

(2024) 05 GAU CK 0018

In the Gauhati High Court

Case No : Writ Petition (C) No. 1517, 1903 Of 2023

Ranjan Nath

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 13-05-2024

Acts Referred:

Assam Services(Pension) Rules, 1969 — Rule 31

Assam Panchayat Employees (Provincialisation) Act, 1999 — Section 2, 3, 4

Citation : (2024) 05 GAU CK 0018

Hon'ble Judges : Soumitra Saikia, J

Bench : Single Bench

Advocate : M. Khan, N.K. Dev Nath, M. Bhattacharjee, R.K. Talukdar

Final Decision : Allowed

Judgement

1. Both these writ petitions are taken together as it relates to the claims for pensionary benefits by the respective writ petitioners.

2. In W.P.(C) No. 1517/2023, the writ petitioner was appointed as a Tax Collector on temporary basis at Narshingpur Anchalik Panchayat under Cachar Zilla Parisad for a period of 90 days in the appropriate scale of pay. His services were thereafter extended from time to time without any break. Subsequently, by orders of the Government, petitioner was regularized on 01.06.2023. During his service period as an ad-hoc employee, the petitioner was receiving the benefit of revised pay-scale. The petitioner had rendered his services during the ad-hoc period against a valid sanctioned post. The petitioner rendered his continuous services as ad-hoc employee from 15.05.1996 to 31.05.2013 which is little more than 17 years. Pursuant to his regularization, he rendered his services as a regular employee in the same sanctioned post from 01.06.2013 to 31.05.2021 that is for 7 years 9 months. Petitioner thereafter superannuated from service on 31.03.2021. Although the pension papers have been duly submitted by the petitioner and forwarded to the competent authorities, his pension has not been released till date. No provisional pension has also been released till date. Upon

queries made by the petitioner, he was informed that he is not entitled to pension as he did not complete the minimum years of service required to qualify for pension which is 10 years as a regular employee. The writ petition is filed by the petitioner seeking a direction from this Court to release his pensionary benefits by taking into account the period of services rendered as ad-hoc employee as the same was against the vacant post.

3. InW.P.(C) No. 1903/2023, this writ petition is filed by the petitioners, who are similarly situated and were appointed as Tax Collectors under the P&RD Department in the year 1996. They were initially appointed on ad-hoc basis and were extended. Subsequently, by Notification dated 01.06.2013, the engagements of the petitioners were regularized without consequential service benefits including regular salary and payment. The petitioners upon attaining their age of superannuation, retired from their respective services on 31.10.2021 and 31.03.2018 respectively. Although the petitioners have submitted their pension papers and which were duly forwarded to the competent authorities, their pension has not been released as they were informed that pursuant to regularizations, their services rendered in regular capacity fell short of the mandatory requirement as per the Assam Services (Pension) Rules, 1969 for being eligible for grant of pension. Although joint representations were submitted as far back as 26.08.2021 before the Secretary, Panchayat and Rural Development, the same has not yet been disposed of. Being aggrieved the present writ petition has been filed praying for an appropriate direction to the respondents to grant them their pensions as per their entitlement.

4. The learned counsel in both the writ petitions have made similar submissions. It is submitted that they had rendered ad-hoc services against the valid sanctioned post. Subsequently, their services were regularized by order of the competent authority dated 01.06.2013. Although the petitioners had rendered their services in ad-hoc capacity, their services rendered were continuous which were duly extended from time to time by the competent authority. They have received regular scale of pay with necessary revision as applicable. As such for all practical purposes, they had rendered their services continuously against the valid sanctioned post, drawing regular scale of pay and the fact that their cases were not considered for regularization, is an issue, which is beyond their control. Be that as it may, by order dated 01.06.2013, the competent authority regularized their services with effect from the said date. Accordingly, the benefits of the services rendered by the petitioner during the ad-hoc period, has not been disputed by the respondents. As such at least that period of service ought to have been counted to consider the claims of the petitioners towards their eligibility for grant of pension and other retiral benefits. It is submitted that there is no dispute that the petitioners rendered continuous services. Under such circumstances, the denial of pensionary benefits to the petitioners that they failed to satisfy the requirement of minimum years of service after being regularized is wholly arbitrary and unjust.

