order dated 18.3.93 passed in Civil Rule No. 873/87 which had been filed by the present petitioner, the petitioner was absorbed in the Brahmaputra Board w.e.f. 1.4.82 vide office order dated 31.1.95 issued by the Board. Mr. B. Goswami has also referred to Para 9 and 11 of the affidavit-in-opposition filed by the respondents which is to the following effect:

"9. That as regards to the statements made in paragraphs 18 and 19 to the writ petition your deponent begs to state that as the petitioner was absorbed in the Board and hence his services was guided by the CCS Rules. It is also stated that

after obtaining no objection for granting Pro-Rate pension to Sri D.C. Sutradhar from P and PG Department under Note 2(i) below Rule 98 of Assam Services (Pension) Rules, 1969, this Department vide letter No. WR(E) 122/2007/20 dated 25/07/2007 forwarded all pension papers of Sri DC. Sutradhar to the Accountant General, Assam for calculation of his pension. Subsequently, his pension was calculated @ Rs. 1225/- P.M. for the period of service rendered (i.e.) 17 years 5 days w.e.f. 27/03/1965 to 31/03/1982 under the State Govt. of Assam by the Accountant General, Assam.

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11. That your deponent denies the correctness of the statements made in paragraphs 21 and 22 to the writ petition. It is further stated that this Department had again moved to the Finance (Estt.-A) Department to their views on the matter of Sri DC. Sutradhar. The Finance (Estt.-A) Department observed that Sri Sutradhar was absorbed permanently in the Brahmaputra Board w.e.f. his date of joining as a consequence of which Sri Sutradhar got seniority and promotion in the Board. Sri Sutradhar received the benefits of C.P.F., leave encashment, Gratuity and other benefits but no pension as pension is not available in the Board. He also got pension as calculated by the A.G. Assam for the period rendered under the State of Assam. Moreover, the Finance (EC-I) Department observed that the incumbent served in the Board for more than 20 years which was beyond the total deputation period of 10 years (two terms) was not covered under any existing rules. Regularization of deputation does not arise after permanent absorption."

7. Thus, counsel for the respondents submits that the petitioner having been absorbed in the Brahmaputra Board on the basis of an order dt. 18.3.93 passed by this Court in Civil Rule No. 873/87 as prayed for by him, he cannot now turn around and ask for pension from the State Government. Mr. B. Goswami also submits that pension is not paid by the Brahmaputra Board and after receiving all other retirement benefits from the Brahmaputra Board w.e.f. 1.4.1982 till retirement, the petitioner is now looking towards the State Government for granting pension for the period from 1.4.82 till the date of his retirement, which cannot be allowed as there was no service rendered by the petitioner during the said period under the Government of Assam and as the petitioner had come under the CCS Rules.

8. Counsel for the respondents further submits that the State of Assam is following the Assam Services (Pension) Rules, 1969 for payment of pension and other pensionary benefits to its employees while CCS (Pension) Rules, 1972 applies to the Central Govt. employees and employees of other State Governments which have applied the said Rules to their States.

9. Counsel for the petitioner submits that pension contribution of the petitioner was deducted by the Board from 1.4.1982 to 31.3.88 as can be seen from the letter dated 19.4.88 issued by the Senior Accounts Officer, Brahmaputra Board to

the Accountant General, Assam issued vide Memo No. BB/P&A/102/84/255A. The said letter shows that an amount of Rs. 9389.30 is the pension contribution in respect of the petitioner on deputation to the Brahmaputra Board for the period from 1.4.82 to 3.3.88. Letter No. BB/ACS/5/Pt-iii/92/113 dated 11.3.93 issued by the Senior Accounts Officer, Brahmaputra Board to the Secretary to the Govt. of Assam, FC Department shows that Rs. 11576/- is the pension contribution of the petitioner for the period from April, 1988 to February, 1993. Counsel for the petitioner, thus submits that the petitioner is very much entitled for the pension from 27.3.65 till February, 1993 i.e. till the date his pension contribution had been deducted by the Brahmaputra Board and given to the Govt. of Assam. Counsel for the petitioner also submits that she is not aware if pension contribution was deducted from the petitioner's salary from February, 1993 till the date of issuance of the office order dated 31.1.95 absorbing the petitioner in the Brahmaputra Board w.e.f. 1.4.82.

10. After hearing the counsel for the parties and on perusal of the records, I find that the petitioner was sent on deputation to the Brahmaputra Board w.e.f. 1.4.82 for a period of 5 years and that though he initially wanted to be repatriated back to his parent department, he subsequently changed his mind and wanted to be absorbed in the Brahmaputra Board. This is clear from the order dated 18.3.93 passed in Civil Rule No. 873/87 which was disposed of with the following direction:

"For the reasons stated above, I dispose of the petition with direction to the Respondent Board to absorb the petitioner in the Board. The Respondents are further directed not to give effect to the impugned order dated 30-7-87 purporting to reverting the petitioner to the Govt. of Assam, Flood Control Department.

The petition is allowed to the extent indicated above. I make no order as to costs."

This order dated 18.3.93 passed in Civil Rule No. 873/87 has attained finality as it has not been challenged by any of the parties till date.

11. The petitioner was thereafter absorbed in the Brahmaputra Board w.e.f. 1.4.82 vide office order dated 31.1.95 issued by the Board in pursuance to the order dt. 18.3.93 passed in Civil Rule No. 873/87. The petitioner not having challenged the order dated 31.1.95 absorbing him in the Brahmaputra Board w.e.f. 1.4.82 till his retirement, he cannot be now allowed to claim pension from the State Government for the period commencing from 1.4.82. In fact, the petitioner has kept silent about the order dt. 18.3.93 passed in Civil Rule No. 873/87 and the absorption order dt. 31.1.95 in the writ petition and has only mentioned it in his reply affidavit to the respondents' affidavit-in-opposition.

12. The petitioner has not controverted the submission of the respondent's counsel that he has received all pensionary benefits from the Brahmaputra Board w.e.f. 1.4.82 till retirement due to his absorption. The petitioner while praying for

granting full pension by taking into account his service period from 1.4.1982 till the date of his retirement, has also kept silent about the pensionary benefits received from the Brahmaputra Board in his writ petition. The petitioner having received all his pensionary benefits as an employee of the Brahmaputra Board w.e.f. 1.4.1982 till the date of his retirement and as he has not challenged the absorption order dt. 31.1.95, the petitioner has to be considered an employee of the Brahmaputra Board w.e.f. 1.4.1982 till the date of his retirement.

13. In that view of the matter, the prayer of the petitioner for granting full pension by the State Government by counting his service from 1.4.82 till the date of his retirement as an employee of the State Government, cannot be allowed. However, in view of the submission made by the petitioner that his pension contribution had been paid by the Brahmaputra Board to the Flood Control Department, Govt. of Assam for the period from 1.4.82 to February, 1993 (Annexure-20 and 21 of the affidavit-in-reply filed by the petitioner), the respondent No. 2 is directed to cause an enquiry into the matter and to return the pension contribution that had been allegedly submitted by the Brahmaputra Board to the Flood Control Department, Govt. of Assam, to the petitioner within a period of three months from the date of receipt of a certified copy of this order, if the averment of the petitioner is found to be true.

14. The writ petition is accordingly dismissed. No cost.