
(2018) 03 GAU CK 0004
In the Gauhati High Court
Case No : WP(C) No. 2821 of 2009

Shri Abdul Hannan

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 08-03-2018

Acts Referred:

Assam Services (Pension) Rules, 1969 — Rule 31

Citation : (2018) 03 GAU CK 0004

Hon'ble Judges : HRISHIKESH ROY

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Dr. B. Ahmed, the learned counsel appearing for the petitioner. Also heard Mr. D. Nath, the learned Addl. Sr. Govt. advocate representing

the respondent Nos. 1 & 4. The Accountant General (A&E) and other officers (respondent Nos. 5, 6 and 7) are represented by the learned counsel

Mr. R.K. Talukdar.

2. The petitioner was engaged as an Extra-Writer on 02.08.1967 in the Ratabari Sub-Registry in Karimganj district and his service was regularised

w.e.f. 01.08.1988, under the Govt. notification dated 19.05.1989 (Annexure-4). Before regularisation, the petitioner served on daily wage like other

Extra-Writers employed in the Registration Department of the Government. Since the Extra-Writers in the Revenue Department were regular service

holders under the Government, the All Assam Extra-Writers' Association made demands for service parity with their counterparts in the Revenue

Department. Eventually decision was taken on 22.12.1988 in a meeting between the Revenue Minister, Revenue (Registration) Department and the

Extra-Writers's Association to ensure parity of service of the Extra-Writers in the two Government departments. The minutes of the meeting held

on 22.12.1988 reflects the following:-

1. The Government agrees to bring the Extra-Writers of the Registration Department at par with/ in the status of the Extra-Writers of the Revenue

Department on the following terms:

(a) All the extra-writers who have rendered 7 years continuous service will be paid the same scale of pay as provided to the extra-writers of the

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(b) This scale of pay will be effected from 1-8-88 as decided by the Government, but the Extra-Writers's Association demands the same from 1-1-

88.

(c) For providing the pension and other benefits, their past services will be counted.

(d) The cases of those persons who lack continues seven (7) years's service as on 22-12-88 will be examined within 30-6-89 for appropriate

decision.

3. As can be seen from the above decision, the past services of the ExtraWriters prior to regularisation, were to be taken into account for

determination of pension. In fact in the notification dated 27.06.1983 (Gazetted on 22.07.1983), it was notified that the Assam Pay Commission had

recommended extension of pensionary benefits (available to permanent govt. servants) also to the temporary govt. servants, who had rendered

minimum 20 years of service. This recommendation of the Pay Commission was incorporated and accepted under Clause 18 (page-45) in the

following terms:-

18. Pension to temporary Government Servants: The Commission recommended for extension of the same pensionary benefits, as

available to a permanent Government servant, to a temporary Government servant who has rendered not less than 20 years of service and this

recommendation is accepted. Necessary orders will be issued separately.

4. When the petitioner reached the superannuation age, the Sub-Registrar, Ratabari, issued the order for retirement on 31.07.2002 and accordingly his

pension papers were processed. However, as can be seen from the communication dated 20.11.2003 (Annexure-7) of the office of the Accountant

General (A&E) addressed to the District Registrar, Karimganj, the petitioner's qualifying service for pension was taken only as fourteen years

and accordingly under the Pension Payment Order No.RAM/67624, the minimal pension of Rs.1225/- per month, was determined for the retired

Extra-Writer.

5.1 The learned counsel Dr. B. Ahmed submits that the petitioner had rendered uninterrupted service for 35 years and therefore his payable pension

should be decided on the total service tenure or, the maximum permissible 33 years. But without any just cause, the 21 years of service (between 1967

to 1988) was disregarded and the payable pension is quantified only for the 14 years regularised service, rendered between 01.08.1988 â?

31.07.2002. WP(C) 2821/2009

5.2 The petitioner contends that the service prior to regularisation should be counted for quantifying the pension as was resolved on 22.12.1988

(Annexure-1) and there can be no justification for disregarding the temporary service, of the Extra-Writers.

6 On the other hand, Mr. D. Nath, the learned Addl. Sr. Govt. advocate projects that the Extra-Writers in the office of the Sub-Registrar, were

engaged on daily wage basis and this according to the Govt. advocate is break in the continuity of service on Sundays and holidays, for the Extra-

Writers. On this basis, he submits that the service rendered by the petitioner before he was regularised on 01.08.1988, is not accountable for

determination of the payable pension, for the retired Extra-Writer.

7 The conditions of qualifying service for superannuation benefits, is prescribed under the Assam Services (Pension) Rules, 1969 and the Rule 31

specifies the pre-conditions, to qualify for pension. The required stipulations are that the service must be under the Government; secondly employment

must be substantive and permanent; and thirdly service must be paid by the Government. However, the proviso to Rule 31, enables the Government, to

relax the stipulations for qualifying service for the superannuation benefits.

8 The calculation of the payable pension is made under a prescribed formula, in reference to the number of years of service rendered by a

Government employee, but maximum 33 years of service is to be taken into account, for determination of pension. In the instant case, the petitioner

has rendered 35 years of service starting from 02.08.1967 until he retired on

31.07.2002. But he is being paid the meagre pension of Rs.1225/- p.m. by taking into account only his 14 years regularised service since 01.08.1988.

9 Even a temporary govt. servant retiring on superannuation is entitled to pension under Clause 18, under the notification dated 27.06.1983, provided he has rendered more than 20 years's service. If this be the entitlement of a temporary govt. employee, the petitioner's temporary service does not get obliterated in my opinion, for calculating the payable pension for the subsequently regularised govt. employee. Thus, it is logical to say that the temporary service rendered before regularisation also become eligible, for the superannuation's benefits. WP(C) 2821/2009. A

10. That apart, it was specifically resolved on 22.12.1988 (Annexure-1), in the meeting presided by the Minister, Revenue (Registration)

Department that, the past service, prior to regularisation, will be taken into account for determining the pension. Therefore the temporary service prior

to regularisation cannot be ignored to calculate the payable pension. To put it another way, if a govt. employee in temporary service retires without

regularisation, his pension amount is decided by referring to the years in service even without regularisation of service. Therefore, it will be logical to

take into account the past temporary service of a regularised govt. employee at least for the purpose of pension, under Clause 18 of the notification

dated 27.06.1983 (page-45). This was also the understanding in the joint meeting held on 22.12.1988, where the past service of the Extra-Writers,

prior to regularisation, was decided to be taken into account, for the purpose of pension.

11 In view of the foregoing discussion, the Court is of the considered opinion that the determination of the payable pension for the retired Extra-Writer,

only with reference to the 14 years regularised service from 01.08.1988 to 31.07.2002 was incorrect. It is accordingly held that the pension for the

petitioner should be re-determined, by taking into account his past temporary service since 02.08.1967, in the Ratabari Sub-Registry of Karimganj

district. Since the norms say that maximum 33 years of service can be taken into account for determination of pension, the Secretary to the Govt. of

Assam, Revenue (Registration) Department is directed to re-calculate the dues for the petitioner, in consultation with the concerned officials and the

counterparts, in the related departments. The payable pension for the petitioner

under the PPO No.RAM/67624 will thus be revised and the arrear and the revised rate of pension will be disbursed to him. It is ordered accordingly. Since the petitioner retired long back and is ailing, the ordered exercise should be carried out expeditiously and preferably within 4(four) months, of receipt of this order.

12 With the above order, the case stands disposed of, leaving the parties to bear their own cost. A copy of this order be furnished to the Govt. advocate.