

(2023) 12 GAU CK 0020

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 7406 Of 2015

Thaneswar Bora

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 13-12-2023

Acts Referred:

Assam Services (Pension) Rules, 1969 — Rule 31

Citation : (2023) 12 GAU CK 0020

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P Katak

Final Decision : Disposed Of

Judgement

1. Heard Mr. P. Katak, learned counsel for the petitioner and Mr. K. Konwar, learned Addl. Advocate General for the respondents No. 1, 2, 4 and 5, being the authorities in the P&RD and DRDA. Also heard Mr. R.K. Talukdar, learned counsel for the respondent No. 3, being the Accountant General (A&E), Assam.

2. The petitioner has a history of an employment under the respondent authorities which was taken note in the order dated 14.03.2023, wherein in course of the hearing the original service book of the petitioner was placed before the Court. The petitioner in this writ petition having served his entire career in various departments of the Government of Assam, upon attaining the age of superannuation, claims for pension.

3. The respondents take a stand that since the year 1982, the petitioner had been working under an entity which is called District Rural Development Agency (DRDA). Mr. K. Konwar, learned Addl. Advocate General for the respondents No. 1, 2, 4 and 5 takes a stand that the DRDA is a society under the law, and not a department of the Government of Assam and therefore, the petitioner is not entitled to any pension. A further stand taken is that the petitioner never worked on a permanent basis against any sanctioned post nor had been appointed by

following the due procedure of law and from such point of view, he would not be entitled to any pension.

4. As per the original service book of the petitioner, it is discernible that the petitioner was initially appointed as Mandal on temporary basis as per the letter dated 09.10.1965 and thereafter he was placed in a scale of pay of Rs. 125-4-145-EB-4-165-EB. In the process the petitioner was allowed increment and he was also allowed to cross the efficiency bar as per various orders of the Settlement Officer of Dibrugarh and Lakhimpur. The records reveal that the petitioner was also granted earned leave from time to time as otherwise entitled to a regular employee. However, a stage came when the Settlement Office of Dibrugarh and Lakhimpur was probably required to have been closed and at that stage, the Assistant Settlement Officer made an endorsement in the service book of the petitioner by providing that the petitioner would be facing retrenchment from the Settlement Office and accordingly he was released from the office of the Assistant Settlement Officer as per the order dated 01.08.1979. In the aforesaid circumstance, upon being retrenched or otherwise from the Settlement Office, the petitioner was temporarily appointed as an LDA in a scale of pay for census work where again benefits of earned leave etc. was granted to the petitioner.

5. Later on, as per the order of the Deputy Commissioner, Dibrugarh dated 28.05.1981, the petitioner was made to join in the office of the Mahkuma Parishad, Tinsukia w.e.f. 01.06.1981 where he continued to work. Thereafter by the order of the Deputy Commissioner, Dibrugarh dated 26.05.1982, the petitioner was released from the office of the Mahkuma Parishad, Tinsukia and by another order of the Deputy Commissioner, Dibrugarh dated 26.05.1982 which was as per the approval of the Governing body of the agency, the petitioner was placed/appointed as an LDA temporarily under NREP work. The service book also revealed an order dated 26.05.1982 of the Deputy Commissioner, Dibrugarh by which in the interest of public service, the service of the petitioner was placed at the disposal of the Project Director, DRDA, Dibrugarh, where he worked for the balance of his entire career till superannuation sometime in the year 2005, which is sought to be corrected by Mr. P. Kataki, learned counsel for the petitioner by stating it to be 30.09.2006.

6. Whatever may be the date of superannuation, the question for decision before the Court in the aforesaid circumstance is whether the petitioner would be entitled to any pension.

7. Mr. K. Konwar, learned Addl. Advocate General refers to Rule 31 of the Assam Services (Pension) Rules, 1969 and submits that the conditions precedent as provided therein in order to be entitled to pension is not satisfied by the petitioner in the present case and therefore, he would not be entitled for pension.

