GAHC010106282019

2026:GAU-AS:3019

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

Case No. : WP(C)/2237/2019

JATINDRA KR. GOSWAMI
S/O- LT NARAYAN CH. GOSWAMI
R/O- VILL AND P.O. GOBINDAPUR
P.S. PATACHARKUCHI
DIST- BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
POLITICAL (A) DEPTT.
DISPUR
GHY-6

2:THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GHY-6

3:THE ASSAM HUMAN RIGHTS COMMISSION
REP. BY ITS SECY.
STATFED H O BUILDING
GMC ROAD
BHANGAGARH
GHY-5

4:THE COMM. ANND SECY. TO THE GOVT. OF ASSAM
FINANCE (ESTT.) DEPTT.
DISPUR
GHY-6

Advocate for : MR. S BARUAH

Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

BEFORE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

24/02/2026

Heard Mr. N K Kalita, learned counsel for the petitioner. Also heard Mr. A Chakraborty, learned Government Advocate, Assam, appearing for the respondent Nos. 1 & 2 and Mr. R Barpujari, learned Standing counsel, Finance Department, appearing for the respondent No. 4. None has entered appearance for the respondent No. 3.

2. The grievance raised by the petitioner in the present writ petition is to the effect that he is to be construed to be an employee in service with effect from the date of his initial appointment on temporary basis, i.e., w.e.f. 22.01.1997 and accordingly, a declaration is sought to the effect that he is covered under the Old Pension Scheme and not under the New Pension Scheme.

3. The petitioner, herein, was initially recruited as a Lower Division Assistant (LDA) in the establishment of the Assam Human Rights Commission (hereinafter, referred to as the Commission). Such engagement of the petitioner was so effected, w.e.f. 22.01.1997. The petitioner, thereafter, continued in his services in such capacity as an LDA on fixed pay basis. The regularization of the petitioner and other similarly situated employees engaged in the Commission, not having been effected by the authorities and posts in this connection not being sanctioned by the Government of Assam, the petitioner along with others approached this Court by way of instituting a writ petition, being WP(C) No. 2966/2002. The said writ petition was given a final consideration by a Co-ordinate Bench of this Court and vide judgment and order dated 13.04.2005, the same was disposed of with a direction, inter-alia, to the respondent authorities to consider and take a decision with regard to framing of service rules, creation of posts and fixation of pay scale of the employees working in the

Commission. A further direction was issued to consider the case of the petitioners, therein, for regularization of their services.

In pursuance to the directions passed by a Co-ordinate Bench of this Court vide judgment and order dated 13.04.2005, the Commission in its meeting held on 26.07.2006 arrived at a decision to regularize the services of the employees working, therein, including the petitioner, herein. Accordingly, vide an order dated 31.07.2006, the services of the petitioner came to be regularized against the post of LDA, as available in the Commission. The petitioner, being an appointee after 01.02.2005, he was held to be covered by the provisions of the New Defined Contribution Pension Scheme and not by the Old Pension Scheme under the provisions of the Assam Services (Pension) Rules, 1969.

It is projected that the petitioner had also subscribed for the New Defined Contribution Pension Scheme. The petitioner, thereafter, superannuated from his services. On the pension and pensionary benefits dues to the petitioner being so processed under the New Defined Contribution Pension Scheme and the petitioner, not being allowed to avail the benefits under the provisions of the Assam Services (Pension) Rules, 1969, he has instituted the present writ petition.

4. Mr. N K Kalita, learned counsel for the petitioner, by reiterating the facts, noticed, hereinabove, has referred to the resolutions as adopted by the Commission in its meeting held on 26.07.2006 and has contended that the said Commission, while proceeding to regularize the services of 11 (eleven) employees working in the Commission, including the services of the petitioner, herein, had directed for maintenance of their seniority, with effect from the date of their original joining in the Commission. It is submitted that the petitioner, having joined the Commission, w.e.f. 22.01.1997, such regularization effected in his case must now relate back to 22.01.1997.

Mr. Kalita, learned counsel for the petitioner submits that the order dated 31.07.2006, having been so issued basing on the said resolution adopted by the Commission in its meeting held on 26.07.2006, the same should be understood to have affected the regularization of the services of the petitioner, herein, against the post of LDA with

retrospective effect, i.e., with effect from the date of his initial engagement in the Commission, i.e., 22.01.1997. Mr. Kalita, submits that the petitioner is to be deemed to be working in a pensionable establishment and accordingly, the provisions of the Assam Services (Pension) Rules, 1969 is held to be applicable in his case.

