

(2003) 06 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 590 of 1998

Madhu Sudhan Bhattacharjee

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-06-2003

Acts Referred:

Assam State Road Transport Corporation Employees Service Regulations, 1971 — Regulation 47, 65

Citation : (2004) 2 GLR 175

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : B. Acharya and L. Chinblai, for the Appellant; P.C. Deka and M. Sarma, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The petitioner, retired Head Assistant of the Assam State Transport Corporation (hereinafter referred to as the "Corporation") seeks to invoke the extraordinary jurisdiction of this court being aggrieved by the inaction on the part of the respondents in releasing his pension and other retirement benefits.

2. I have heard Mr. B.K. Acharyya, learned counsel for the petitioner and Mr. P.C. Deka, Senior Advocate, assisted by Mr. M. Sarma Advocate for the Respondent Corporation. None appears for the State respondents.

3. The fascicule of facts necessary for the adjudication of the issues involved may first be notice. The petitioner was appointed as LDA in the Assam State Transport Department under the Government of Assam on 10.6.1958. He was confirmed in the said post subsequently. In March, 1970 the Govt. of Assam constituted the Assam State Road Corporation which was eventually renamed as Assam State Transport Corporation. All employees of the State Transport Department including the petitioner were thereafter deputed to the Corporation w.e.f. 31.3.1970. The petitioner was thereafter permanently absorbed in the said Corporation with

effect from 1.1.1977. In pursuance of Assam Government notification No. TMV 155/72/23 dated 1.9.1976 the petitioner had opted to be absorbed in the Corporation as well as to be governed by the terms and conditions of Assam State Road Transport Corporation Employees Services Regulations, 1971 (hereinafter referred to as the "Regulations"). According to him, he also opted for pensionary benefits under the said Regulations. The petitioner retired on 31.3.1991 as Head Assistant, ASTC, Silchar on attaining the age of superannuation. He accordingly submitted his pension papers to the Divisional Superintendent of the Corporation claiming pension, D.C.R. Gratuity and other benefits to which he was entitled under the law. His pension papers were also forwarded to the Managing Director of the Corporation by communication dated 17.6.1991. However, his pension and other benefits were not released to him, though, there was no impediment in doing so. He submitted several representations before the District authorities of the Corporation for releasing his pension and other retirement benefits, but to no avail. It is the categorical case of the petitioner that he did not opt for the Contributory. P.F. Scheme of the Corporation and that no C.P.F. was deducted from his pay. He has therefore contended that in view of the provisions of the Regulations more particularly, Regulations 47 and 65 thereof, is service under the Corporation is a pensionable one and he having not opted for its C.P.F. Scheme, the Corporation was obliged under the law to release his pension and other retirement benefits. According to him, the inaction on the part of the respondent-Corporation in releasing the pension and other retirement benefits is without any justification, besides being unfair, arbitrary and whimsical.

4. The primary facts are not disputed in the counter filed by the respondent-corporation. No affidavit has been filed on behalf of the State respondents. The stand of the respondent-corporation in its counter inter alia, is that though the petitioner had opted to be governed by the service conditions as per the Rules and Regulations of the Corporation and Rule 65 of the Regulations provides for payment of pension, the Corporation had adopted the C.P.F. Scheme in lieu of pension and therefore the petitioner was entitled to contributory P.F. only and not pension. The respondent-Corporation, however, denied that the petitioner had opted for pensionary benefits in terms of the Rule 65 of the Rules. According to it, the petitioner shall be entitled to receive gratuity and C.P.F. in lieu of pension for the period of service rendered under the Corporation and pension and other retirement benefits from the Government for the period of service under it prior to 1.1.1977 in terms of the rules applicable to the Government servants. The respondent-Corporation has admitted that the petitioner had opted for absorption in the Corporation and therefore was to be governed by the Regulations. But in view of the fact that it had adopted the Scheme of the C.P.F. in lieu of pension, every employee of the Corporation was entitled to gratuity and C.P.F. and no employee of the Corporation is entitled to pension and in fact none had been given the same. It contended that initially C.P.F. was deducted from the salary of the petitioner. As he protested against the same the amount deducted was

refunded to him and since then no deduction had been made. It further contended that due to some disputes with regard to pay fixation it was ultimately referred to the Industrial Tribunal, Guwahati in the form of reference case No. 1/89, The retirement benefits of the petitioner could not be released because of the pendency of the Reference as he did not consent to stepping down and fixation of his pay.

