
(2002) 09 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 5430 of 2001

Naoman Ch. Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Assam Services (Pension) Rules, 1969 — Rule 111, 31
Constitution of India, 1950 — Article 226

Citation : (2003) 1 GLT 523

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : B.D. Konwar and J.M. Konwar, for the Appellant; N.C. Phukan, for the Respondent

Final Decision : Allowed

Judgement

N.S. Singh, J.—In this writ petition under Article 226 of the Constitution, the Petitioner, Sri Naoman Chandra Kalita, has prayed for a direction on the Respondents to release his monthly pension forthwith along with the interest on the said pension amount coupled with a prayer for quashing the impugned office letter bearing No. PEN/ 4/PR/R/PWD/I60/99 dated Nil issued by the Senior Accounts Officer, Office of the Accountant General (A and E), Assam, Maidamgaon, Beltola, Guwahati (Annexure-B to the writ petition) and the order dated 24.2.2000 bearing No. PPG(P) 106-97-12 issued by the Deputy Secretary to the Government of Assam, Pension and Public Grievance Department, Dispur, Guwahati, (Annexure-C to the writ petition) by contending, inter alia, that the Petitioner was appointed as a Muster Roll worker under Public Works Department, Assam, in November, 1965 and his services were regularised as such Muster Roll Worker in the year 1984, and he retired on 30.11.1994 after rendering 29 years of service under the said Department.

2. The grievance of the Petitioner is that the Senior Accounts Officer of the office of Accountant General, (A and E), Assam, issued the impugned office letter as in

Annexure-B to the writ Petitioner thus denying the pension to the Petitioner, and apart from that in terms of Anr. impugned order dated 24.2.2000 issued by the Deputy Secretary to the Government of Assam, Pension and Grievance Department, the Commissioner and Secretary to the Government of Assam, Public Works Department, Dispur, was to stop payment of pension to the Petitioner on the main ground that the Petitioner had rendered a net "qualifying service" of 9 years 11 months and 28 days only which was short by 2 days" qualifying service for the prescribed 10 years for becoming eligible to regular monthly pension as per the provisions of Rule 111 of the Assam Services (Pension) Rules, 1969, ignoring the period service for 29 years rendered by the Petitioner as Muster Roll worker.

3. The State-Respondents have not filed any affidavit-in-opposition resisting the case of the Petitioner.

4. Upon hearing Mr. B.D. Konwar, learned Counsel appearing for the Petitioner, and Mr. N.C. Phukan, learned Addl. Senior Government Advocate, Assam, as well as on perusal of the materials on record, I am of the view that the Petitioner has enforceable legal right to get the pension in the instant case for the following reasons:

The law has been well-settled on the related issue by this Court in connection with the entitlement of pension. In *Kabiram Rajbongshi v. State of Assam*, reported in 1997 (1) GLT 589, this Court examined as to whether the Petitioner in that case would be entitled to pension holding his date of entry into service from 1972 though he did not render qualifying regular service of 10 years, and in that case, this Court held thus:

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 the 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....

In an unreported judgment of this Court rendered in *Chabaram Baro v. State of Assam* (Civil Rule No. 828/1997) this Court made the following observations:

In the case in hand the Petitioner in all along served under the Govt. for more than 35. years of continuous service. He served as a regularised Muster Roll worker for 9 years 2 months and was confirmed at the last stage of his service, i.e. on 1.1.1993. By judgment dated 26.8.1993 passed by this Court in Civil Rule No. 694/90 (*Mohimuddin Ahemd 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.

Similar view was also taken in Anr. case between Sri Phalik Das v. State of Assam rendered in Writ Petition (Civil) No. 1986/1999. Similarly, in a case between Kalicharan Rabidas Vs. State of Assam and Others, , this Court further reiterated that a Muster Roll worker after serving for 18 years long service was regularised in service, but he served for a little more than five years in regular capacity before reaching the age of superannuation, and the authority concerned denied pension to the said Muster Roll worker on the ground that the said Muster Roll worker did not complete 10 years of pensionable service in regular capacity, and in that case this Court held the said Muster Roll worker was entitle" to pension.

5. In view of the aforesaid settled position of law, I am of the opinion that the present case is covered by the aforesaid decisions of this Court and, according this Court need not go more into depth is suffice is made to make the following order and direction:

The impugned orders bearing No. PEN/4/PR/R/PWD/160/00 dated NIL issued by the Senior Accounts Officer, Office of the Accountant General, (A and E), Assam, and No. PPG(P)106-97-12 dated 24.2.2000 issued by the Deputy Secretary to the Government of Assam, Pension and Grievance Department, Dispur (Annexure-B and C to the writ petition respectively) are hereby quashed with the direction that the Respondents, particularly, Respondents-2 to 7, to settle and finalize the pension matter of the Petitioner by making necessary declaration as provided under the proviso to Rule 31 of the Assam Services (Pension) Rules, 1969, within a period of three (3) months from the date of receipt of a certified copy of this judgment and order, and to afford the arrear pension within the said period of 3 (three) months, mentioned above, and thereafter the monthly pension regularly.

6. In the result, the writ petition stands allowed. However, I make no order as to costs.