In the above premises, Mr. Kalita, learned counsel for the petitioner submits that a direction would be called upon to be issued by this Court to the respondents to process the pension and pensionary benefits of the petitioner under the provisions of the said Rules of 1969.

5. Mr. A Chakraborty, learned Government Advocate, Assam, appearing for the respondent Nos. 1 & 2 submits that the prayer of the petitioner would not mandate an acceptance from this Court, inasmuch as, the regularization of the services of the petitioner, vide order dated 31.07.2006 was with prospective effect and the same was never given a retrospective effect. He submits that the post, having been created and thereafter, the regularization of the services of the petitioner having been so effected, the petitioner being working prior thereto, without a post being available for the purpose, the services of the petitioner cannot be deemed to have been so regularized, with effect from the date of his initial engagement.

Mr. Chakrabory, learned Government Advocate, Assam further submits that the petitioner, without any objection, had subscribed to the provisions of the New Pension Scheme, coming into operation, w.e.f. 01.02.2005 and the said aspect of the matter having attained finality, the delay occasioning in instituting the present proceeding, the reliefs, as prayed for, herein, would not mandate an acceptance by this Court.

6. Mr. R Barpujari, learned Standing counsel, Finance Department submits that the resolution as adopted by the Commission in its meeting held on 26.07.2006 has been misconstrued by the petitioner, herein. He submits that the Commission, while proceeding to regularize the services of the petitioner and other employees working in the Commission at the relevant point of time, had not resolved to effect such regularization with retrospective effect. He submits that the seniority of the employees working in the organization was only

directed to be maintained by reckoning their respective dates of joining the services in the Commission. He submits that the said prescription as contained in the decision as arrived at by the Commission in its meeting held on 26.07.2006 cannot be given any other meaning than that can be plainly culled out there from. He submits that the order dated 31.07.2006 is in connossance with the decision of the Commission as arrived at in its meeting held on 26.07.2006 and the services of the petitioner was regularized only with prospective effect. He submits that the petitioner, having become a Government servant, w.e.f. 31.07.2006, he cannot be held to be covered by the provisions of the Assam Services (Pension) Rules,1969 and he is covered by the provisions of the New Pension Scheme coming into effect, w.e.f. 01.02.2005.

Mr. Barpujari, learned Standing counsel, Finance Department has further submitted that the order dated 31.07.2006, having only effected the regularization of the services of the petitioner with prospective effect, in absence of a challenge to such order of regularization, the same has attained finality and the petitioner cannot question the same in the present proceeding, in view of the long lapse of time, occasioning since the order dated 31.07.2006 was so passed.

7. I have heard the learned counsels for the parties and also perused the materials available on record.

8. The facts, as noticed hereinabove, is not in dispute.

9. The rival contentions of the learned counsels for the parties have brought forth an issue to the effect as to whether the regularization of services of the petitioner vide order dated 31.07.2006 was so effected with retrospective effect, i.e., with effect from the date, he had so joined the services of the Commission on temporary basis. The said issue can be understood from a perusal of the resolutions adopted by the Commission in its meeting held on 26.07.2006. The operative portion of the said resolution dated 26.07.2006, being relevant, is extracted hereinbelow:

> "*NOW, THEREFORE, the Assam Human Rights Commission, after taking into consideration the above facts and the legal opinion of Sri D.C. Mahanta, Senior*

Advocate, Gauhati High Court and in exercise of the powers conferred upon the Commission by section 27 (2) of the Protection of Human Rights Act, 1993, regularize the services of the following 11 employees against the post indication in this resolution. The Seniority of the employees shall_be maintained as per their original date of joining the Assam Human Rights Commission."

10. A perusal of the operative portion of the said decision would reveal that the Commission had resolved in exercise of its powers conferred under Sub Section (2) of Section 27 of the Protection of Human Rights Act, 1993, to regularise the services of 11 (eleven) employees working in the Commission against the posts available for the purpose. The name of the petitioner, who figured against the post of LDA. The original date of joining by the petitioner in the Commission was disclosed as 22.01.1997.