6. Mr. Acharyya has strenuously argued that the petitioner having admittedly exercised his option to be absorbed in the Corporation, he was governed by the Regulations framed by it where under his service was pensionable and therefore the stand of the respondent-Corporation that he was not entitled to pension and other retirement benefits is wholly unsustainable, besides lacking in bona fide. Referring to the statements made in the writ petition as well as the annexures thereto, the learned counsel contended that the petitioner did not, at any point of time opt for the C.P.F. Scheme for the Corporation and therefore the question of his forgoing the benefit of pension and of these retirement benefits as contemplated under Regulation 65 does not arise. He maintained that it was evidently clear from Regulations 47 and 65 that the petitioner's service under the Corporation was pensionable and that it was obligatory on its part to release his pension and other retirement benefits on his superannuation and in not doing so, the respondents have failed to discharge their public duties without any conceivable justification and it is therefore a fit case for issuance of a writ of mandamus directing them to release his pension and other retirement benefits to which he is entitled under the law. The learned counsel in support of his submissions relied on a decision of this Court in S.A. No. 173/ 97, Assam State Transport Corporation and Anr. Appellate v. Sri Singhajit Singha, Respondent as well as that of the Apex Court in Dhan Raj and Ors., Appellants v. J & K and Ors., Respondents, reported in (1998) 4 SCC 30.

7. As against this, the learned Senior counsel for the Corporation has submitted that though Regulation 65 provides that the service in the Corporation is pensionable and an employee under it shall be entitled to pension including family pension, gratuity etc. as a matter of facts, the Corporation had never any pension scheme and none of its employees has been granted pension and other benefits contemplated under Regulation 65. According to him, the Corporation only has a C.P.F. Scheme and all its employees have received their retirement benefits under the said scheme. The learned Senior counsel argued that the petitioner having opted to be absorbed in the Corporation had by implication agreed to opt for the C.P.F. Scheme of the Corporation and therefore it is not open for him to contend that he is entitled to pension on the strength of Regulation 65. According to Mr. Deka, the Corporation has to function under the instructions issued by the State Government from time to time in matters inter alia relating to recruitment, conditions of service of its employees etc. under the provisions of the Road Transport Corporation Act, 1950 (hereinafter referred to as the "Act") and as the arrangement of C.P.F. scheme stands approved by the Government, it is not permissible for the Corporation to sanction pension and

other retirement benefits as claimed by the petitioner.

8. The controversy thus centres around the fact as to whether in the face of a Regulation 65, the petitioner can be denied pension on the ground that the Corporation has no pension scheme and that like other employees opting for the C.P.F. scheme, the petitioner is also entitled to the retirement benefits under the said scheme above. The respondent has counter that initially the C.P.F. contribution was deducted from the pay of the petitioner, law on protest being raised by him, the amount was refunded and thereafter no such contribution was deducted. No contemporaneous records have also been produced on behalf of the Corporation to prove that the petitioner had at any point of time opted for the G.P.F. Scheme of the Corporation. The contrary, the documents annexed to the writ petition including the communication dated 21.8.1992 (Annexure 4), and the representation dated 17.2.1993 (Annexure 8) to the writ petition clearly indicates that the petitioner had opted for the pension scheme of the Corporation. The communication dated 2.9.1992 (Annexure 5) to the writ petition suggests that the concept of pension was not alien to the Corporation at all relevant times as is sought to be represented. The authenticity and genuineness of the documents have not been questioned by the Corporation. The letter dated 7.9.1976 (Annexure 1) to the writ petition by which the petitioner was made aware of his option to continue with the Corporation after the expiry of the deputation period also required of him to decide as to whether he would like to be governed by the terms and conditions of the Regulations. By the communication dated 1.7.1977 (Annexure 2) to the writ petition, issued by the General Manager of the Corporation, the petitioner on the strength of his option was absorbed in the Corporation w.e.f. 1.1.1977 mentioning that his services would be governed by the terms and conditions of the Regulations and other Rules of the Corporation. In course of the arguments, the attention of this court has not been drawn to any clause in the Regulations either superseding Regulation 65 of reserving any residuary power of the Corporation to provide otherwise. No other Rule/ Rules have been produced nullifying the mandate of Regulation 65. Admittedly, therefore, Regulation 65 stands as framed with its rigour undiluted.

