

(2024) 05 GAU CK 0031
In the Gauhati High Court
Case No : Writ Petition (C) No. 7201 Of 2022

Rajani Choudhury And 2 Ors

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 08-05-2024

Acts Referred:

Citation : (2024) 05 GAU CK 0031

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : R. Mazumdar, R.M. Das, R. Borpujari

Final Decision : Allowed

Judgement

1. Heard Shri R. Mazumdar, learned counsel for the petitioners. Also heard Shri R.M. Das, learned Standing Counsel, Water Resource Department and Shri R. Borpujari, learned Standing Counsel, Finance Department.
2. The petitioners who are three in numbers have joined together with a claim for the minimum pay scale in terms of a judgment and order dated 08.06.2017 passed by this Court in WA 45/2014 (State of Assam and Ors. vs. Upen Das & Ors.).
3. The petitioners have projected that they are working as Muster Roll Workers in the Water Resource Department from the year 1993. It is also contended that the stipulation made by the Hon'ble Division Bench in the case of Upen Das (supra) is payment of minimum pay scale for existing employees who are in service for the last 10 years from the date of the judgment. The learned counsel has also referred to the affidavit-in-opposition filed by the Department wherein it has been admitted that the petitioners are working from 1993, 1995 and 1994 respectively. The only reason which is discernible from the affidavit is an enquiry on the aspect of their claim regarding induction in the service prior to 01.04.1993.

4. Shri Mazumdar, the learned counsel contends that there being no dispute with the fact that the petitioners are in service for at least a period of 10 years prior to the judgment rendered in the case of Upen Das (supra) which was on 08.06.2017, the petitioners claim is justified and therefore, appropriate directions are to be issued in this regard.

5. Shri R.M. Das, learned Standing Counsel of the Department has submitted that there is a dispute with regard to the dates of induction of the petitioner in service. He submits that though the petitioners have contended that they were appointed prior to 01.04.1993, the actual dates of their appointments are 01.06.1993, 01.03.1995 and 01.03.1994 respectively.

6. By drawing the attention of this Court to the affidavit-in-opposition filed by the respondent no. 4 on 17.02.2023, more specifically, paragraph 8 thereof, the learned Standing Counsel has submitted that an enquiry was held on the aspect of the initial date of their induction which was claimed by the petitioners to be prior to 01.04.1993. He also referred to the additional affidavit filed by the Department on the aspect of enquiry.

7. Shri R. Borpujari, learned Standing Counsel Finance Department, while endorsing the submissions and views of the Water Resource Department has also submitted that unless the date from which the petitioners are in service can be ascertained, there may not be automatic application of the mandate laid down in the case of Upen Das (supra). Shri Borpujari, learned counsel however has clarified that so far as the Finance Department is concerned, the role have been completed and it is up to the Administrative Department to take necessary steps.

8. Shri Mazumdar, the learned counsel for the petitioners, in his rejoinder has submitted that apart from the admitted fact which would be revealed in the affidavit-in-opposition filed by the Department that all the petitioners fulfilled the criterion of length of service laid down in Upen Das (supra), the salaries of the petitioners are also paid in their bank account which would prima facie establish their claim.

9. After consideration of the rival submissions and the materials on record, this Court has noticed that in the affidavit-in-opposition filed by the Department on 17.02.2023, there is a clear statement with regard to the dates of initial engagement of the petitioner. For ready reference, the relevant paragraph is extracted herein in below:

"6. That, with regards to the statements made in paragraph 4 of the writ petition the deponent begs to state that as per the records available in the office of the deponent, the initial engagement dates as stated in the writ petition is not correct and as such is denied by the answering deponent.

The correct dates of initial engagement are as follows:

1. Rajani Choudhury : 01-06-1993

2. Pulak Barman : 01-03-1994

3. Nakul Das : 01-03-1995”

10. The only objection for denying the benefit of payment of minimum scale of pay is on the ground that an enquiry was conducted on the claim of the petitioner that they were working prior to 01.04.1993. In the opinion of this Court the aforesaid ground would not be a relevant factor at all for denying the benefit as given in the case of Upen Das (supra). In fact, this Court has noticed that such benefit was directed on a concession made by the State which would be apparent from the observations made by the Hon’ble Division Bench in paragraph 22 of the judgment which is extracted herein below:

“22. It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken as welfare measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in State of Punjab vs. Jagjit Singh, (2017) 1 SCC 148, also direct the State Government to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 1.8.2017.”

11. The issue with regard to the claim of the petitioners to have been appointed prior to 01.04.1993 on which an enquiry is stated to be done will have no relevance at all in the present claim made by the petitioners. There is no manner of doubt that the petitioners are in continuous service for a period of more than 10 years from the date of the judgment in Upen Das (supra) which is 08.06.2017.

12. In view of the aforesaid facts and circumstances and the discussions made, the writ petition is allowed by directing the respondent authorities to give the benefit of minimum scale of pay to the petitioners for their services rendered as Muster Roll Worker at par with other candidates in terms of the judgment and order dated 08.06.2017 passed in the case of Upen Das (supra).