11. A further perusal of the said decision of the Commission would reveal that the Commission had also resolved that the seniority of the employees shall be maintained as per their original date of joining in the Commission. The petitioner, basing on the said decision arrived by the Commission with regard to the criteria to be applied for determination of intense seniority of the employees of the Commission, whose services were being regularized, has contended that the regularization of his services was decided by the Commission to be regularized with retrospective effect, i.e., w.e.f. the date he had initially joined the services of the Commission. The commission in pursuance to the resolution adopted in its meeting held on 26.07.2006 had proceeded to issue an order dated 31.07.2006 regularizing the services of the petitioner. The said order being relevant is extracted hereinbelow:

"*OFFICE OF THE ASSAM HUMAN RIGHTS COMMISSION*

GMC Road, Bhangagarh, Guwahati-781 005

No AHRC (PLA) 1/98/185 *dated 31 July, 2006*

ORDER

WHEREAS, Shri Jatindra Kumar Goswami, has been working in the Assam Human Rights Commission since 22/01/1997 as Lower Division Assistant continuously

without any break.

WHEREAS, 2(two) posts created by the Government vide letter No PLA 397/95/5, dtd 14th Dec, 1995 are lying vacant, AND

NOW, THEREFORE, the Assam Human Rights Commission, in exercise of its powers under section 27(2) of the Protection of Human Rights Act, 1993 and in pursuance of the Minutes of the Commission's meeting held on 26th July, 2006 and the Resolution adopted in the said meeting in the light of the judgment dtd. 13/04/2005 of the Hon'ble Gauhati High Court in WP(C) No 2966/2002, hereby regularize the services of Shri Jatindra Kumar Goswami in the post of Lower Division Assistant in the pay scale of 3490-90-4480-120-4600-EB-120-5200-175-6600-250-8100 plus other allowances as admissible and sanctioned by the Government from time to time.

Secretary,

Assam Human Rights Commission

dated: 31st July, 2006"

12. A perusal of the said order dated 31.07.2006 would reveal that the Commission had regularized the services of the petitioner, herein, in the applicable scale of pay against the post of LDA with prospective effect. The order does not reveal that the said order was so issued regularizing the services of the petitioner with retrospective effect.

13. This Court also notices that the decision arrived at by the Commission in its meeting held on 26.07.2006 for regularization of the services of the employees working in the Commission on temporary basis was so effected after the post for the purpose, was sanctioned by the Government of Assam in the concerned department, in pursuance to the directions passed in this connection by a Co-ordinate Bench of this Court vide judgment and order dated 13.04.2005 in WP(C) No. 2966/2002.

14. A post being not available for the purpose of regularizing the services of the petitioner, it cannot be held that the petitioner's services stood regularized prior to a date

before the issuance of the order dated 31.07.2006. The petitioner had accepted the order dated 31.07.2006 along with the conditions as contained, therein and had assumed the charge of the post against which his services was so regularized, way back on 31.07.2006, itself. The petitioner is not found to have assailed the order dated 31.07.2006 on the ground that the same was so issued with prospective effect only.

15. The petitioner having become a permanent employee against a sanctioned vacant post, w.e.f. 31.07.2006, the earlier services rendered by the petitioner on temporary basis, w.e.f. 22.01.1997 in the considered view of this Court being not so rendered against any sanctioned vacant post, would not be mandated to be so construed for the purpose of determining as to whether the petitioner would be covered under the Old Pension Scheme as mandated under the provisions of the Assam Service (Pension) Rules, 1969 and/or the New Defined Contribution Pension Scheme coming into effect, w.e.f. 01.02.2005. The petitioner, herein, having also subscribed to the New Pension Scheme proximate to the time of regularization of his services effected vide order dated 31.07.2006, the present writ petition having admittedly been filed after 13 (thirteen) years since the date of such regularization of services of the petitioner, this Court is of the considered view that the grievance raised in the present petition is also hit by the principles of delay and laches.

16. The services rendered by the petitioner, w.e.f. 22.01.1997 to 30.07.2006 in the considered view of this Court cannot be deemed to be qualifying service for the purpose of determination of pension and pensionary benefits. The right accruing to the petitioner as an employee duly appointed against a sanctioned vacant post being so traceable only to the date from when the order dated 31.07.2006 was so issued, the petitioner must be deemed to be covered by the provisions of the New Pension Scheme, which had come into effect, w.e.f. 01.02.2005 in the State.

17. In view of the above conclusions reached by this Court, this Court is of the considered view that the petitioner, herein, is not entitled to have his services regularized with effect from the date of his initial engagement in the Commission, i.e., w.e.f. 22.01.1997 and the petitioner would be held to be holding a sanctioned vacant post only, w.e.f. 31.07.2006, on his services being so regularized in the Commission. Further, the petitioner is held to be

covered by the New Pension Scheme and the benefits, so accruing to the petitioner under the said scheme be made available to the petitioner, if not so made available, in the meanwhile.

18. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant