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**(2013) 04 GAU CK 0005**  
**In the Gauhati High Court**  
**Case No : WP (C) No. 4971 of 2010**

Monsing Tisso

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision :** 26-04-2013

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2013) 3 GLT 328

**Hon'ble Judges :** Anima Hazarika, J

**Bench :** Single Bench

**Advocate :** D. Borah and Ms. S. Bhuyan, for the Appellant; D.P. Borah, A.H. Chetri and Mr. C. Baruah, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Anima Hazarika, J.—Heard Mr. D. Borah, learned counsel for the petitioner. Also heard Mr. D.P. Borah, learned counsel for the respondent Nos. 1, 3, 4 and 5, Mr. A.H. Chetri, learned counsel for respondent No. 2 and Mr. C. Baruah, learned Standing Counsel, Accountant General, for respondent No. 6. Praying for a direction to the respondent authorities to release the pension, gratuity and all other admissible retirement benefits, the instant writ petition has been filed by the petitioner invoking power under Article 226 of the Constitution of India.

2. Petitioner's case in brief is that the petitioner had joined as Muster Roll Labourer on 6.6.1987 in the office of the Executive Engineer, PWD (Roads), Umpanai Division, Ulukunchi in the district of Karbi Anglong. He retired from service on 31.7.2007, i.e. he served the department continuously without any break for 20 years and without any blemish. During the tenure of services as Muster Roll Worker, the Government of Assam framed a scheme for regularisation of service of the Muster Roll Labourers. Accordingly, as per office order No. 32 dated 7.10.2005 issued by the respondent No. 4, the service of the petitioner was brought to regular cadre in the scale of pay of Rs. 2450-40-2770-EB-60-3490-90-3670 per month and other allowances as admissible from time to

time with effect from 22.7.2005. Alongwith the petitioner, other similarly situated 30 Muster Roll Labourers ("MRL" for short) were also brought to the regular cadre in the same scale of pay as allowed to the petitioner. Respondent No. 4 vide office order No. 20 released the petitioner from the department on his attaining the age of superannuation on 31.7.2007. The respondent No. 4, thereafter, vide letter dated 27.11.2007 submitted before the respondent No. 6 the pension papers of the petitioner alongwith the original service book. However, the pension papers which were sent by the respondent No. 4 to the respondent No. 6 were returned by the respondent No. 6 asking respondent No. 4 to submit the Service Roll of petitioner. On coming to know about the same, the petitioner had visited the office of the respondent authorities on several occasions and requested the authority concerned for payment of pension alongwith the other retirement benefits. However, till date, the authority has not released the pension, retirement benefits etc. to the petitioner and hence, the instant application with the aforesaid prayer.

3. Mr. Bora, learned counsel for the petitioner has brought to the notice of the Court the office memorandum dated 20.5.2009 and 18.10.2010. The same being relevant are quoted hereinbelow:--

GOVERNMENT OF ASSAM PENSION AND PUBLIC GREVANCES DEPARTMENT  
DISPUR::GUWAHATI-5

No. PPG(P)88/2009/2

Dated Dispur, the 20th May, 2009

OFFICE MEMORANDUM

Sub:--COUNTING OF PAST SERVICES OF MUSTER ROLL WORKERS TOWARDS PENSION/D.C.R.G.

Consequent upon the Govt. decision to regularise the services of Muster Roll Workers of Different Government departments, Govt. have been considering for sometime past the question of counting of a portion of Muster Roll Period of services towards pension, gratuity etc.

After careful consideration of all aspects, the Governor of Assam is pleased to order that after regularisation of the services of the Muster Roll Workers the period of Muster Roll services beyond the initial period of 6 (six) years of Muster Roll service shall qualify for the purpose of pension and D.C.R.G. subject to fulfillment of the following conditions:

1. The period of Muster Roll Services of initial 6 (six) years will be deducted.
2. Such Muster Roll period of service will be continuous and the incumbent was not employed for specific broken period.
3. The service was paid at monthly rates or daily rates and paid monthly at rates which has some relation to pay for similar jobs in regular establishments.

The Assam Services (Pension) Rules, 1969, Assam Financial Rules and Assam, P.W.D. Code stand amended to the extent of the order contained herein. Formal amendments will be issued in due course.

