

GAHC010007382012



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

Case No. : WP(C)/3729/2012

RAJENDRA CHANDRA KUMAR
S/O LATE ABHIRAM KUMAR, R/O PALASHBARI, P.O. and P.S. PALASHBARI,
PALASHBARI TOWN, PIN-781128, DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, PANCHAYAT
AND RURAL DEVELOPMENT DEPARTMENT, DISPUR, GHY-6

2:THE UNDER SECRETARY FINANCE ESTT.-A DEPARTMENT
DISPUR GHY-6 DIST- KAMRUP ASSAM

3:THE DIRECTOR
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
GOVT. OF ASSAM DISPUR GHY-6

4:THE PRINCIPAL PANCHAYAT RAJ TRAINING CENTRE
KAHILIPARA GUWAHATI ASSAM

5:SIDHESWAR BARUAH
EX-UDA-CUM ACCOUNTANT
PANCHAYAT RAJ TRAINING CENTRE
JOYSAGAR
SILCHAR
ASSAM

Advocate for the Petitioner : MR. S B PRASAD

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 23.01.2024

Heard Mr. K. K. Medhi, learned counsel for the petitioner. Also heard Mr. K. Konwar, learned Addl. Advocate General, Assam, appearing on behalf of all the respondents.

The petitioners by way of instituting the present writ petition, has raised as a grievance with regard to non-consideration of his case for being conferred with pension and pensionary benefits on account of the services rendered by him in the Panchayat Raj Training Centre, Kahikuchi, Kamrup.

The facts requisite for adjudication of the present writ proceeding, is noticed hereinbelow.

The petitioner who was initially appointed as Lower Division Assistant in the Office of the Principal, Assam Engineering Institute, Guwahati, on 06.09.1961 was released from the said organization permitting him to join as UDA-cum-Accountant in the Office of the Panchayat Raj Training Centre, Kahikuchi, Kamrup. The petitioner, accordingly on such release, joined as UDA-cum-Accountant in the Office of the Panchayat Raj Training Centre, Kahikuchi, Kamrup. The said Panchayat Raj Training Centre, Kahikuchi, Kamrup, was so established under a scheme of the Central Government with a view to provide training facilities to the elected representatives of the Panchayat in order to equip them to shoulder the responsibilities involved in their area of work. The said organization is managed by a Society and the expenses of the said organization is funded from the funds allotted to it under the scheme.

The petitioner along with others joined the said organization and had prayed for regularization of their services before the authority and the same not being considered, the petitioners approached this Court by way of filing a writ petition being Civil Rule No. 4140/1996 and this Court, vide order, dated 19.06.2001, after noticing the facts involved and also the nature of the services of the petitioners, disposed of the said writ petition, requiring the Government to prepare a scheme for providing pension, gratuity, and other retiral benefits to the petitioners. The relevant paragraphs of the said order, dated 19.06.2001, is extracted hereinbelow:

“9. When the matter has been taken up today for hearing on pointed asking from this court the learned Govt. Advocate has stated that he has no instruction in this regard. Keeping in view the said submission of the learned Govt. Advocate, this Court has no alternative but to dispose of the writ petition with the following directions:

The Commissioner & Secretary to the Government of Assam, Panchayat & Rural Development Department shall consider the case of the petitioners and pass appropriate orders in order to declare the petitioners as Government employee so as to make them eligible to payment of pension, gratuity and other retiral benefits on the retirement of superannuation and also for making eligible for such payment to those persons who have already retired on attaining their superannuation.

10. However, in the interest of justice and for the sake of equity, I allow the Commissioner & Secretary to the Government of Assam, Panchayat and Rural Development Department six months time from the date of receipt of this order to frame a scheme in this regard in order to afford socio-economic security to the petitioners, considering the entire factual aspect as stated in the writ petition. It is made clear that in framing such scheme, the said authority shall be at liberty to take all the necessary assistance and cooperation from all the interested authorities concerned.”

