
(2004) 01 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 7456 of 2003

Pulin Goswami

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-01-2004

Acts Referred:

Assam Services (Pension) Rules, 1969 — Rule 31

Citation : (2004) 3 GLR 211

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : D. Barua, S.R. Gogoi and D. Pathak, for the Appellant; H.K. Sarma, G.A. and A.K. Goswami, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—Being aggrieved by the non payment of his pensionary benefits the petitioner who had retired from service with effect from 31.3.2000 is before this court.

2. I have heard Mr. D. Baruah, learned counsel, for the petitioner and Mr. H. K. Sarma, learned State counsel. Also heard Mr. A. K. Goswami, learned counsel for respondent No. 4.

3. The facts in bare minimum are that the petitioner was initially appointed as Addl. Teacher of Karkak L. P. School by order dated 30.7.1953 issued by the Secretary Primary Education Board, Mikir Hills District council, Diphu. The appointment was against a Government sanctioned post. It is the case of the petitioner that he was permanently appointed in the post of Addl. Teacher in the year 1973 and the pay benefit as prescribed was made available to him. He was thereafter promoted as Head Master. Borlanpahar L. P. School under the Karbi District Council, Diphu. His pay was fixed from time to time from Government and same was sanctioned by the Director of the Elementary Education, Assam. On his request the petitioner in the year 1995 was transferred from Borlanpahar

L P School to Puranigudam L P School. Nowgong against a vacant post which had arisen due to the retirement of one Shri Bhudheswar Baruah. Pursuant to the said order, the petitioner was duly released from Barlanpahar L P School and accordingly he joined his duties at Puranigudam L P School. The Dy. Inspector of Schools, Nowgong by order dated 25.10.1995 granted permanent status of the petitioner. Eventually, the petitioner retired on reaching the age of superannuation on 31.3.2000.

4. After his retirement the Dy. Inspector of Schools accorded sanction of pension to the petitioner of Rs. 3,781 P.M. which he received from 1.4.2000 to 31.3.2001. But thereafter his pension was withheld. On enquiry, the petitioner come to learn that some queries have been made from the office of the Director of Elementary Education pertaining to his transfer to Puranigudam Model L P School from a school under Karbi Anglong District Council and whether his post under the post was pensionable. In reply thereto, the District Primary Education officer, Karbi Autonomous Council by communication dated 3.12.2002 approved the Addl. Director, Education, Kahilipara that the post held by the petitioner as Addl. Teacher of Barlanpahar L P School was a Government sanctioned post and his appointment was made by the District Council against the said post. It was further indicated in the said communication that the process for sanctioning pension of the petitioner had already been undertaken.

5. According to the petitioner, the action of the said authorities in withholding his pensionary benefits is arbitrary and illegal and therefore a writ of mandamus ought, to be issued directing them to release the same as due to him under the law.

6. Though no affidavit has been filed, Mr. Sarma, learned State counsel produced before this court, the parawise comments furnished by the Director of Elementary Education, Assam. The stand of the state respondents appears to be that the petitioners service rendered under the Karbi Anglong Autonomous District Council was not pensionable at the relevant time and that process has been initiated for making it pensionable as is reflected in the letter dated 3.12.2002. The plea taken is that as the service rendered by the petitioner while posted at Nowgong w.e.f. 1.6.1995 till his retirement though pensionable is less than 10 years his pension has been held up for the time being pending a final decision, in the matter.

7. Mr. Baruah, learned counsel for the petitioner in the above factual premises has submitted that in the facts and circumstances of the case, the stand of the State respondents that the services rendered by the petitioner under the Karbi Anglong. Autonomous District Council is not pensionable is wholly untenable. The appointment of the petitioner having been made admittedly against a Government sanctioned post and he having served continuously for about 37 years being granted a permanent status with pay fixed by the Government from time to time, the impugned action is patently illegal, arbitrary and discriminatory.

8. The learned State counsel while referring to the parawise comments has contended that the issue with regard to services rendered by the petitioner under the Council is under consideration of the concerned authorities and a final decision is awaited and that therefore this court would not issue a direction for payment of the petitioner's pensionary benefits at this stage.

9. Mr. Goswami, learned counsel appearing for respondent No. 4 has fairly submitted that having regard to the accompanying facts as can be called out, from the records there appears to be no material to conclude that the petitioner is not entitled to the pensionary benefits for the services rendered by him.

10. Admittedly, the appointment of the petitioner in the year 1963 has been against the Government sanctioned post. There is no denial of the fact that the pay of the petitioner was fixed by the Government from time to time and that the petitioner was granted a permanent status in course of his service. His pay as released by the Council during his tenure under it was made from the Government funds. There has been no break in service since 1963 till his retirement in the year 2000.

11. Having regard to the materials on record and the stand of the parties, I am of the view that the services rendered by the petitioner from 1963 till 1995 under the Karbi Anglong District Council till he was transferred to Puranigudam Model L P School, Nowgong should be construed to be a pensionable service for entitling him for his pensionary benefits under the Assam Services (Pension) Rules, 1969. In my considered opinion all the conditions enumerated in Rule 31 of the said Rules for receiving pension are satisfied in the instant case and there appears to be no impediment in law to release the pensionary benefits to the petitioner. As a matter of fact from the parawise comments produced before this court, the State authorities also appear to have initiated an exercise in this direction. The petition therefore has to succeed. It is therefore directed that the State respondents would immediately take up the case of the petitioner for release of his pensionary benefits and the process should be complete within a period of 2 months from the date of receipt the certified copy of this order.

12. The petition stands allowed. No costs.