

GAHC010015212023



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

Case No. : Review.Pet./22/2023

RAJKUMAR KACHARI AND 3 ORS.
S/O- LATE HARESWAR KACHARI, R/O- HENGRABARI NABANAGAR, P.O.
HENGRABARI, P.S. DISPUR, DIST.- KAMRUP(M), ASSAM.

2: BIREN RABHA
S/O- LATE TULSI RAM RABHA
R/O- JAPORIGOG
KRISHNANAGAR
P.O. JAPORIGOG
P.S. DISPUR
DIST.- KAMRUP(M)
ASSAM

3: RAM CHARAN RABHA
S/O- LATE GANESH RABHA
R/O- NICHINPUR
P.O. BIRPARA
P.S. BOKO
DIST.- KAMRUP(R).

4: FAKARUDDIN AHMED
S/O- LATE ABDUR RAHMAN
R/O- VILL.- SUNDARBAN NAGAR
NABARATNA PATH
DAKHINGAON
P.O. KAHILIPARA
P.S. HATIGAON
DIST.- KAMRUP(M)
ASSAM-781019

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,

WPT AND BC DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI-6.

3:THE ASSAM TRIBAL DEVELOPMENT AUTHORITY
REP. BY ITS MEMBER SECRETARY
R.P. ROAD
GUWAHATI.

4:THE CHIEF EXECUTIVE OFFICER

ASSAM TRIBAL DEVELOPMENT AUTHORITY
R.P. ROAD
GUWAHATI-6.

5:THE DIRECTOR

WPT AND BC DEPARTMENT
ASSAM
RUKMININAGAR
GUWAHATI-6

For the Review Petitioner(s) : Mr. F.U. Barbhuiya, Advocate.

For the Respondent(s) : Mr. D.Nath, Addl. Senior Govt. Advocate.

Mr. R. Dhar, S.C., Tribal Affairs.

Mr. P. Nayak, S.C., Finance Department

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

08.04.2024

(Soumitra Saikia, J)

1] This Review Petition is filed against the Judgment and Order dated 22.12.2022 passed in W.A. No. 164 of 2021. The review petitioners as the writ petitioners had approached this Court assailing the rejection of a proposal for regularization of their services as Drivers under the Department of Assam Tribal Development Authority (hereinafter referred to as "ATDA"). The said rejection of their proposal was on the ground that their appointments were made in non-sanctioned posts and non-existent posts without prior concurrence or approval of the State Government. The review petitioners as writ petitioners had filed 2 (two) writ petitions being WP(C) No.956/2016 and WP(C) No.1216/2016. The grievance of the review petitioners before the Writ Court was that the WPT&BC Department, which is the parent Department of the ATDA, had arbitrarily rejected their proposals submitted by the ATDA for creation of the posts of Drivers to accommodate the petitioners by regularising their services. Pursuant to filing of the writ petition, a Single Bench noticing the Provisions of Section 12 of the Assam Tribal Development Authority Act, 1983 which provides that the Authority may have such staff as may be decided by the said Authority (ATDA) with the approval of the Government, meaning thereby that the ATDA is the primary Authority to take a decision as regards the staff that the Authority may

have but qualified by the requirement that the same had to be with the approval of the Government of Assam and accordingly, directed the WPT&BC Department to take a decision as to whether the decision of the ATDA taken under Section 12 of the Act requiring the 4 posts of Drivers is to be approved or not. The WPT&BC Department was directed to give its own reasons either accepting or rejecting the case for approval. Pursuant to the said directions passed in this writ petitions, WPT&BC Department by a speaking order dated 03.01.2018 rejected the proposal for regularisation on the ground that the appointments sought to be made were in non-sanctioned and non-existing posts and without prior concurrence or approval of the State Government. Assailing the said Order dated 03.01.2018 passed by the WPT&BC Department, WP(C) No.2321/2018 was filed. All these 3 (three) petitions i.e. WP(C) No.956/2016, WP(C) No.1216/2016 and WP(C) No.2321/2018 were taken up together and by a common Judgment and Order dated 09.06.2021 passed by the learned Single Judge, the writ petitions were, disposed of. Although the prayers for regularization were rejected, the writ petitions were partly allowed in terms of the directions contained therein.

2] Since their primary prayer for regularization of this services was rejected by the learned Single Judge, Writ Appeal No.164/2021 was filed by the petitioners therein by assailing the Judgment and Order dated 09.06.2021 passed by the learned Single Judge. However, this writ appeal also came to be dismissed by Judgment and Order dated 22.12.2022 which is presently sought to be reviewed.

3] It is urged before this Court that the review petitioners are entitled to the revised scale of pay as per Assam Services (ROP) Rules, 2017. Mr. F.U. Barbhuiya, learned counsel for the review petitioners submits that the prayer

before the Court seeking review is for release of the salary and the arrear pay as per the ROP Rules, 2017. It is urged before this Court that this ground being urged before the learned Single Judge as well as the Appellate Court and the same not being considered constitutes an error apparent on the face of the record and therefore, the judgment and order dated 22.12.2022 passed in W.A. No.164/2021 is required to be reviewed and recalled. Learned Single Judge found that the petitioners are not entitled for quashing of the impugned order dated 03.01.2018 passed in WP(C) No.2321/2018 or to any other order from the Court for regularization of their respective services. Accordingly, the Court partly allowed the Writ Petitions in terms of the directions contained therein.

