

(2015) 04 GAU CK 0030

In the Gauhati High Court

Case No : WP(C) 1124, 1147, 2560, 4106, 4564, 4567, 4576, 4577 and 4580 of 2013

Kailash Ch. Mahanta

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 04 GAU CK 0030

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : D. Choudhury and M.L. Gupta, Learned Counsels, for the Appellant

Final Decision : Disposed off

Judgement

Michael Zothankhuma, J.—Heard Mr. D. Choudhury and Dr. M.L. Gupta, learned counsel for the petitioners. Also heard Mr. G. Baishya, learned counsel for the Accountant General's office; Mr. M. Bhagawati, learned Govt. Advocate; Mr. A. Chetry, learned counsel for the Pension and Public Grievances Department and Ms. A. Verma, learned counsel for the Finance Department.

2. All the writ petitions are being disposed of by a common order as the fact situation is similar in all the cases. The only difference in the facts is with regard to the number of years of service of the petitioners. The petitioners in all the cases have worked as employees in the Border Organization of Assam Police as per the Prevention of Infiltration of Foreigners Scheme (for short, hereinafter referred to as "the PIF Scheme"). The petitioners in all the cases, including the husband of the petitioner in WP(C) 1124/2013, have worked for more than 10 years but less than 20 years in the said organization under the PIF Scheme.

3. The petitioners' case is that after retirement from Defence Service they were selected for being appointed in the Border Organization of Assam Police under the PIF Scheme. The particulars of each of the petitioners are reflected below:

The petitioner in WP(C) 1147/2013 was appointed on 10.12.93 as SI of Police (B) and retired on 30.6.2012.

The husband of the petitioner in WP(C) 1124/2013 was appointed on 10.12.93 as SI of Police (B) and he expired on 17.6.2002.

The petitioner in WP(C) 4106/2013 was appointed in May, 2001 as Constable (B) and retired on 31.7.2013.

The petitioner in WP(C) 4564/2013 was appointed on 27.5.94 as Constable (B) and he retired on 31.12.2012.

The petitioner in WP(C) 4567/2013 was appointed on 2.2.93 as Constable (B) and after being promoted as SI (B) on 1.10.2000, he retired on 31.3.2010.

The petitioner in WP(C) 4576/2013 was appointed on 6.6.94 as Constable (B) and retired on 30.9.2000.

The petitioner in WP(C) 4577/2013 was appointed on 14.10.93 as Head Constable (B) and after being promoted as SI(B) on 14.10.2000, he retired on 19.10.2012.

The petitioner in WP(C) 4580/2013 was appointed on 5.10.93 as Head Constable (B) and retired on 31.12.2012.

The petitioner in WP(C) 2560/2013 was appointed on 27.4.94 as Constable (B) and retired on 30.11.2010 as Head Constable (B).

4. The case of the petitioners is that after retirement they had applied for pension as per the Rules. However, as they had not completed the mandatory period of 20 years" service, they were denied pension by the respondents. In WP(C) 1124/2013, the petitioner is the wife of the person who had served in the Border Organisation of Assam Police and she has prayed that besides the pension payable as per law, she should also be given the family pension.

5. The Govt. of India had formulated the Prevention of Infiltration of Foreigners Scheme (PIF Scheme) for Assam for strengthening the Assam Governmental machinery for detection and deportation of foreigners in the year 1960. This scheme was extended from time to time. In the year 1987, the Govt. of India created additional scheme for the existing PIF Scheme. It was under this PIF Scheme that the petitioners had been recruited. While some of the petitioners were recruited in the time scale of pay, the others were recruited in a fixed pay.

6. The Inspector General of Police Border, Assam issued a Circular on 17.3.95 laying down procedures for appointment/continuance of ex-servicemen in the Additional PIF Scheme whereby conditions for yearly renewable contract of service to the staff of Additional PIF Scheme had been imposed. This Circular dated 17.3.95 was challenged by way of two writ petitions before this Court and a Single Bench of this Court had allowed the writ petitions clarifying that there should not be any break in service of the persons recruited into the scheme and

they would continue as long as the scheme was in existence. The Single Bench also observed that the persons recruited under the Additional PIF Scheme shall be entitled to all service benefits as regular employees so long as the scheme continues. It was also held that the benefits extended to the ex-service personnel in the Assam Special Peace Keeping Force vide Office Memorandum dated 14.6.84 shall also be applied to the persons recruited under the Additional PIF Scheme.