8. Having noted the entire service career of the petitioner, it is discernible that initially the petitioner was appointed as a Mandal on temporary basis against a scale of pay as per letter dated 09.10.1965 and he continued as such in the

Settlement Office of the Assistant Settlement Officer, Dibrugarh. But as the settlement operations itself were in a temporary phase where there was a requirement to close down the Settlement Office, the Assistant Settlement Officer released the petitioner by his order dated 01.08.1979 and was engaged to work against a scale of pay as an LDA for census work. Thereafter, the Deputy Commissioner, Dibrugarh by order dated 28.05.1981 required the petitioner to join in the office of the Mahkuma Parishad, Tinsukia w.e.f. 01.06.1981 where he continued to work till the order of the Deputy Commissioner, Dibrugarh dated 26.05.1982 was passed by placing the service of the petitioner at the disposal of the Project Director, DRDA, Dibrugarh. In whatever manner or capacity the petitioner may have been appointed/engaged, it is noticed that up to 26.05.1982, the petitioner was working under certain authorities who are under the Government of Assam, meaning thereby that he was in a Government service in the manner as indicated above. In whatever capacity the service of the petitioner may have been engaged by various Government authorities as noted above, it cannot be accepted that the petitioner was not under the employment of the Government. If by the order dated 26.05.1982 the service of the petitioner was placed at the disposal of the Project Director, DRDA, Dibrugarh and according to the respondent authorities, DRDA is only a society and not a department of the Government of Assam and therefore the further service is not a service under the Government of Assam, a pertinent question would remain as to why and under what circumstance the Deputy Commissioner had placed the service of the petitioner before the DRDA.

9. The services of a Government servant can be utilized by the employer Government in any manner they may feel like, but wherever the services are utilized it is understood that the Government servant is transferred and posted in such Government post for providing further service to the Government. There is no principle of law under the Service Jurisprudence where the services of a Government employee can be placed with a society even if it is accepted that the DRDA is a society. The only principle of Service Jurisprudence under which a Government employee may be placed before an entity which the Government feels is not a Government department is through principle of deputation and we do not see any other principle under the Service Law Jurisprudence where the services of a Government employee can be placed with any other entity or else, the only manner in which it can be construed is that the Deputy Commissioner had acted with profound illegality in placing the service of the petitioner before the DRDA for which the petitioner cannot be faulted with on the principle that no authority can take advantage of its own illegality.

10. Accordingly, in the manner in which the service of the petitioner was handled by the respondent authorities for his entire career from 1965 up to 2006 when he retired i.e. more than 40 years, the only way we can construe is that there was an implied deputation of the petitioner to the DRDA being an admitted position that he was initially an employee under the Government and no material is available that upon being released by the Government, there was fresh

recruitment of the petitioner before the DRDA or that the petitioner had voluntarily applied and had obtained employment under DRDA.

11. In any view of the matter, we are not concerned with any claim of petitioner for any regular employment or anything as such, but the claim of the petitioner is only limited that he be paid pension. Even this aspect of the matter had been clarified by the Hon'ble Supreme Court in its proposition laid down in State of Gujarat and Ors. Vs. Talsibhai Dhanjibhai Patel, reported in 2022 SCC OnLine SC 2004, wherein in paragraph 1 thereof it is provided as extracted below:

"1. It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand."

12. In a matter where the State respondents extracted the service of an employee for his entire career, but his service was extracted in a manner from which the State respondents can take a stand that it is not a regular appointment, even in such cases the employee after rendering a service for the complete career and upon attaining the age of superannuation would be entitled to pension. We accordingly follow the proposition laid down by the Hon'ble Supreme Court in Talsibhai Dhanjibhai Patel (supra).