This issues with the concurrence of Finance (EC-II) Department vide their U/O No. FEC (II) 169/09 dated 11/2/09.

Yours faithfully, Sd/- Principal Secretary, to the Govt. of Assam, Pension & Public Grievances Department

GOVERNMENT OF ASSAM PENSION AND PUBLIC GRIEVANCES DEPARTMENT  
DISPUR::GUWAHATI:::6

No. PPG(P)88/2009/44

Dated Dispur, the 18th March, 2010

#### OFFICE MEMORANDUM

Sub:-COUNTING OF PAST SERVICES OF MUSTER ROLL WORKERS TOWARDS PENSION/D.C.R.G.

Consequent upon the decision regarding counting of past services of Muster Roll Workers towards pension/D.C.R.G. communicated vide O.M. No. PPG (P)88/2009/2 dated 20th May, 2009 the concerned Department(s) used to submit such proposals to the Accountant General, Assam for finalisation of pension/D.C.R.G. where upon some clarification regarding date of effect of the pensionary Benefits and the basis on which the period of Muster Roll Services prior to regularisation will be verified have been raised.

To meet the above points, the following clarifications have been given:

1. Irrespective of the date of regularisation, on regularisation of services of a Muster Roll Worker by appointing him in a personal Grade-IV post, his Muster Roll service will be counted for the purpose of pension with effect from the date of his initial engagement as a Muster Roll Worker after deducting initial period of 6(six) years from his total Muster Roll Service prior to regularisation, in terms of Office Memorandum No. PPG(P)88/2009/2, dated 20-05-2009 issued by the Pension & Public Grievances Department.
2. For the purpose of determining the past Muster Roll service prior to regularisation, the Appointing Authority/Head of Office should furnish documentary proof of actual engagement of Muster Roll Worker concerned such as, Muster Roll, Pay Voucher, Order of Engagement etc. alongwith a certificate to the effect that the Muster Roll worker concerned has been rendering uninterrupted service with effect from the date of engagement (documentary proof for actual engagement will be furnished alongwith the pension papers).

This issues with the concurrence of Finance (EC-II) Department conveyed vide their U/O No. FEC(II)234/2010 dated 15.3.2010.

Yours faithfully, Sd/- Secretary to the Govt. of Assam, Pension & Public Grievances Department

4. Referring to the aforesaid office memoranda, Mr. Bora had submitted that in the office Memorandum dated 20.5.2009, it has been clearly stated that after regularisation of the services of Muster Roll Workers the period of Muster Roll services beyond the initial period of six years of Muster Roll Service shall qualify for the purpose of pension and DCRG subject to fulfillment of conditions mentioned therein. Out of the aforesaid conditions, the relevant condition is the period of Muster Roll Service of initial 6 years will be deducted for the purpose of pension of the Muster Roll Workers. In the instant case, the petitioner was serving the department continuously for more than 20 years meaning thereby that if the period of 6 years is deducted his total qualifying service would be 14 years. Therefore, his total qualifying service being 14 years, is entitled to get pensionary and other retirement benefits. On the other hand, while clarifying the Office memorandum dated 20.5.2009, it has been clearly mentioned at paragraph 2 of the office memorandum dated 18.3.2010 that for the purpose of determining the past Muster Roll service prior to regularisation, the appointing authority/Head of Office should furnish documentary proof of actual engagement of Muster Roll Worker concerned such as Muster Roll, Pay Voucher, Order of Engagement etc. alongwith a certificate to the effect that the Muster Roll Worker concerned has been rendering uninterrupted service with effect from the date of engagement.

5. Mr. Baruah, learned Standing Counsel, Accountant General submits that a detailed affidavit-in-opposition has been filed on behalf of respondent No. 6 and referring the statements made at paragraph 5 of the same, Mr. Baruah submits that case of the petitioner was returned on 27.2.2008 due to non-completion of required minimum 10 years of qualifying service. However, in the meantime, an Office Memorandum dated 20.5.2009 was issued by the Government, stipulating therein that the period of Muster Roll services have been allowed to be counted as qualifying service for pension after deduction of initial 6 years of Muster Roll Service and therefore, in view of the same, now the department would take up the matter of the petitioner after receipt of the pension case from the pension sanctioning authority.