7. A writ appeal being W.A. No. 154/96 was filed against the judgment of the Single Bench and the by judgment and order dated 1.9.2000 passed in W.A. No. 154/96, the judgment passed by the Single Bench was set aside. Thereafter, the Supreme Court was approached by filing Civil Appeal No. 7922/2002 and the Supreme Court disposed of the said Civil Appeal vide order dated 22.4.2009. The said judgment of the Supreme Court is reported in Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others, (2009) 8 SCALE 615 : (2009) 6 SCC 611 : (2009) 2 SCC(L&S) 227 : (2009) 9 SCR 611 : (2010) 1 SLJ 125 : (2009) 7 SLR 212 .

8. The Supreme Court decided only two issues in view of the fact that the relief given to the personnel of the Border Organisation of Assam Police vide scheme dated 14.6.84 relating to Assam Special Peace Keeping Force was not pressed by the appellants before the Supreme Court. The two issues that arose for consideration of the Apex Court were--(i) whether the persons engaged under the Additional PIF Scheme, 1987 were entitled to be regularized in service? (ii) whether the procedure introduced by the Circular dated 17.3.95 is valid?

9. The Supreme Court held that the persons employed in the Border Organisation of Assam Police under the Additional PIF Scheme, 1987 shall not be entitled to regularization irrespective of length of their ad-hoc service or scheme. With regard to the second issue, the Supreme Court set aside and quashed the Circular dated 17.3.95 wherein the process of termination and re-appointment every year was directed to be made.

10. The Apex Court while disposing of Civil Appeal No. 7922/2002 had made the following observations:

"20. The PIF Scheme has been in force for nearly five decades. The PIF Additional Scheme has been in force for more than two decades. The object of the Scheme is detection and deportation of illegal immigrants/fresh infiltrators/re-infiltrators, establishment of second line of defence on Assam Bangladesh Border to man the areas not covered by Border Security Force and monitoring the occurrences on international border. The staff entrusted with such sensitive functions and duties can work wholeheartedly and with commitment in adverse and hostile conditions only if they have security of tenure, without having to constantly worry about their future. If the task under the scheme is perennial, there is no point in executing it as a "temporary" Scheme, though to start with it might have been thought that the task was a short term task.

21. Another aspect to be noticed is that duties discharged by the Border staff belonging to Assam Police Border Organization under the PIF Scheme is said to be somewhat similar or parallel to the duties discharged by regular forces like Border Security Force and Assam Special Peace keeping Force. Further, part of the very same Border Organization under PIF Scheme is manned by regular police personnel. Therefore, if those working as ad hoc or temporary staff for decades on, are converted to regular permanent staff, that would boost their morale and efficiency.

22. We are conscious of the fact that the issue is a matter of policy having financial and other implications. But where an issue involving public interest has not engaged the attention of those concerned with policy, or where the failure to take prompt decision on a pending issue is likely to be detrimental to public interest, courts will be failing in their duty if they do not draw attention of the concerned authorities to the issue involved in appropriate cases. While courts cannot be and should not be makers of policy, they can certainly be catalysts, when there is a need for a policy or a change in policy."

11. The Supreme Court had also observed that the State Government should in all fairness pass the benefit of the time scale of pay to all the employees concerned as there should not be discrimination between similarly situated persons in the said organization.

12. Pursuant to the order passed by the Apex Court in Mohd. Abdul Kadir (supra), Orders by the Governor dated 23.9.2011 was notified by the Govt. of Assam whereby the Circular dated 17.3.95 was quashed. It was also stated in the said Order dated 23.9.2011 that ex-servicemen would also be entitled to pension against their services in civil employment, subject to completion of qualifying service, as per Rule 176 of the Assam Services (Pension) Rules, 1969.

13. Counsels for the petitioners have submitted that even though the petitioners are not eligible to full pension as they do not have 20 years of service, they are entitled to proportionate pension as envisaged under the provisions of Rule 108(b) of the Assam Services (Pension) Rules, 1969 and also as per the Office Memorandum dated 2.4.91 issued vide O.M. No. PPG(P) 136/90/239. Rule 108(b) states as follows:

"108. The amount of pension shall be regulated as follows--

.....

