
(2000) 02 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 218 of 1998

Kalicharan Rabidas

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-02-2000

Acts Referred:

Assam Services (Pension) Rules, 1969 — Rule 31

Citation : (2000) 3 GLT 206

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : B.B. Narzjary, S. Chauhan and P. Mahanta, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This Writ Application has been filed by a person who was a Muster Roll worker claiming his retiral benefits i.e. Pension, Gratuity, amount of salary in lieu of unutilised earned leave etc. The claim of the Petitioner is that he was engaged as a Muster Roll Labour in April 1958 and from that date he had been discharging his continuous services without any break in his service career. The affidavit-in-opposition has been filed on behalf of the Respondents and records have also been produced along-with Service book of this case. From the service book of this person it is seen that the Petitioner was continuing as Muster Roll Labour from 1.4.72 as per the records. But it is the case of the Respondents that the Petitioner did not qualify for Pension since he had not completed 10 years regular services. As services of the Petitioner was only regularised under regular cadre only with effect from 27.10.90 and since 1.4.72 to 27.10.90 he was working on casual basis. Petitioner retired from service on 31.7.96 and virtually he served on regular cadre from 27.10.90 to 31.7.96 i.e. for 5 years 9 months and 4 days therefore he is not entitled for pension under the Assam Services Pension Rules, 1969 in as much as, requirement for eligibility to get pension, a person must served for a period of minimum 10 years. But the

authority has given the service gratuity and cash payment in lieu of unutilised earned leave on the basis of calculating regular services for the period of 5 years 9 months and 4 days amounting to Rs. 2681/- and he also has given benefit of 175 days leave encashment benefit and that amount also calculated by the authority and the total amount payable to the Petitioner has been found by the authority to be Rs. 11,547/- + Rs. 2681/- = 14,228/- (Rupees fourteen thousand two, hundred twenty eight) only and that amount is being paid. This amount was paid only after filing of the writ application.

2. Be that as it may, question remains to be adjudicated as to whether the Petitioner shall be entitled to pension holding his date of entry from 1972. As revealed from the Records this matter is covered by a number of judgments of this Court. In *Kabiram Rajbangshiv v. State of Assam and Ors.* reported in 1997(1) GLT 589 this Court in paragraph 4 of the judgment laid down the law as follows:

Keeping this background of law in mind, I allow this writ application and direct that the Petitioner shall be entitled to pension and for that purpose, the authority is directed to make necessary declaration as provided under proviso to Rule 31 as quoted above. This declaration shall be made within a period of one month from the date of receipt of this judgment and order and the pension of the Petitioner shall be computed according to his entitlement....

3. An unreported judgment In Civil Rule No. 828/97 (*Sri. Chabaram Baro v. State of Assam and Ors.*) is relied by the learned Counsel wherein this Court held as follows:

In the case in hand the Petitioner in all along served under the Govt. for more than 35 years of continuous service. He serve a regularised Muster Roll worker for 9 years 2 months and was confirmed at the last stage of his service i.e. on 1.1.93. By judgment dated 26.8.93 passed by this Court in Civil Rule No. 694/90 (*Mahimuddin Ahmed v. the State of Assam and Ors.* as well as Civil Rule No. 1775/1996 (*Kabiram Rajbongshi v. State of Assam*) held that the Muster Roll labourer is entitled to pension and for the purpose the earlier period prior to confirmation is to be computed for the purpose of pension qualifying the service period. Hence this case is also squarely covered by the aforesaid decision. In light of the above decision as well as the Govt. policy indicated above Respondent authority is directed to make necessary declaration under Rule 31 of the Assam Services Pension Rules, 1969 and to complete the above exercise within a month from the date of receipt of this order....

4. The same is the decision in W.P.(C) 1986/99 (*Sri. Phalik Das v. State of Assam and Ors.*) wherein this Court as follows:

A reading of the proviso to Rule 31 of the Rules, 1969 would show that it is for the Governor to declare that any specified kind of service, rendered in a non-gazetted capacity shall qualify for pension and individual cases and subject to such conditions he may think fit to impose in each case allow such service

rendered by an officer to count for pension. The aforesaid two judgments of this Court have only directed the Government to issue a declaration under the proviso to the aforesaid Rule 31 of Rules, 1969. The competent authority therefore may specify the period of service out of the service spent by a Muster Roll worker which is to be counted as qualifying service for the purpose of pension/DCR and pass appropriate order as has been done in the case of workcharged employees by office Memo. Dated 14.12.89....

5. That being the position of law, this Writ Application is allowed and the same relief also is given to the Petitioner as was given in the other aforesaid three cases. Process of the matter be finalised by the authority within a period of four months from the date of receipt of the certified copy of this order. Petitioner shall obtain certified copy of this order and submit it to the concerned Respondent. No costs.