5. The learned counsel for the petitioners has referred to the Assam Panchayat Employees (Provincialisation) Act, 1999. Referring to the said Act, the learned counsel has brought the attention of the Court to the definition of "employees" under Section 2, which means a person in the employment of Panchayats against regularly sanctioned post. The learned counsel submits that the definition itself goes to show that so long a person is working against a sanctioned post, that person is to be deemed to be an employee under the Panchayat and Rural Development Department. That apart, under Section 3 of the said Act, it is provided that all employees of the Panchayat under the State Government shall be deemed to have been provincialised from the appointed date and all Rules including Service Rules and Rules of Conduct, Discipline and Appeal Rules which are applicable to government servants of corresponding grade and similarly placed shall also be applicable to the employees of the Panchayat. Under Section 4 of the Act, it is provided that all the employees going on superannuation under the provisions of the Act shall be eligible to pension or gratuity or both in accordance to the pension rules.

6. The learned counsel for the petitioners, therefore, submits that the denial of pension to the petitioners for the services rendered in their respective capacities is contrary to the provisions of the Act and the Rules as well as the law.

7. The respondents are represented by the Standing Counsel who submits that an affidavit has been filed in W.P.(C) 1517/2023 and he craves leave of the Court to rely on the same for the purposes of both the writ petitions. The learned counsel for the respondents submits that while there is no dispute that the petitioners had rendered their services against valid sanctioned posts, but their services were rendered in ad-hoc capacity. He submits that it is only on 01.06.2013 that these posts have been regularized. Referring to the Rule 31 of the Assam Services (Pension) Rules, 1969, the learned counsel for the respondents submits that Rule 31 of the Pensions Rules prescribes the eligibility of Government servants who are entitled to pension. The petitioners are required to fulfill the criteria prescribed under the pension Rules and they having not so done their eligibility for pension will be required to be counted from the date their regularization namely 01.06.2013. However, before they could complete the minimum years of service necessary to make them eligible for pension, all the petitioners superannuated from service.

8. The learned counsel for the petitioners, in rejoinder, submits that a communication has been addressed from the Department of Panchayat and Rural Development, Government of Assam for submission of necessary clarifications to the Office of the Accountant General towards opening of the GPF account for the petitioner in W.P.(C) No. 1517/2023. However, no such clarifications have been received as yet and accordingly, the pension and other retiral benefits have not been released to the petitioner.

9. The learned counsel for the parties have been heard. Pleadings on records have been carefully perused.

10. It seen that the petitioners had rendered their initial services on ad-hoc basis but against regularly sanctioned posts and were receiving regular scale of pay with appropriate revision. The petitioners were regularized by order dated 01.03.2013 issued by the Principal Secretary to the Government of Assam, Panchayat and Rural Development Department. The fact that the petitioners rendered continues services is also not disputed by the respondents.

11. Rule 31 of the Assam Services (Pension) Rules, 1969 provided that the service of an officer does not qualify for pension unless it conforms to the following three conditions:

Firstly, the service must be under Government;

Secondly, the employment must be substantive and permanent;

Thirdly, the servant must paid by Government:

Provided that the Governor may, even through 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.

12. The Assam Panchayat Employees (Provincialisation) Act, 1999 provides that the employees will include person in employment of Panchayat against the regularly sanctioned post. The Act further provides that all employees of Panchayats under the State Government shall be deemed to have been provincialised on and from the appointed date and upon being soprovincialized, all Rules including Service Rules and Rules of Conduct and Discipline and Appeal which are applicable to the Government servants of corresponding grade and similarly placed shall be applicable to the employees of the Panchayat.

Section 4 of the Act further provides that all employees going on superannuation under the provisions of the Act shall be eligible to pension or gratuity or both. The question whether in respect of employees working under the department of Panchayat and Rural Development and employees in the various Panchayats in various capacities pension and retirement dues would be available was elaborately dealt with by a Division Bench of this Court in State of Assam Vs. Sayed Md. Fazlay Rabbi (W.A. No. 145/2009), reported in 2010 SCC OnLine Gau 38. In this Judgment, the Division Bench had extensively considered the provisions of the Assam Panchayat Employees (Provincialisation) Act, 1999.