.....

(b) After a service of not less than ten years a pension not exceeding the following amounts:-

.....

....."

14. The Office Memorandum dated 2.4.91 determines the rate at which the Government servants who retire from service after 31.1.89 and who have rendered not less than 10 years of service but less than 33 years of service have to have their pension calculated.

15. Counsels for the petitioners have also relied upon the judgment of the Apex Court in D.S. Nakara and Others Vs. Union of India (UOI), AIR 1983 SC 130 : (1983) 1 LLJ 104 : (1982) 2 SCALE 1213 : (1983) 1 SCC 305 : (1983) 2 SCR 165 : (1983) 1 SLJ 131 to bring home the point that there cannot be discrimination among personnel of the Border Organization of Assam Police and the other Departments of the State Government in violation of Article 14 of the Constitution. The petitioners' case is also that there cannot be a cut-off-date of 20 years for being eligible for getting pension as the cut-off-date of 10 years as reflected in Rule 108(b) can also be applied to the present petitioners. Counsels for the petitioners also submit that Rule 108(b) of the Assam Services (Pension) Rules, 1969 does not exclude the petitioners in any manner and, as such, non-application of the said Rule in their case and denial of their pensionary rights is violative of Article 14 of the Constitution of India.

16. Counsels for the petitioners have also relied upon the judgment of the Division Bench of this Court dated 20.8.2014 rendered in W.A. No. 289/2014 [Sri Muruli Mazumdar -vs-Director General of Police (Border) and Ors.] wherein the Division Bench had considered the case of a Head Constable in the Border Organization of Assam Police under the PIF Scheme, 1987 who had rendered less than 10 years of qualifying service. The Division Bench of this Court by the aforesaid judgment upheld the decision of the Single Bench and dismissed the Writ Appeal on the ground that the appellant therein did not complete 10 years of qualifying service for being entitled to get compensation. Para 11, 12 and 13 of the judgment and order dated 20.8.2014 passed in W.A. 289/2014 read as under:

"11. The order dated 23.09.2011, amongst others, provides that ex-servicemen would also be entitled to pension, against their services in civil employment, subject to completion of qualifying service. It is not in dispute that full pension is payable after 25 years of qualifying service and proportionate pension is payable after completion of 10 years of qualifying service.

12. In the attending facts and circumstances of the case, we are of the opinion that the appellant was not subjected to artificial breaks in service. Accordingly, his qualifying service has to be reckoned from 03.01.2006. Thus, till his retirement, the appellant did not complete 10 years of qualifying service for being entitled to get pension.

13. In view of the above, we are of the opinion that no interference with the order of the learned Single Judge is called for and, accordingly, we dismiss the appeal. No cost."

17. A perusal of Para 11 and 12 of the aforesaid judgment and order dated

20.8.2014 shows that an employee of the Border Organisation of Assam Police who has completed 10 years of qualifying service is entitled to get pension as per the Rules.

18. In the instant case, all the petitioners including the husband of the petitioner in WP(C) 1124/2013 had completed 10 years of service before their retirement/death. Thus, they are entitled to get proportionate pension as per Para 11 and 12 of the judgment and order dated 20.8.2014 passed in W.A. No. 289/2014 and Rule 108(b) of the Assam Services (Pension) Rules, 1969.

19. Counsels for the respondents have fairly submitted that Para 11 and 12 of the judgment and order dated 20.8.2014 passed in W.A. No. 289/2014 seems to cover the cases of the petitioners in the instant case only for the purpose of pension and they should be given pension only as per Rules.

20. In view of the fact that the cases of the petitioners are covered by the judgment and order dated 20.8.2014 passed in W.A. No. 289/2014, the respondents are directed to give to the petitioners proportionate pension as admissible as per law. In respect of the petitioner in WP(C) 1124/2013, she should be given arrears of proportionate pension which her husband would have received and she should also be given family pension as admissible as per Section IV of the Assam Services (Pension) Rules, 1969. Besides giving the proportionate pension as applicable, the respondents should give to the petitioners all other retirement benefits as admissible under law.

21. The entire exercise in this behalf shall be completed within a period of five months from the date of receipt of a certified copy of this order.

22. Subject to the aforesaid observations/directions the writ petitions stand disposed of.

23. No cost.