Paragraph 5 of the affidavit-in-opposition being relevant is quoted hereinbelow:--

5. That as regards the statements made in paragraphs 8 & 9 your deponent states that the case was returned by this office on 27.2.2008 due to non-completion of required minimum 10 yrs qualifying service. Subsequently, State Govt. issued one memorandum vide No. PPG (P)88/09/2 dated 20.05.2009 in which the period of Muster Roll services have been allowed to be counted as qualifying service for pension after deduction of initial 6 years of Muster Roll Service. As such, on receipt back of the pension case of Sri Monsing Tisso, Ext Reg. M.R. Labour from the pension sanctioning authority, necessary action will be taken as per pension rules and Govt. orders.

6. At paragraph 7 of the affidavit-in-opposition filed by respondent No. 6, it has been specifically stated that pension documents have not yet been received by respondent No. 6 from the pension sanctioning authority, i.e. respondent No. 4 till date and as soon as the papers relating to pension of the petitioner is received from respondent No. 4, necessary action will be taken by the office of the respondent No. 6 as provided under Assam Services (Pension) Rules, 1969 ("Rules 1969" for short).

7. Regarding non-completion of 10 (ten) years of qualifying service for entitlement of pension by the petitioner, as submitted by Mr. Baruah, Mr. Bora, learned counsel for the petitioner has referred to a decision of this Court in *Kabiram Rajbangshi Vs. State of Assam & Ors.* reported in 1997 (1) GLT 589 and submits that in *Kabiram Rajbangshi (supra)*, this Court held that under Rule 31 of Rules 1969, the Government is empowered to make declaration counting any kind of service towards pension. The Court considering the hard facts that the petitioner in *Kabiram Rajbangshi (supra)* had rendered 32 years of service, allowed the writ petition with a direction that the petitioner shall be entitled to pension and for that purpose the authority was directed to make declaration as provided under proviso to Rule 31. Further directing the authority to make such declaration within a period of one month from the date of receipt of the judgment and order and to compute pension of the petitioner according to his entitlement.

8. Pension for the Assam Government employees are governed by Rules, 1969. Rule 31 provides for conditions of qualifying service. The same is quoted hereinbelow;-

31. Conditions of qualifying service--The service of an officer does not qualify for pension unless it conforms to the following conditions:

firstly, the service must be under government;

secondly, the employment must be substantive and permanent;

thirdly, the servant must be paid by government; provided that the Government may, even though either or both of conditions (1) and (2) above are not fulfilled;--

i) declare that any specified kind of service, rendered in a non-gazetted capacity shall qualify for pension, and

ii) in individual cases and subject to such conditions as he may think fit to impose in each case allow service rendered by an officer to count for pension.

9. In the instant case, the petitioner has served the department continuously for a period of 20 years without any blemish and his service was regularised vide order dated 7.10.2005 w.e.f. 22.7.2005 and therefore, as per Government office memorandum dated 20.5.2009 and 18.3.2010 issued towards counting of qualifying service of MRL and the decision rendered by this Court in *Kabiram*

Rajbangshi (supra), the petitioner is legally entitled to pension as well as the other retirement benefit etc.

10. In the facts and circumstances of the present case and keeping the background of law in mind and the decision rendered by this Court in Kabiram Rajbangshi (supra), I allow this writ application by holding that the petitioner is entitled to pension as well as other retirement benefits. Respondent No. 4 is directed to send the pension papers alongwith the relevant documents stipulated at paragraph 2 of the office memorandum dated 18.3.2010 with the proposal for pension to the Accountant General, Assam, respondent No. 6 for finalisation of pension/DCRG etc. The petitioner shall submit a certified copy of this judgment and order before the respondent No. 4 and respondent No. 4 after receipt of the same shall send the relevant papers to the respondent No. 6 as directed hereinabove within a period of 4 (four) weeks from the date of receipt of the same. Respondent No. 6 shall settle and finalise the pension matter of the petitioner within a period of 6 (six) weeks thereafter so as to afford the arrear pension within the aforesaid period of six weeks and thereafter the monthly pension regularly.

11. With the direction as indicated hereinabove, the writ petition is accordingly allowed and disposed of. However, considering the facts and circumstances of the case, there shall be no order as to costs.