



GAHC010131762013



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

Case No. : WP(C)/5747/2013

ISMAIL ALI and 6 ORS
S/O LT. JAFAR KHAN, WORKING AS PEON IN THE O/O THE WELFARE
MINORITIES AND DEVELOPMENT DEPARTMENT, DISPUR, GHY.

2: HAFIZUDDIN
S/O LT. JAMIR UDDIN
WORKING AS DRIVER IN THE O/O THE WELFARE MINORITIES AND
DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI

3: AZIZUR RAHMAN
S/O LT. BALI ALI
WORKING AS PEON IN THE O/O THE WELFARE MINORITIES AND
DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI

4: CHAND MAHAMMAD ALI
S/O LT. KUDRAT ALI
WORKING AS PEON IN THE O/O THE WELFARE MINORITIES AND
DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI

5: ABU MERAJ HUSSAIN
S/O LT. PHULBABA HUSSAIN
WORKING AS STENO-III IN THE O/O THE WELFARE MINORITIES AND
DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI

6: FAREJOR RAHMAN
S/O MD. JOYNAL ABEDIN



WORKING AS UDA IN THE O/O THE WELFARE MINORITIES AND
DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI

7: HANIF ALI
S/O MD. SURAT JAMAL
WORKING AS DRIVER IN THE O/O THE WELFARE MINORITIES AND
DEVELOPMENT DEPARTMENT
DISPUR
GUWAHAT

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, ASSAM

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL AFFAIRS
DISPUR
GHY-6

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
WELFARE OF MINORITY DEVELOPMENT DEPARTMENT
DISPUR
GHY-6

4:THE JT. SECRETARY TO THE GOVT. OF ASSAM
WELFARE OF MINORITY DEVELOPMENT DEPARTMENT
DISPUR
GHY-6

5:THE DIRECTOR
ASSAM MINORITIES DEVELOPMENT BOARD
GANESHGURI
GUWAHATI

6:THE ACCOUNTANT GENERAL AandE
MAIDAMGAON
BELTOLA
GHY-29

7:THE DIRECTOR OF PENSION
ASSAM HOUSEFED
GUWAHAT



B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocate for the petitioners : Shri S. Borthakur, Advocate

Advocate for respondents : Ms. M.D. Bora, SC, WMDD
Shri S.K. Medhi, SC, AG, Assam.
Shri C.S. Hazarika, GA, Assam

Date of hearing : 30.04.2024

Date of judgment : 30.04.2024

7 (Seven) numbers of petitioners have joined together in this petition which has been filed primarily with a claim for pensionary and other post retirement benefits as per the Assam Services (Pension) Rules 1969 (hereinafter called the Rules).

2. The facts as projected in the petition are that the petitioners were appointed as Grade-III and Grade-IV employees in the Assam Minorities Development Board which was constituted in the year 1985. Certain posts for the said Board were sanctioned vide order dated 28.02.1987 and 29.12.1987 and it is contended that the posts are sanctioned post. Vide an order dated 25.01.2012, the Department had permanently retained the said post. Subsequently, the GPF accounts of the petitioners were opened on 06.12.2012.



Thereafter, the Director of the Board had issued a communication dated 25.04.2013 to the Department on the issue of payment of pension to the spetitioners. The said communication was however negated by the Department vide letter dated 22.02.2012 by stating that the Board was registered under the Societies Registration Act, 1860 and accordingly, the petitioners are not entitled to the pensionary benefits. Subsequently, vide communication dated 19.07.2013, the Department had informed the Director of the Board that the employees would not fall under the Rules of 1969.

3. I have heard Shri S. Borthakur, learned counsel for the petitioners. I have also heard Ms. M.D. Bora, learned Standing Counsel, Welfare of Minorities Development Department and Shri S.K. Medhi, learned Standing Counsel, AG, Assam. Shri C.S. Hazarika, learned State Counsel is present for the other State respondents.

