

GAHC010201172021



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

Case No. : WP(C)/6550/2021

TAPAN CHANDRA KALITA
S/O LATE RAJAT CH. KALITA, R/O H.NO. 16, RANGPATHAR BYE LANE, P.O.
AND P.S.-AMBARI FATASHIL, DIST- KAMRUP(M), ASSAM, PIN-781025

VERSUS

THE STATE OF ASSAM AND 5 ORS
COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, PUBLIC
WORKS DEPARTMENT, DISPUR, GUWAHATI-6

2:THE COMMISISONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

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

4:THE CHIEF ENGINEER
PWD (ROADS)
ASSAM
CHANDMARI
GUWAHATI-3

5:THE DIRECTOR
ASSAM ROAD RESERCH AND TRAINING INSTITUTE
PWRD
FATASHIL AMBARI
GUWAHATI-25

6:RESEARCH OFFICER
ASSAM ROAD RESEARCH AND TRAINING INSTITUTE
PWRD
FATASHIL AMBARI
GUWAHATI-2

Advocate for the Petitioner : MR. B SAIKIA

Advocate for the Respondent : SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

07.12.2021

Heard Mr. S. Muktar, learned counsel for the petitioner, who submits that the petitioner was appointed as a Work Charge Field Assistant *w.e.f.* 12.02.1981 in the Office of the Research Officer, PWD (R&B) Road Research Laboratory, Guwahati. He was thereafter appointed as a Work charged Surveyor by the Director, Road Research Laboratory, PWD (R&B), Ambari, Guwahati-25 vide order dated 24.09.1986. Thereafter, vide Office order dated 09.10.1990, issued by the Chief Engineer, PWD (Roads), Assam, the petitioner was appointed against a sanctioned post of Scientific Assistant in the Pay Scale of 580 – 1165/- per month and the petitioner joined the said post on 09.10.1990. He submits that though the petitioner's Work Charge period of service was not regularized, his pay was protected at the time of his regular appointment as Scientific Assistant.

2. The petitioner's counsel submits that the petitioner retired from service on 31.03.2019. Though the petitioner is getting provisional pension, he has not been given regular pension on the ground that his service as Work Charge Field Assistant was not regularized. He submits that the petitioner has submitted a representation dated 12.08.2021 to the respondent No. 5, praying for providing ex-post facto approval to the Pay Protection given to the petitioner at the time

of his appointment as Scientific Assistant. However, the same has not been decided by the respondent No. 5 till date.

3. Mr. P. Nayak, learned counsel appears for all the respondents except respondent No. 3, who is represented by Mr. A. Hasan. Mr. P. Nayak submits that the decision to be taken by the PWRD Department, with regard to whether ex-post facto approval can be given to the Pay Protection provided to the petitioner at the time of his regular appointment to the post of Scientific Assistant, has to be done with the concurrence of the Finance Department.

4. On perusing the writ petition, it is noticed that the Addl. Chief Engineer (P), PWD (Roads), Assam has written letter No. CEE/61/2019/4 dated 14.05.2020 to the respondent No. 5, with regard to the issue of giving Ex-post Facto approval/concurrence of Pay Protection in respect of the petitioner in the post of Scientific Assistant, wherein, a request has been made to the respondents to furnish the necessary justification/clarification on the point for not moving the proposal of Ex-post Facto approval earlier to the Finance Department on Pay Protection. The contents of the letter dated 14.05.2020 is reproduced below:-

“Sub:- Regarding Ex-post-facto approval/concurrence of Pay protection in respect of Sri. Tapan Ch. Kalita in the post of Scientific Assistant.

Ref:- 1. Govt. letter No. RBEB.75/2019/134, dtd. 08.05.2020 (Copy enclosed)

2. Your letter No. EG/75/30/Pt.VI/4639, dtd 25.09.2019.

3. This office letter Memo No. CEE/61/2019/4-A, dtd. 30.09.2019

Sir,

With reference to the subject quoted above, I am to enclose herewith a copy Govt. letter No. RBEB.75/2019/134, dtd 08.05.2020, the

contents of which are self explanatory. Therefore, you are requested to furnish the necessary justification/clarification on the point for not moving the proposal of ex-post facto approval earlier to the Finance Deptt. on pay protection in respect of the services of Sri. Tapan Ch. Kalita, Retd, Scientific Asstt. for onward submission to the Govt.

Further, the original Service Book 4 (four) parts of Sri. Tapan Ch. Kalita, Retd. Scientific Asstt. as received vide your letter No. EG/75/30/Pt-VI/4639, dtd 25.09.2019 are returned herewith.

Enclo:- As above"

5. Besides the above, the Deputy Secretary to the Govt. of Assam (I/C), PWRD, Establishment (B) Branch, Dispur has written letter No. RBEB.75/2019/137, dated 23.11.2020 to the Chief Engineer, PWRD (Roads), Assam, which is the following effect:-

"Sub : Regarding ex-post facto approval on pay protection in respect of the services of Sri. Tapan Ch. Kalita, Retd, Scientific Assistant, ARR&TI

Ref : (i) This Department's letter No. RBEB.75/2019/134, dtd. 08.05.2019 and

(ii) Your letter No. CEE/61/2019/4, dtd. 30.09.2020.

Sir,

With reference to the subject cited above, I am directed to request you kindly to examine the proposal as per the terms & conditions as laid down in the Finance Department's O.M FEC(II) 49/2010/Pt./52, dtd 27.06.2013 (copy enclosed) and re-submit the same with proper justification as desired by the Finance Department for taking further necessary action."

Subsequent to the above letters, the Chief Engineer, PWRD (Roads), Assam has written a letter dated 16.12.2020 to the Deputy Secretary to the

Govt. of Assam, P.W.R Department, (Esstt.-B) Branch, stating that since the appointment of the petitioner in the post of Scientific Assistant was against a regular sanctioned post and as the petitioner had served for 29 years 5 months in the said post till his superannuation on retirement on 31.03.2019, perhaps, there was no need for regularizing his previous service as – (1) W/C person as Filed Asstt. (12/02/1981 to 24/09/1986) and (2) W/C person as Surveyor (25/09/1986 to 08/10/1990). The letter dated 16.12.2020 then requested the Government in the PWRD to take up the matter with the Finance Department for granting Ex-post Facto approval on Pay Protection as already allowed by the respondent No. 5.

6. In view of above, Mr. P. Nayak shall obtain instructions as to whether the Deputy Secretary to the Govt. of Assam, PWRD (Esstt./B), Branch has approached the Finance Department for granting Expo Facto approval on the Pay Protection proposal.

7. List the matter on 06.01.2022.

JUDGE

Comparing Assistant