13. Mr. K. Konwar, learned Addl. Advocate General raises a contention that the factual circumstance before the Hon'ble Supreme Court in the matter was that the employee concerned was an ad hoc employee and he was appointed against a post. However, in the instant case, it is more damaging for the State Government that the present petitioner was employed against a scale of pay, it is the respondent authorities who had been shunting the petitioner from one post to another.

14. Mr. K. Konwar, learned Addl. Advocate General refers to another judgment of the Hon'ble Supreme Court rendered in Director General, Doordarshan Prasar Bharti Corporation of India & Anr. Vs. Smt. Magi H Desai, reported in 2023 SCC OnLine SC 336, and relies upon the provisions in paragraph 16 thereof, which is extracted as below:

"16. Now so far as the submission on behalf of the respondent that in other departments under the scheme the employees of such departments are entitled to their services rendered as casual/contractual counted for qualifying service for pensionary/service benefits is concerned, merely because some other departments might have such schemes, the respondent shall not be entitled to the same benefit in absence of any scheme in the appellants' department/department in which the respondent rendered her services. The appellant -

Doordarshan Prasar Bharti Corporation of India is an autonomous independent department/body. As observed hereinabove, neither the rule nor the regularisation scheme provide that services rendered as casual/contractual shall be treated as temporary service and/or the same shall be counted for the purposes of pensionary/service benefits.”

15. A reading of the proposition laid down in paragraph 16 of Director General, Doordarshan Prasar Bharti Corporation of India (supra) makes it discernible that in the matter before the Hon’ble Supreme Court, an employee of Doordarshan Prasar Bharti Corporation of India had claimed for the earlier period as contractual employee to be included in the qualifying service for the purpose of the retirement benefits and accordingly, relied upon certain schemes applicable in some other departments for the period as contractual employee to be also included as qualifying service. But as the Doordarshan Prasar Bharti Corporation of India did not have any such scheme, therefore the Hon’ble Supreme Court was of the view that the scheme of other departments cannot be incorporated.

16. No such issue is involved in this present writ petition. In the present writ petition, all that we are adjudicating is whether the petitioner was given fair treatment during the period of 40 years when his services were extracted. It was always open to the respondent authorities to discontinue the service of the petitioner at any stage, if permissible under the law. But it cannot be that the services of an employee would be extracted for his entire career of more than 40 years and in between, he would be shunted from one department to the other, be paid the scale of pay, allowed to cross the efficiency bar, also provide increments and somewhere in the middle of his career place his service before an entity which the department officials definitely knew that it was not a Government department but a society, meaning thereby at that stage itself illegality had been committed. From such point of view, the proposition laid down in Talsibhai Dhanjibhai Patel (supra) would be more applicable in the present case.

17. We have also taken note that the writ petitioner retired from service sometime in the year 2006, meaning thereby that presently he would be aged about 77 to 78 years. Considering the matter in its entirety, the respondents are directed to pay the pension to the petitioner as per the entitlement of his last drawn salary, but such direction shall be prospective from the date of this order. We are not ordering payment of pension from the date of retirement till the date of this order inasmuch as, no determination has been made on the entitlement of the petitioner for pension under the Assam Services (Pension) Rules, 1969, but the direction is issued solely based on the proposition laid down by the Hon’ble Supreme Court in paragraph 1 of its judgment rendered in Talsibhai Dhanjibhai Patel (supra).

18. We are also of the view that the Government authorities in dealing with its employees should also give the employees their due dignity in life and if it is not possible for the State authorities to give the dignity and under the law they are

not entitled to continue their service, it is always open for the State authorities to discontinue the service of the petitioner. But it cannot be both ways that on one hand the respondents take a stand that the employee is not entitled to continue with his service but on the other hand utilize his service in all manners, extract his service for the entire career, and then take a stand that he would not be entitled to anything.

19. The requirement be complied by the respondents within a period of 2 (two) months from the date of receipt of certified copy of this order. However, we provide that the provisions of the present order shall not be precedent for any other provision and it is confined with the facts and circumstances of the present case.

Writ petition stands disposed of as indicated above.