4. Shri Borthakur, the learned counsel for the petitioners by referring to Rule 31 of the Rules of 1969 has submitted that three conditions are laid down by the said Rule as qualification for pension. He submits that the petitioners fulfil the aforesaid conditions in view of the fact that the Board is wholly controlled by the Government and for all practical purposes, the petitioners can be treated as Government Servants. It is further submitted that the salaries of the petitioners are paid from the Government funds and the post are permanently retained by the Department. The learned Counsel has also taken the aid of Rule 36 which lays down that continuous temporary or officiating services can also be included for the purpose of pension. It is submitted that for all practical purposes, the post in question are under the Department and even the Director of the Board is an ACS Officer who is paid salary by the Government.

5. In support of his submissions, the learned counsel has relied upon the

decision of this Court reported in **(2004) 3 GLR 211 (Pulin Goswami vs. State of Assam & Ors.)**. In the said case, a direction was given by this Court for release of pensionary benefits to the incumbent in that case who was working as a teacher against a duly sanctioned post.

6. *Per contra*, Ms. Bora, the learned Standing Counsel of the concerned Department has strenuously opposed the writ petition. It is submitted that the petitioners are not Government employees and the order dated 25.01.2012 of permanent retention would itself make it clear that the salaries were paid as a Grant-in-aid and not from the normal Head of salaries. The Department vide communication dated 19.07.2013, after examination of the matter had made it clear that the services of the petitioners would not come within the ambit of the Rules of 1969.

7. By drawing the attention of this Court to the affidavit-in-opposition filed on 20.03.2014, the learned Standing Counsel has placed on record the averments made therein, more specifically in paragraphs 4 and 7. In the said paragraphs, the aspect of payment of salaries as a form of Grant-in-aid and the aspect that permanent retention would not mean eligibility to pension have been clearly stated.

8. The learned Standing Counsel has also relied upon the case of the Hon'ble Supreme Court in **State of Assam vs. Barak Upatyaka D.U. Karmachari Sanstha** reported in **(2009) 5 SCC 694**. It is submitted that in the aforesaid decision, the Hon'ble Supreme Court has carved out a distinction between the aspect of holding a respondent to be a "State" within the meaning of Article 12 of the Constitution of India and the aspect of financial burden to be cast upon such a body.



9. Shri S.K. Medhi, learned Standing Counsel, AG, Assam, while endorsing the submission of the learned Standing Counsel of the Department has submitted that the petitioners cannot be held to have fulfilled the conditions laid down in Rule 31 of the Rules of 1969 to claim the pensionary benefits.

10. Shri Hazarika, the learned State Counsel also endorses the aforesaid views of the Department. He also submits that the State cannot be financially burdened inasmuch as, the initial entry of the petitioners in their service was not with any such condition of payment of pension.

11. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

12. The grounds on which the present claim is based, as contended are that the post were sanctioned post and the same were permanently retained. It is also contended that for all practical purposes, the Board has to be construed to be a "State" within the meaning of Article 12 of the Constitution of India. The permanent nature of the services rendered was contended to be a relevant factor towards consideration of the claim.

13. The first contention that the posts are sanctioned Government posts is not substantiated with the materials placed on record. No doubt, the posts were permanently retained, and the same were sanctioned vide the order dated 28.02.1987, such sanction was only with respect to the functioning of the Board. It is not in dispute that the Board is a Society registered under the Societies Registration Act, 1960.

14. This Court has also noticed that though the posts were permanently retained, there is a stipulation that the salaries to the employees, (petitioners)

were to be paid from the Grant-in-aid and not under the ordinary Head of salaries.

15. The grievance is not with regard to any aspect of not making such Grants-in-aid available whereby the salaries and other aspects have not been able to be released to the petitioners. The grievance, as observed above is towards the pensionary benefits. This Court has also been informed that out of the 7 (seven) numbers of petitioners, petitioner nos. 6 & 7 have retired from service after attaining the age of superannuation.

16. The contention that the Board in question is to be treated to come within the ambit of "State" under the meaning of Article 12 of the Constitution of India may be relevant for many aspects towards its functioning *vis-a-vis* the employees. However, the said aspect cannot be stretched to the issue of payment of pensionary benefits, which does not *prima facie* appears to be correct by the Rules of 1969.