13. After considering in detail, the facts and circumstances and the various provisions of the Act, this Court held that the benefit of the provisions of the Act including those for pension and other retirement benefits would be available to be provincialised employees in service on or after 01.10.1991 on the basis of the services rendered which is to be reckoned from the dates of their initial

appointments. The Division Bench of this Court held that the prime consideration of the Provincialisation appears to be to protect the past services of the existing employees as on 01.10.1991 in different levels of the Panchayat institutions of the State. It was held that the legislation involved namely the Assam Panchayat Employees (Provincialisation) Act, 1999, being apparently one to benefit the serving employees of the institutions and the legislature consciously maintained a distinction between the 'appointed date' and the 'date of appointment'. The Division Bench held that the 'appointed date' has been defined to be the one on which the Act had come into force. Whereas 'the date of appointment' as found in the Act is in respect of the employees with regard to their dates of appointment. It was held that it is patently clear that the legislature had in its wisdom intended to maintain a distinction between 'appointed date' and 'the date of appointment' of the employees to be provincialized under the Act. The Division Bench held that on a scrutiny of the provisions of the enactment, it is seen that the appointed date was provided as a cut-off date for the provincialisation of the services of the existing employees and the date of appointment was comprehended for the purpose of continuity of such employees on and from the dates of their initial appointment to determine their entitlements under the legislation including the pension and other retirement benefits. It was held by Division Bench that the Assam Panchayat Employees (Provincialisation) Act, 1999 was with the statutory object of provincialisation of the services of the employees to treat them as State Government Employees. If the 'appointed date' and the 'date of appointment' are considered to be synonymous then the services rendered by them prior to the enforcement of the Act would then have to be treated to be non-existent and this will be contrary to the scheme of the Act as the prime consideration of the Provincialisation Act appeared to be to protect the past services of the existing employees as on 01.10.1991.

14. The Judgment as discussed above held that the employees of the Panchayat and Rural Development Department working in the various capacities in the Panchayat are eligible for pension by taking into consideration the services which were rendered earlier.

15. In *Kabiram Rajbangsi Vs. State of Assam & Others*, reported in 1997 (1) GLT 589, the Co-ordinate bench of this Court held that services rendered prior to regularization can be taken into account for consideration of the pensionary benefits of the employee.

16. Similar view was rendered by another Co-ordinate Bench in *Sh. Abdul Hannan Vs. State of Assam & Others* in W.P(C) No. 2821/2009.

17. The Apex Court in *Prem Singh Vs. State of Uttar Pradesh & Others*, reported in (2019) 10 SCC 516 held that period of service of an employee prior to his regularization, was also to be counted as qualifying service for the purposes of pension.

18. Similar views have been held by the Apex Court in *The State of Gujarat &*

Ors Vs. Talsibhai Dhanjibhai Patel, reported in 2022 LiveLaw (SC) 187 as well as in Habib Ali Barbhuiya Vs. State of Assam & Ors passed by this Co-ordinate Bench of this Court in W.P(C) No. 1777/2015.

19. The law laid down by the Apex Court as well as this Court is that services rendered by any employee prior to their regularization should be counted towards their pensionary benefits if there is any shortfall in their services rendered after being regularized. Under such circumstances, when there is no dispute that the petitioners have rendered services in ad-hoc capacity continuously against valid sanctioned posts without any break in service and they came to be subsequently regularized by the Government and at the time of their superannuation, the employees did not have qualifying services from the date of their regularizations, then in the opinion of this Court and as has been held by several decisions as discussed above, the period of services rendered in ad-hoc capacity against valid sanctioned posts can also be counted for the purposes of satisfying the qualifying period of service prescribed under Rule 31 of the Assam Service (Pension) Rules, 1969.

20. Accordingly, the respondents are directed to forthwith the process the pension papers and forward them to the competent authority by considering the balance period of service required to satisfy the qualifying period of service under the pension Rules from the services rendered earlier in their ad-hoc capacity against the vacant sanctioned posts.

21. The respondent authorities will thereafter release the pensions and the other retiral benefits to the writ petitioners as expeditiously as possible within the outer limit of 90 (ninety) days from the date of receipt of a certified copy of this order.

22. The writ petitions, are, accordingly allowed and disposed of. No order as to cost.