

(2014) 08 GAU CK 0026
In the Gauhati High Court
Case No : W.A. No. 289/2014

Muruli Mazumdar

APPELLANT

Vs

The Director General of Police (Border)

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Citation : (2014) 08 GAU CK 0026

Hon'ble Judges : K. Sreedhar Rao, Acting C.J.; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : D.K. Saikia, P.K. Das, B. Das and K. Borah, Advocate for the Appellant; B.J. Ghosh, Government Advocate, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Arup Kumar Goswami, J.—Register the appeal.

2. This writ appeal is presented by the writ petitioner against the judgment and order dated 07.01.2014, passed by the learned Single Judge, in WP(C) 1748/2012, whereby the writ petition was partly allowed.

3. The case of the appellant, shortly put, as projected in the writ petition is that he was an ex-serviceman from the Indian Air Force and had retired from service in the year 1986, while working in the rank of Sergeant. He was appointed as Head Constable in the Assam Police (Border), under a Central Government Scheme, named and styled as "Prevention of Infiltrators and Foreigners" (for short, "PIF"), and he joined the post on 20.06.1992. While working as such, he was discharged from service on 03.12.1992. On 14.09.2000, he was re-appointed as Head Constable (B) for a period of one year. By orders dated 31.10.2001 and 26.09.2002, his engagement was renewed with effect from 14.09.2001 and 01.10.2002, respectively. Thereafter, by an order 25.07.2003, he was appointed as Sub-Inspector of Police (B) for a period of one year with effect from 01.08.2003. By order dated 08.09.2004, his service was not renewed w.e.f. 01.08.2004. Again, by an order dated 05.01.2006, he was re-instated as

Sub-Inspector of Police (B) w.e.f. 03.01.2006. Thereafter, he continued in service, his service being renewed from time to time till his retirement.

4. The appellant retired from service, as Sub-Inspector of Police, on 29.02.2012, on attaining the age of 60 years. Relying on an Office Memorandum, dated 23.09.2011, issued by the Commissioner and Secretary to the Government of Assam, Home Department, the writ petition was filed praying for extending the benefit of pension and gratuity, including arrears, to him.

5. The learned Single Judge held that the appellant did not fulfill the minimum requirement of service of 10 years for getting pension. The contention put forward on behalf of the appellant, that his service should be counted from 20.06.1992 on the basis of the Judgment of the Apex Court, rendered in the case of Md. Abdul Kadir and Anr. v. Director General of Police, Assam and Ors. (Civil Appeal No. 7922/2002, dated 22.04.2009), was rejected by the learned Single Judge and it was held that the qualifying service of the appellant cannot be counted from 20.06.1992, when he was first appointed as Constable in the Assam Police (B). Accordingly, the learned Single Judge declined the prayer made by the appellant for grant of pension. The operative portion of the order of the learned Single Judge reads as follows:

"For the foregoing reasons, I hold that the appellant is not entitled to get any pension. However, the appellant has completed 5 years of continuous service and, as such, he is entitled to gratuity for the said period. If the respondents have not paid the gratuity, the same shall be released to the appellant as early as possible. For this purpose, the appellant shall submit a representation to the concerned authority, who shall pass appropriate orders within 2 (two) weeks from the date of filing of the representation."

6. We have heard Mr. D.K. Saikia, learned counsel for the appellant, and Mr. B.J. Ghosh, learned State counsel, appearing for the respondents.

7. Learned counsel for the appellant submits that the learned Single Judge fell into error in holding that the appellant did not fulfill the minimum requirement of 10 years of service for getting pension, by ignoring the service rendered by the appellant from 20.06.1992. Learned counsel submits that in view of the judgment in Abdul Kadir (supra), the artificial breaks in his service has to be ignored and, viewed in that context, the appellant had rendered service of more than 19 years and, thus, entitled to pension.

8. In Abdul Kadir (supra), on which much reliance has been placed by the learned counsel for the appellant, the subject-matter of consideration was a Circular, dated 17.03.1995, issued by the Inspector General of Police (B), Assam, prescribing procedure for appointment/continuation of ex-servicemen as ad hoc Border staff. The Circular, amongst others, provided for appointment for contractual period of one year and, again re-appointment on the request of the employee for fresh appointment. The Apex Court deprecated the artificial annual breaks in service and re-appointment introduced by the Circular, dated

17.03.1995, and, accordingly, quashed the said Circular. The Apex Court also directed that the benefit of the order would be available to the similarly situated ad hoc staff even if they had not approached the Court for relief.

9. Coming to the facts of the instant case, it is noticed that the appellant, after joining on 20.06.1992, had continued to work till 03.12.1992, i.e., a period less than six months and, during the said period, he was also undergoing treatment for the period from 10.11.1992 to 30.11.1992 as he had been suffering from Hepatitis. After almost eight years, he was again re-appointed as Head Constable on 14.09.2000, and his service was renewed from time to time. However, by order dated 08.09.2004, his service was not renewed because of his poor performance. The appellant did not challenge the said order, dated 08.09.2004, in any forum. It is not a case of artificial break in service so far as the appellant is concerned. We are of the opinion that the case of the appellant is not covered by the decision in Abdul Kadir (*supra*).

10. After finding the appellant to be medically fit, the appellant was again re-instated on 05.01.2006 with effect from 03.01.2006. Though the order dated 05.01.2006 provided that the appellant was appointed on contract basis for a period of one year, he had continued to discharge his duties uninterruptedly till his retirement on 29.02.2012.

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.