17. This Court has also taken into consideration that nothing has been placed on record that at the time of induction into the services, any such condition was attached or stipulated or any expectation given that the petitioners would be given pensionary benefits. On a specific query, the learned counsel for the petitioners have fairly submitted that certain post retirement benefits are given to the employees but not pension under the Rules of 1969.

18. The aforesaid aspect of the matter has been put to rest by the Hon'ble Supreme Court in the case of ***Barak Upatyaka*** (supra). In the aforesaid case, the Hon'ble Supreme Court was considering the demand of the employees of Cachar and Karimganj District Milk Producers' Cooperation Union Ltd. (CAMUL). Though the Hon'ble Supreme Court had come to a conclusion that in view of the

nature of the control of the Government over the Society may bring it within the ambit of Article 12, that by itself would not be enough to pass a direction for payment of salaries and other dues to the employees by the State Government. For ready reference, the relevant portion of the judgment is extracted herein below:

“9. The various averments of the respondent in the writ petition about the all-pervasive financial, administrative and functional control of CAMUL by the State Government, even if assumed to be true, may at best result in CAMUL being treated as “State” within the meaning of that expression under Article 12 of the Constitution of India. If it is a “State”, in case of violation of any of the fundamental rights of its employees, by CAMUL, by taking recourse to a writ petition under Article 226 of the Constitution of India. But the fact that a corporate body or cooperative society answers the definition of “State” does not make it the “State Government”, nor will the employees of such a body, become holders of civil posts or employees of the State Government. Therefore the fact that CAMUL may answer the definition of “State” does not mean that the State Government is liable to bear and pay the salaries of its employees.

“11. Therefore, CAMUL, even if it was “State” for the purposes of Article 12, was an independent juristic entity and could not have been identified with or treated as the State Government. In the view we have taken, it is not necessary in this case to examine whether CAMUL was “State” for the purposes of Article 12.

23. What clearly holds the field at present is the principle laid down and reiterated by the Constitution Bench of this Court in Steel



Authority of India Ltd. v. National Union Waterfront Workers wherein this Court categorically held:

“37. We wish to clear the air that the principle, while discharging public functions and duties the government companies / corporation / societies which are instrumentalities or agencies of the Government must be subjected to the same limitations in the field of public law constitutional or administrative law-as the Government itself, does not lead to the inference that they become agents of the Centre /State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and / or State Acts or under private law.”

24. We, therefore, reject the interpretation put forth by the respondent, on the tentative observations in Kapila Hingorani (I) and Kapila Hingorani (II), to contend that the Government would be liable for payment of salaries and other dues of employees of the public sector undertakings. We are of the considered view that the decision of the High Court cannot therefore be sustained.”

19. This Court has also taken the aid of a recent decision of the Hon'ble Supreme court in the case of ***State of Orissa & Anr vs. Orissa Khadi and Village Industries Board Karmachari Sangh & Anr.*** passed in Civil Appeal No. 6944/2015 vide judgment and order dated 17.03.2023. It is held that employees of the Board in question namely, the ***Orissa Khadi and Village Industries Board*** cannot be held to be at par with Government employees and therefore not entitled to pension. It may be noted that the Hon'ble Supreme



Court has also gone to the extent of observing that such powers cannot be exercised even by taking into recourse Article 142 as the same would be contrary to the law.

20. As regards the case of ***Pulin Goswami*** (supra) cited by the petitioners, the facts are distinguishable inasmuch as, the petitioner in that case was working as a teacher against a duly sanctioned post continuously and only because the services were under the Karbi Anglong Autonomous District Council (KAAC), such pensionary benefits could not have been denied to him. It may be mentioned that the KAAC is created under the Sixth Schedule to the Constitution of India unlike the present Board within is a Society under the Societies Registration Act.

21. In view of the aforesaid discussion, this Court is of the considered opinion that no relief can be granted to the petitioners and accordingly the writ petition stands dismissed.

JUDGE

Comparing Assistant