9. The Regulations have been framed by the Corporation in exercise of the power conferred u/s 45(1) of the Act with the previous sanction of the Government of Assam and therefore has a statutory force and is binding on the Corporation as well. Regulation 47 and Regulation 65 on which, the case of the petitioner is founded are extracted hereinbelow for ready reference :

"Regulation 47 : The past services rendered by the employees under the Govt. will count for the purpose of pension and other benefits to which they may be entitled as if their services have not been interrupted by reason of their absorption in the Corporation".

"Regulation 65 : Service in the Corporation shall be pensionable and the employee shall be entitled to pension including family pension, gratuity etc. at

the rates and in the manner applicable to the Govt. servants on the date of commencement of these Regulations and/or as may stand from time to time, as the case may be. Employees covered under the pension scheme shall not be entitled to contributory provident fund benefit."

10. It is evident, that Regulation 47 conveys the legislative intents that the past services rendered by an employee under the Government would count for the purposes of pension and other benefits to which he may be entitled as if his service had not been interrupted by reason of his absorption in the Corporation. Regulation 65 makes the services in the Corporation pensionable and lays down that an employee shall be entitled to pension including family pension, gratuity etc. at the rates and in the manner applicable to the Government servants. The rider contained therein provides that an employee covered under the pension scheme shall not be entitled to contributory P. F. benefit.

11. The plain and unambiguous language applied in the above mentioned provisions of the Regulations clearly proclaim that the past services of an employee under the Government would be computable for the purpose of pension and his service under the Corporation being pensionable he would be entitled to pension including the family pension, gratuity etc. at the rates applicable to the Government servant. Understandably one enjoying the benefit under the pension scheme would not be entitled to the contributory P.F. benefit under the Corporation. A conjoint reading of Regulation 47 and Regulation 65 clearly conveys the intention of the Corporation that service under it would be pensionable and therefore an employee would not be entitled to contributory P.F. benefit. Regulation 58 may be noticed at this stage. It requires an employee to subscribe to the Provident Fund in the manner prescribed by the Corporation. It, therefore, follows that the Corporation under the Regulations may have a Provident Fund Scheme but an employee covered by the pension scheme would not be entitled to the benefit under the P.F. Scheme. There is no parallel provision in the Regulations laying down that an employee covered by a P.F. Scheme would not be entitled to pension as contemplated under Regulation 65.

12. Having regard to the scheme of the Regulations and on a harmonious interpretation Regulations 47, 58 and 65 the acceptable conclusion appears to be that the service of an employee in the Corporation would be pensionable and if covered by the pension scheme he would not be entitled to contributory P.F. However, if he opts for the P.F. Scheme he, would have to forgo his pension and other retirement benefits under Regulation 65. In case an employee does not exercise an option for the P.F. Scheme, he would be entitled to the pension and other benefits as comprehended under Regulation 65. It is not as if, an employee on exercising his option to be absorbed in the Corporation or being appointed thereto would automatically be deemed to have opted for the P.F. Scheme as is sought to be contended on behalf of the Corporation. Such an argument fails in the face of Regulations 47 and 65 and thus cannot be accepted.

13. The contention raised on behalf of the Corporation that though Regulation 65

makes the services under the Corporation pensionable, no pension scheme had in fact been evolved and that all the employees of the Corporation are covered by its C.P.F. Scheme cannot be sustained as well. There is no provision in the Regulations which authorises the Corporation to make such arrangements which has the effect of rendering Regulation 65 otiose. No provision of any other law has been pointed out in support of such action or arrangement. Introduction of C.P.F. scheme which has the effect of excluding concept of pension as envisaged under Regulation 65 cannot be conceived of without amending Regulations. This admittedly has not been done. The Regulations framed under the Act being of statutory nature, any provision thereof cannot be reduced to a dead letter so lightly. The acceptance of the C.P.F. Scheme by the employees of the Corporation, even, if, assumed to be correct cannot obliterate Regulation 65. The Regulations having been framed for administering the affairs of the Corporation in exercise of powers conferred by the Act, the same are to be scrupulously followed and no each thereof can be countenanced. That the Corporation has no pension scheme and that all its employees have received their retirement benefit under its C.P.F. Scheme is no defence to sidetrack Regulation 65. In my view, therefore, the Corporation is under a legal obligation to comply with the legislative edict contained in Regulation 65 and thus cannot avoid its liability to provide pension and other benefits enumerated thereunder to its employees who have not opted for its P.F. Scheme for the said purpose. The contention to the contrary, therefore, cannot be sustained.

14. On facts, no records have been produced to establish that the petitioner had opted for C.P.F. scheme of the Corporation. On the other hand, it is admitted by the Corporation that initially C.P.F. deduction was made from his pay, but he having protested against the same, the amounts deducted were refunded to him and thereafter no further deductions were made. The stand of the Corporation that the petitioner had not opted for the pension scheme also remains unsubstantiated absence of the records. As a matter of facts, in view of Regulation 65, no such option in my opinion is even called for. The petitioner having exercised his option to be absorbed in the Corporation, his service thereunder becomes pensionable entitling him to pension, family pension, gratuity etc. It is only if he would have exercised his option to be covered by the C.P.F. scheme that his claim for pension and other retirement benefits under Regulation 65 would become untenable. It is not so in the instant case.

15. In *Assam State Transport Corporation and Anr., appellant v. Singhajit Singha, respondent (supra)*, the respondent therein, who as a Driver of the Corporation was absorbed after its formation, claimed pension and gratuity under the Regulation 65. The stand taken by the Corporation was that he was not entitled to pension as he had opted for the C.P.F. Scheme. On facts it was held that he had not opted for the C.P.F. Scheme and therefore he was declared to be entitled to pension and gratuity as claimed by him. Mr. Acharyya, has placed reliance on the decision rendered in *Dhan Raj and Ors. Appellants v. State of J & K and Ors., respondents (supra)* to drive home the point that pension is not a bounty and is

not something which a person after putting a long period of service seeks with a begging bowl.

16. Whether the grant of pension to a public servant is a matter of discretion with the Government was the question which had fallen for consideration of the Apex Court in *Deokinandan Prasad Vs. The State of Bihar and Others*, It ruled that the payment of pension does not depend upon the discretion of the State, but on the other hand, is governed by the rules and a Govt. servant coming within the rules is entitled to claim pension. While dealing with the concept of pension as a measure of socio-economic justice, the Apex Court in *Dhan Raj and Ors. v. State of J & K and Ors. (supra)* held as follows :-

"Even otherwise, while considering the question of grant of pensionary benefits the State has to act to reach the constitutional goal of setting up a socialist State as stated and the assurance as given in the Directive Principles of State policy. A pension is a part and parcel of that goal, which secures to a person serving with the State after retirement of his livelihood. To deny such a right to such a person, without any sound reasoning or any justifiable differential would be against the spirit of the Constitution. We find in the present case the stand taken by the State Government to be contrary to the said spirit".

It follows, therefore, it is the legal as well as the solemn obligation of the Corporation to release the pension and other retirement benefits envisaged under Regulation 65 in favour of the petitioner. The stand taken by it in the affidavit does not commend to the Court for acceptance, rather it portrays an indifferent, casual and apathetic attitude towards an employee who had served it in his heydays and is at fag end of his life. The denial of pension to the petitioner, in my considered view, is without any acceptable justification. The petitioner has retired in the year, 1991 and after waiting for 6 (six) years in bona fide expectation had to approach this Court for redress. The withholding of his pensionary benefit being without any justification, I am inclined to saddle the Corporation with the liability interest at the rate of 12% per annum on the amount due to the petitioner, from it by way of pension and other benefits under the Regulations. The State respondents and the Corporation would Act in tandem to work out their liabilities in this regard and ensure that the pension and other retirement benefits are made available to the petitioner within a period of 3 months from the date of receipt of the certified copy of this order. The petitioner, therefore, succeeds and is allowed accordingly.

17. In the facts and circumstances of the case, there would be no order as to costs.