It may be noted here that for the services rendered by him, the petitioner was given all service benefits other than the pension and pensionary benefits maintaining parity with the Government servants of equal status working in other Government establishments. The directions passed by this Court vide order, dated 19.06.2001, not being complied with, a person similarly situated with the petitioner, had instituted a contempt petition being COP(c)No. 217/2007. It is to be noted here that after passing of the order, dated 19.06.2001, the matter was considered by the Department and a proposal was placed in this connection before the Finance Department. The Finance Department vide an endorsement, dated 02.04.2008, rejected the case of the petitioner and others holding that the petitioner being an appointee of the Institute, they are not entitled to pension and pensionary benefits. However, by the said Note, one of the petitioners in Civil Rule No. 4140/1996 i.e. Shri Siddheswar Baruah was accorded approval for

being authorized pension and pensionary benefits by treating his services at Panchayat Raj Training Centre, Kahikuchi, Kamrup, to be on deputation. This aspect of the matter was brought to the notice of this Court while considering the contempt petition being COP(c) No. 217/2007, and this Court, vide order, dated 19.04.2012, on accepting the said developments, was pleased to close the said contempt petition, by permitting the petitioners therein, to challenge the decision of the Finance Department as regards the similarity or dissimilarity of the petitioner with Shri Siddheswar Baruah by filing appropriate petition before this Court. It is in this context that the present petitioner has filed the present petition before this Court.

It is to be noted that the scheme that was directed to be prepared by this Court vide order, dated 19.06.2001, was never prepared and the matter on being considered, culminated in the decision rendered by the Finance Department vide its endorsement, dated 02.04.2008. The contempt petition alleging violation of the directions passed by this Court vide order, dated 19.06.2001, although filed; the same was disposed of by the Court by granting the petitioner therein liberty to challenge the decision rendered by the Finance Department.

Accordingly, the directions passed by this Court vide order dated 19.06.2001 having not held to have been violated by the respondent authorities and the decision of the Finance Department having been accepted with liberty to the petitioner involved to challenge to the extent as indicated hereinabove, the directions as contained in the order, dated 19.06.2001 passed by this Court in Civil Rule No. 4140/1996, now, cannot be directed to be complied with.

This brings me to the consideration of the contention raised by the petitioner in the writ petition and as well as pressed today in the hearing by the learned counsel for the petitioner, that the petitioner ought to have been given the same benefits as was extended to Shri Siddheswar Baruah who was a co-petitioner in the proceedings in Civil Rule No. 4140/1996. The said Shri Siddheswar Baruah who was working in a government service before joining the services of the Panchayat Raj Training Centre, Kahikuchi, Kamrup, was authorized pension and

pensionary benefits by treating his services at Panchayat Raj Training Centre, Kahikuchi, Kamrup to be one on deputation. Mr. Konwar, learned Addl. Advocate General, Assam, in the hearing today, has drawn my attention to the affidavit filed by the respondents in WP(c)3717/2012, wherein, in Annexure-1 thereof, a communication, dated 05.05.1962, filed by Shri Siddheswar Baruah, is brought on record. A perusal of the said communication, dated 05.05.1962, would show that Shri Siddheswar Baruah was serving as a Lower Division Assistant-cum-Typist in Dimow Development Block since 01.01.1956 and thereafter, he was transferred to the Office of the Assistant Development Commissioner, Jorhat, as Lower Division Assistant. He had on his selection as UDA-cum-Accountant in the Panchayat Raj Training Centre, Barbheta, Jorhat, requested the authorities that he be appointed in the said Institute as UDA-cum-Accountant on deputation basis. The said Shri Siddheswar Baruah had accordingly after submitting the communication, dated 05.05.1962, joined his services with the Panchayat Raj Training Centre, Barbheta, Jorhat, on 01.06.1962.

It is in this context that following the directions of this Court contained in the order, dated 19.06.2001, passed in Civil Rule No. 4140/1996, that the Finance Department had agreed to authorize to Shri Siddheswar Baruah, pension and pensionary benefits, by treating his service in Panchayat Raj Training Centre, Barbheta, Jorhat, to be one on deputation. The factors as available in the case of Shri Siddheswar Baruah is clearly absent in the case of the present petitioner and as such, he cannot be permitted to claim benefits similar to the benefits that was conferred upon Shri Siddheswar Baruah.

There is no material available in record in the present proceeding to highlight the fact that the petitioner and Shri Siddheswar Baruah were similarly situated in all respects and as such, the petitioner was also required to be extended similar service benefits. In the absence of such materials available in record, it is not open for this Court to direct the respondent authorities to provide similar benefits to the petitioner as provided to said Shri Siddheswar Baruah.

In view of the said conclusions reached by this Court, the contentions raised by the petitioner in this writ petition are without any merit and accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant