

GAHC010008452024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/224/2024

ABDUL MOZID
S/O LATE ARFAN ALI,
RESIDENT OF VILLAGE- KHELUAPARA PART-V,
POLICE STATION- JOGIGHOPA,
DISTRICT- BONGAIGAON, ASSAM,
PIN- 783371.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
IRRIGATION DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNEMENT OF
ASSAM

ADMINISTRATIVE REFORMS TRAINING AND PENSION AND PUBLIC
GRIEVANCES DEPARTMENT
DISPUR

GUWAHATI-6.

4:THE CHIEF ENGINEER
IRRIGATION
ASSAM

CHANDMARI
GUWAHATI-3.

5:THE ASSISTANT EXECUTIVE ENGINEER
BILASIPARA EAST SUB-DIVISION (IRRIGATION)
BILASIPARA.

6:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-29

Advocate for the Petitioner : MR. C BHATTACHARYYA

Advocate for the Respondent : SC, IRRIGATION

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

28.02.2024

Heard Mr. C. Bhattacharyya, learned counsel for the petitioner. Also heard Mr. N. Upadhyay, learned Standing Counsel, Irrigation Department for the respondent nos. 1, 4 & 5, Mr. C.K.S. Baruah, learned Government Advocate Assam for the respondent no.3, Mr. R. Borpujari, learned Standing Counsel, Finance Department for the respondent no.2 and Ms. J. Das, learned counsel, Accountant General for the respondent no.6.

2] This writ petition is filed by the petitioner who had served as a Muster Roll worker in the office of the Executive Engineer, Dhubri Division (Irrigation), Gouripur. He was appointed on 01.07.1992 and he was regularized as a Helper

with effect from 22.07.2005 by order dated 06.10.2005. He retired from his service with effect from 31.12.2022 on superannuation. When the pension papers were prepared the gross period of service was shown as 29 years 9 months and the net qualifying service was shown as 23 years 9 months. The last pay of the petitioner was reflected as Rs.27,190/- (Rupees Twenty Seven Thousand One Hundred Ninety) and accordingly, in the pension payment order, the pension of the petitioner was shown as Rs.12,780/-. According to the petitioner the amount of pension that he has received is less than the amount he is entitled to receive under the provisions of law. It is submitted that the respondent authorities have deducted his initial 6 (six) years from the total period of his service while calculating the amount of pension payable to the writ petitioner. Learned counsel for the petitioner submits that the said deduction of 6 (six) years of service has been held impermissible by this Court in WP(C) No.1089/2015 (*Sanjita Roy vs. the State of Assam & Ors.*) decided on 04.12.2018, and the respondent authorities were directed to determine the continuous length of service of the petitioners as Muster Roll Workers and if such service meets the bench marks of 20 (twenty) years then the benefit of pension should be made available to them without any deduction from the total period of service. This view was also upheld by a Division Bench of this Court by Judgment and Order dated 26.02.2021 passed in W.A. No.18/2021 (*Binapani*

Das vs. the State of Assam & Ors.)

3] By earlier orders the respondents were permitted opportunities to complete their instructions in the matter. Learned counsel for the respondents do not dispute the position in law laid down by this Court in this regard.

4] The counsel for the parties have been heard. The pleadings available on record have been perused.

5] Learned counsel for the respondents does not dispute the position in law as has been laid down in *Sanjita Roy (supra)* and which was upheld in *Binapani Das (supra)*. In *Sanjita Roy (supra)* the Coordinate Bench of this Court held that the deduction of 6 (six) years of initial service from the total services rendered by an incumbent while calculating the period of service towards eligibility of grant of pension of Muster Roll Workers have been held to be bad. The Coordinate Bench held that such deduction of initial period of 6 (six) years of service from the total period of services rendered is contrary to law. The judgment in *Sanjita Roy (supra)* was passed on 04.12.2018. In subsequent writ petitions filed, other Coordinate Benches held that the benefits of *Sanjita Roy (supra)* will be effective only from the date of the said Judgment i.e. 04.12.2018. One such order was brought to the Division Bench of this Court in W.A. No.18/2021 and the Division Bench of this Court in *Binapani Das (supra)*

(W.A. No.18/2021) by Judgment and Order dated 26.02.2021 while upholding the proposition laid down in *Sanjita Roy (supra)*, further held that once the benefit has been granted by way of a judgment, the same cannot be curtailed to deny the benefit of other similarly situated persons when the original judgment itself did not restrict such benefit. It was held that the orders of the Courts are always retrospective in nature unless it is specifically made prospective in the order itself. The relevant paragraph of the said Judgment and Order is extracted herein below:

“9. An order of the court is always retrospective in nature, unless it is specifically made prospective in the order itself. This is because the courts do not legislate, they only interpret an existing law. This is unlike the laws made by the State Legislature and the Parliament, which are always prospective in nature, unless again, the law itself makes it retrospective. The original judgement (dated 04.12.2018), passed in WP(C) 1089/2015 (Sanjita Roy vs. State of Assam and Others), does not give benefit to the petitioners from a prospective date. Therefore, in our considered opinion, the order dated 04.12.2018 was retrospective in nature and it would include all similarly situated muster roll workers irrespective of their dates of retirement, provided they are covered by the benefits given to them earlier, and were already availing pension.”

6] That apart, the Government of Assam by Office Memorandum dated 31.07.2010 provided that the part of their past Muster Roll services prior to regularisation have to be counted for the purpose of pension in terms of PPG Department's OM No.PPG(P)88/2009/2 dated 20.05.2009 on attaining the age of superannuation by the regularized Muster Roll Workers.

7] Considering the limited prayer before this Court and upon careful perusal of the writ petition including the judgments passed in *Sanjita Roy (supra)* and *Binapani Das (supra)*, this Court is of the view that the issue raised in the writ petition is squarely covered by the Judgment and Order passed in *Sanjita Roy (supra)* which was upheld by the Division Bench of this Court in *Binapani Das (supra)*.

8] In that view of the matter, the writ petition stands closed with a direction to the respondent authorities to examine the claim of the petitioner and if it is found to be correct then the deduction of 6 years of service of the petitioner shall be calculated as continuous period of service and the amount of pension, gratuity and all other retiral benefits payable to the petitioner be revaluated and the appropriate amount payable to the petitioner taking into consideration his entire period of service in view of the Judgment and Order passed in *Sanjita Roy (supra)* and *Binapani Das (supra)* be released to him without any further delay. The entire exercise shall be completed within a period of 60 (sixty) days from the date of receipt of a certified copy of this order.

9] In terms of the above, the writ petition stands disposed of.

JUDGE

Comparing Assistant