

(2006) 09 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (C) No's. 8076, 8900 and 8999 of 2005

Ismail Hussain and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Assam Panchayat Employees (Provincialization) Act, 1999 — Section 3

Citation : (2006) GLT 47 Supp

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S. Das, D. Nath, N. Bora, R. Verma, I. Rafique, S.A. Choudhury and M. Das, for the Appellant; R. Chakraborty and D. Baruah, for the Respondent

Judgement

B.K. Sharma, J.—Heard learned Counsel for the Petitioners. Also heard Ms. R. Chakraborty, learned State counsel representing the Respondents.

2. These writ petitions have been filed claiming pensionary benefits which according to the Petitioners, they are entitled to in view of the provincialization of their services. The Petitioners are the Panchayat employees and their services have been provincialized with effect from 1.10.1991 i.e. the date of enforcement of the Assam Panchayat Employees (Provincialization) Act, 1999. Although the services of the Petitioners as Panchayat employees have been provincialized with effect from 1.10.1991 but because of lack of qualifying service for pension, they have not been provided with the benefit of pension. According to the Petitioners, the Act having been passed to facilitate the pensionary and other retirement benefits, the Respondents are duty bound to count their previous service before provincialization. Placing reliance on the respective dates of appointment, the Petitioners have contended that irrespective of date of provincialization of their services pursuant to the passing of the said Act of 1999, having regard to their long length of service, they are entitled to receive pensionary and other retirement benefits.

3. The Respondents have filed counter-affidavit in W.P. (C) No. 5786/2005. While

broadly agreeing with the fact of provincialization of services of the Petitioners and for that matter, 4565 number of Panchayat employees pursuant to the enactment of the Assam Panchayat Employees (Provincialization) Act, 1999, they have contended that as per the provisions of the Pension Rules, the Petitioners having not rendered minimum qualifying services for pension, the Respondents have faced difficulties in providing pensionary and other retirement benefits to the Petitioners. They have quantified the qualifying services as 10 years and it is their contention that since none of the Petitioners has got qualifying service of 10 years from the date of provincialization of their services, the Petitioners are not entitled to get pensionary and other retirement benefits. Taking a pragmatic approach to the matter, the Respondents have now initiated action to work out the feasibility of providing pensionary and retirement benefits to the Petitioners and similarly situated other Panchayat employees. In this connection, the Respondents in their counter affidavit have stated thus:

However, it may be stated here that the matter of extending pension benefits to the provincialized panchayat employees who had retired/expired on or after the date of enforcement of the Act i.e. 1.10.1991 rendering less than 10 years of service to Govt. after the said date has been under examination of the Department and as a sequel to this, a draft amendment of the relevant provision of the Act i.e. Section 3 has been prepared and the same has been endorsed brother required departments for their examination at their levels. It may be observed that the extension of pension benefits to the Petitioner will be possible only if the said amendment it brought about.

4. Learned Counsel for the Petitioner in W.P. (C) No. 5786/2005 has drawn my attention to the Office Memorandums dated 10.9.2000 (Anexure-"B") and 18.12.2003 (Annexure-"F") annexed to the writ petition indicating that pursuant to provincialization of services of the Panchayat employees they would be entitled to pensionary benefits. However, the Respondents have contended that those office memorandums cannot override the provisions of me Act.

5. There is enough indication in the counter affidavit filed by the Respondents that the Government is seriously engaged in considering case of the Panchayat employees entitling than to pensionary benefits pursuant to provincialization of their services. It is in this context, the above quoted statements have been made in the counter affidavit.

6. Today, Ms. R. Chakraborty, learned State counsel has produced a copy of the letter dated 5.9.2006 addressed to her by the Government in the Panchayat and Rural Development (A) Department. In the letter, it is indicated that the matter relating to pension of the provincialized Panchayat employees is presently under process in the Finance/Personnel Departments. By the said letter, she has been requested to obtain further two months time.

7. From the above stand of me Respondents, it is evident that the Government is seriously considering the question of granting pensionary benefits to the

Panchayat employees which naturally include the Petitioners. The Petitioners have rendered several years of service and after provincialization of their services as per provisions of the aforesaid Act, it was their natural expectation that they would be provided with pensionary and other retirement benefits. But for the particular provisions in the Act in the normal circumstances, the Petitioners would have entitled to pensionary benefits. There is no denial of the fact that all of them have rendered requisite length services. However, because of the effective date of the provisions of the Act, their earlier periods of service have not been counted for pensionary benefits.

8. It will be expedient for the Respondents to take a pragmatic approach to the matter so that several years of service rendered by the Petitioners under the Respondents do not go fruitless and the Petitioners after their retirement from service get some benefits by way of pensionary and other retirement benefits.

9. The prayer in the aforesaid letter dated 5.9.2006 is allowed. It is expected that the Respondents will look to the genuine problems faced by the Petitioners and for that matter the similarly situated Panchayat employees and shall do the needful towards redressal of their grievance. Since the matter involves retirement benefits, it is expected that the Respondents shall expedite the matter and shall take final decision as expeditiously as possible, preferably within 30.11.2006.

10. Learned Counsel for the Petitioner in W.P. (C) No. 8999/2005 submits that irrespective of the provisions of the Act relating to qualifying service, the Respondents No. 1 and 2 have rendered qualifying service of 10 years with effect from 1.1.1991. They have retired from service on attaining the age of superannuation with effect from 31.1.2002 and 31.8.2004 respectively. The Respondents will keep in mind this aspect of the matter that the Petitioners in W.P. (C) No. 8999/2005 have already rendered qualifying service of 10 years.

11. With the aforesaid direction, the writ petitions are disposed of. Learned State counsel shall apprise the State Respondents about this order enabling the Respondents to take immediate necessary follow up action.

12. Let a copy of this order be furnished to Ms. R. Chakraborty, learned State counsel. At this, Mr. D. Baruah, learned Central Govt. Counsel representing the Accountant-General, Assam submits that till this very day, the office of the Accountant-General did not have any role to play in the matter. However, he assures that in the event of any action on the part of the office of the Accountant-General pursuant to the decision to be taken by the Government, the same shall be initiated and completed as expeditiously as possible.