

(2021) 08 GAU CK 0040

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5721 Of 2020

Indrajit Paul

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 11-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Assam Services (Pension) Rules, 1969 — Rule 66, 67

Citation : (2021) 08 GAU CK 0040

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : M Kalita

Final Decision : Allowed

Judgement

1. Heard Mr. J. Hatimuira, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned standing counsel for the PHE Department, respondent

nos.1, 2, 3 and 7, Mrs. M.D. Borah, learned standing counsel for the respondent no.4 and Mr. R.K. Talukdar, learned standing counsel for the respondent nos.5 and 6.

2. By filing this writ petition under Article 226 of the Constitution of India, the case projected by the petitioner is that he was engaged as a Muster Roll

Worker on 20.01.1993 in the PHE Department under Dhubri Division. His service was regularized as Khalasi in the year 2005 and he worked in the

said post till superannuation on 31.12.2018. After superannuation, his pension papers were submitted. However, the respondent no.6 by

communication dated 01.06.2020 returned the pension papers to the respondent no.2 on the ground that there was a shortfall of 18 (eighteen) days for

availing the full pensionary benefits. However, the respondent no.6 had advised

the respondent no.2 that the pensionary benefits would be authorized after the sanction of shortfall service condoned by the authority as per provisions laid down in Rule 66 and 67 of the Assam Services (Pension) Rules, 1969. The learned counsel for the petitioner has placed reliance on the ratio laid down by this Court in the case of Sanjita Roy vs. State of Assam & Ors., 2019 (2) GLT 805 wherein it is laid down that if there was any shortfall in 20 (twenty) years of continuous service, the authorities are required to take recourse to Rule 67 for those petitioners who had failed to make the benchmark of 20 (twenty) years by 12 (twelve) months or less.

3. The learned standing counsel for the PHE Department has submitted that in the present case in hand, the petitioner had been disallowed pension as the total length of service fell short of 20 (twenty) years by 18 (eighteen) days.

4. Having regard to the fact that Rule 67 of the Assam Services (Pension) Rules empower the competent authority to condone the deficiency in exceeding 12 (twelve) months and therefore, in the case of Sanjita Roy (supra), the Court had also directed the competent authority to take recourse of Rule 67 of the Assam Services (Pension) Rules to those persons who have failed to make the benchmark by 12 (twelve) months or less. This appears to be a fit case for directing the competent authority of the respondents to consider that the shortfall of the petitioner is only 18 (eighteen) days and to take recourse to Rule 67 of the Assam Services (Pension) Rules, 1969.

5. Accordingly, this writ petition stands allowed by directing the respondent no.1 to take recourse to 67 of the Assam Services (Pension) Rules, 1969 for the purpose of condoning the deficiency of 18 (eighteen) days in respect to make the benchmark of 20 (twenty) years. The said exercise shall be carried out by the respondent no.1 within a period of 6 (six) weeks from the date of receipt of downloaded copy of this order. The respondent no.1 may compare the downloaded copy of the order from the website of the Court and act accordingly.

6. It is needless to say that upon disposal of the case of the petitioner, the respondent no.1 shall communicate a copy of the order to the petitioner within a reasonable time and in the event, the deficit period being condoned, the pension papers of the petitioner shall be processed and sent to the respondent no.6 within a period of 4 (four) weeks from the date of passing of

such order. On receipt of the pension papers of the petitioner along with the order of condoning the deficiency of make the benchmark, the respondent no.6 shall thereafter process the pension papers and do the needful within a reasonable time.

7. With the aforesaid direction, this writ petition stands allowed to the extent as indicated above.