4] On earlier dates when the matter was listed before the Court, the learned Senior Government Advocate, Assam was permitted to obtain instructions and file necessary affidavit. Today when the matter is called on Board, the learned Senior Government Advocate, Assam has placed before the Court a communication dated 30.03.2024, whereby an amount of Rs.16,04,585/- (Rupees Sixteen Lakh Four Thousand Five Hundred Eighty Five), which is the salary for the period with effect from April, 2023 to March, 2024, has been released as per the last pay scale drawn.

5] Copy of this instruction is placed before the Court and is kept as a part of the case record.

6] Mr. D. Nath, learned Additional Senior Government Advocate, Assam appearing for the Department disputes the contentions raised and submits that the arrear salary and pay as found payable to the petitioners has already been released as per the communication dated 30.03.2024 and which is also placed before the Court.

7] Learned counsel for the parties have been heard. The review petition along with the enclosures have been carefully perused.

8] It is seen that the writ petitions being WP(C) No.956/2016 and WP(C) No.2321/2019 and WP(C) No.1216/2018 were filed where the basic and common prayer of the petitioners was for regularization of their services in the post of Drivers under the ATDA. This claim was urged by the petitioners before the learned Single Judge on placing reliance of the judgment of the Apex Court rendered in ***Nihal Singh v. State of Punjab & Ors.*** reported in **(2013) 14 SCC 65**. The learned Single Judge by Judgment and Order dated 09.06.2021 came to the finding that the petitioners are not entitled for quashing of the impugned orders or to any order for regularisation of their respective services. The learned Single Judge, however, upon consideration of all the submissions made, rejected their claims for regularization in their respective services, but, however, partly allowed the writ petition in terms of the following directions passed therein:

*“a. The respondents would implement the welfare schemes by enlisting the petitioners in Health and Accidental and Death Insurance Scheme as envisaged in the herein before referred case of **the State of Assam vs. Upen Das, (2017) 5 NEJ 553.***

b. In the event there is truth in the allegations made in WP(C) no.2321/2018 that the petitioners have not been paid their salary since the month of December, 2017, then the respondents shall release the arrear salary as per last pay scale drawn within a period of 4 (four) months from the date of service of a certified copy of this order upon the respondent no.4.

c. The current salary shall be paid as and when due.

d. Save and except the reliefs as indicated above, all other prayers made in these three writ petitions are refused.”

9] A perusal of the directions dated 09.06.2021 reveal that the learned Single Judge had directed the respondents to implement the health and accidental and death insurance schemes in so far as the writ petitioners are concerned. Learned Single Judge had directed that in the event there is any truth in the allegations made in WP(C) No.2321/2018 that the petitioners have not been paid their salary since the month of December, 2017, then the respondents shall release the arrear salary as per the last pay scale drawn within the period of 4 (four) months from the date of service of the certified copy of the order on the respondent no.4, namely, the Chief Executive Officer, Assam Tribal Development Authority. The arrear salary as per the last pay scale drawn (emphasis supplied) should be released within a period of 4 (four) months from the date of receipt of a certified copy of this order. The current salary was also directed to be paid as and when due. Save and except the reliefs which were specifically indicated in the order, all other prayers made in these three writ petitions were refused.

10] The Appellate Court duly considered all the submissions made before the Court and upon due consideration, the appeal was found to be devoid of merit and accordingly dismissed. In view of the dismissal of the Appeal, the directions of the learned Single Judge attained finality and the petitioners were entitled to be granted arrear salary as per last pay scale drawn. It is not in dispute before this Court that the last pay scale drawn by the petitioners was the pre-revised scale of pay and not the revised scale of pay under ROP Rules, 2017. The only ground urged before this Court is that even if the Review Petitioners are not entitled for regularisation, they are entitled to their salary as per the revised scale of pay along with the gratuity and leave salary. Accordingly, the review petitioners have not been able to point out any error apparent on the face of the record which calls for review of the Judgment and Order dated 22.12.2022

passed in W.A. No.164/2021. Prayer made for grant of arrear salary as per revised scale of pay is a fresh ground urged before the Court, which cannot be accepted to be an error apparent calling for review of the Judgment and Order dated 22.12.2022 passed in W.A. No.164/2021.

11] Under such circumstances, we are not persuaded by the submissions made by the learned counsel for the review petitioners to review and recall the impugned Judgment and Order dated 22.12.2022 passed in W.A. No.164/2021. The Review Petition is, therefore, dismissed as being without any merit. Liberty, however, is granted to the review petitioners to approach the Writ Court for grant of arrear salary as per the revised scale of pay, if so advised.

JUDGE

CHIEF JUSTICE

Comparing Assistant