

GAHC010090732019



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

**Case No. : WP(C)/2892/2019**

MAFIJAR RAHMAN  
S/O LT. BAKKAR ALI, VILL. GOTIONG, P.O. KALIABHOMORA, DIST.-  
SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,  
DISPUR GHY-6

2:THE DIRECTOR OF FISHERIES  
ASSAM  
GUWAHATI  
MEAN BHAWAN  
GUWAHATI-16

3:THE DEPUTY COMMISSIONER CUM CHAIRMAN FFDA SONITPUR  
TEZPUR  
P.O. TEZPUR  
DIST.-TEZPUR  
ASSAM

4:THE JOIN DIRECTOR OF FISHERIES (FFDA)  
ASSAM  
GUWAHATI-1

5:THE DISTRICT FISHERY DEVELOPMENT OFFICER AND CHIEF  
EXECUTIVE OFFICER  
FISH FARMERS DEVELOPMENT AGENCY  
FFDA SONITPUR  
TEZPUR  
ASSA

**Advocate for the Petitioner : MR. U K NAIR**

**Advocate for the Respondent : GA, ASSAM**

Linked Case : WP(C)/4407/2015

KRISHNA GHOSH  
W/O MR. SUDEB GHOSH R/O JYMOTINAGAR MAIN ROAD  
NEAR UDAYCHAL CHILDREN LIBRARY PANDU  
GUWAHATI-12  
DIST. KAMURP M  
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF FISHERY  
DEPARTMENT  
ASSAM  
DISPUR  
GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY

FINANCE DEPARTMENT  
GOVT. OF ASSAM  
DISPUR  
GUWAHATI - 781006.

3:THE DIRECTOR OF FISHERIES ASSAM

GUWAHATI MEAN BHAWAN  
GUWAHATI-16.

4:THE DEPUTY COMMISSIONER-CUM- CHAIRMAN  
FFDA KAMRUP  
P.O. KAMRUP  
DIST. KAMRUP M  
ASSAM  
GUWAHATI -01.

5:THE DISTRICT FISHERY DEVELOPMENT OFFICER

and CHIEF EXECUTIVE OFFICER

FISH FARMERS DEVELOPMENT AGENCY  
FFDA KAMRUP M  
ASSAM  
GUWAHATI.

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Advocate for : MSW YHOSHII  
Advocate for : appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE  
HONOURABLE MR JUSTICE SONGKHUPCHUNG SERTO**

**JUDGMENT & ORDER (CAV)**

**Date : 26-03-2020**

Heard Mr. U.K. Nair, learned Sr. counsel for the petitioner in both the writ petitions and also heard Mr. P. Nayak, learned counsel for the Finance Department and Ms. M.D. Bora, learned Government Advocate appearing for the respondents No. 1, 3 & 4 in both the writ petitions.

**2.** These two writ petitions have been heard together and are being disposed of by this common judgment and order since, the petitioners were employees of the same department or organization and praying for the same relief.

The petitioner in W.P.(C) No. 2892/2019 was initially appointed as LDA-cum-Typist in the pay scale of Rs. 240-5-265-EB-7-335-EB-9-380/- p.m vide order dated 30.11.1978, issued by the Executive Officer, Fish Farmers Development Agency (in short, FFDA). Thereafter, he was promoted to the post of Accountant vide order dated 30.01.1987 in the scale pay of Rs. 675-25-800-EB-30-1100/- p.m. The petitioner continued to work in that capacity till he retired from service on 31.08.2012. After his retirement, one Sri. Mitha Ram Das, UDA of the District Fishery Development Officer was appointed to his post. Prior to his retirement, the petitioner submitted a representation to the Director of Fishery, Assam praying for payment of his retirement benefits and the same was forwarded to the Deputy Secretary to the Government of Assam, Fishery Department vide letter dated 03.02.2012 with a request to take up the matter with the appropriate

authority. The Deputy Secretary through a letter dated 27.02.2012 informed the Director of Fishery, Assam that the matter would be taken up at the time of retirement of the petitioner. Accordingly, the Director of Fishery, Assam submitted the proposal for payment of retirement benefit to the petitioner to the Government of Assam as submitted by the Chief Executive Officer concerned. Since, no pensionary benefits were extended to him in spite of the proposal submitted by his higher authority, he filed a writ petition being W.P.(C) No. 6447/2014 in this Court. However, the same was withdrawn with liberty to file afresh, on the verbal promise made to him by the respondents that his case would be considered. After the writ petition was disposed of vide order dated 04.12.2017, the Managing Committee, FFDA headed by the Chairman-cum-Deputy Commissioner released a sum of Rs. 3,41,730/- as leave encashment but did not give any other benefits. Being aggrieved by none extension of pensionary benefits, the petitioner is before this Court praying for issuance of appropriate writ or order or direction directing the respondents to pay all the pensionary benefits which are extended to Government employee of Assam Government.

**3.** The petitioner in W.P.(C) No. 4407/2015 was appointed as Stenographer (English) in the scale pay of Rs. 275-9-320-EB-10-420-EB-11-475/- p.m. plus other allowances as admissible to the under qualified Steno rules issued by the Chairman, Fish Farmers Development Agency, Kamrup vide his letter No. FFDA/EG.37/81-82/854, dated 28.11.1981. The appointment was purely temporary and valid upto 15<sup>th</sup> of December, 1981. Thereafter, she has stated to have cleared the Stenographer exam held by the Government of Assam and was given scale of Stenographer Grade-III and continued to serve in that position till she was superannuated on 31.03.2013 after serving for about 31 years. After her retirement, the Chief Executive Officer, Fish Farmers Development, Kamrup submitted a budget proposal for her retirement benefits before the Director of Fishery Department, Government of Assam, vide his letter No. 2112/655, dated 01.04.2014. But no positive action was taken by the respondents to extend pensionary benefits to her except releasing of her GPF amount which was a sum

of Rs. 57,300/-. Being aggrieved by none extension of the pensionary benefits as extended to the employees under the Government of Assam, the petitioner is here before this Court praying for issuance of appropriate writ or order or direction directing the respondents to extend the pensionary benefits.

**4.** Mr. Nair, learned Sr. counsel submitted that the Fish Farmers Development Agencies were created by the Government of Assam for promoting the interest of farmers in Assam with funds provided in the form of grant-in-aid which is source from the centrally sponsored schemes and partly provided by the State Government and every agency is managed by a Managing Committee constituted by the Government. The committee members are drawn from the responsible Government Officers of the State and their function of the committee are as follows;

*“The functions of the committee will be as follows;*

- 1. Finalization of the list of water areas for development of pisciculture.*
- 2. Entrustment of specific matters requiring coordination of follows up action to the chairman of one or more members of the committee.*
- 3. Selection of candidate and allotment of water areas to them though a selection committee consisting of 3 members of the Managing Committee, one on when will be the Chief Executive Officer.*
- 4. Arrangement for Fishery leases etc. to the Fish Farmers and for the preparation of plans and estimate and Executive of world.*
- 5. Final selection of a Commercial Bank to function as the lead Bank for the Agency to lend financial assistance to Fish Farms.*
- 6. Obtaining the services of Technical and other staff of deputation from the State Government and advise from experts form time to time.*
- 7. Finalization and approval of project report or proposals to be send to Centre/State Govt./Commercial Bank.*
- 8. Arrangement for supply of inputs, equipments or proposal and transfer of technology to the Fish Farmers' through demonstrations etc. and arrangement for fishing and Marketing.*

9. *Matters relating to financial assistance from the commercial Bank and Govt. and channelizing funds relating to subsidy and loans received from the State Govt. to the Fish Farmers.*
10. *Arrangements concerning recoveries of loans from fish farmers.*
11. *Periodical review of progress and finalization of various reports to the State Govt./Director of Fisheries/Union Ministry of Agriculture”.*

The Sr. counsel further submitted that the employees of the agencies are appointed by the Managing Committee and they are paid by the Government, therefore, they are employee of Government of Assam in every sense of the term and they cannot be treated differently.

Mr. Nair referred to Rule-31 Assam Services (Pension) Rules, 1969 and submitted that as per the provision of this rules a person who is in service of the Government of Assam or an employees of the Government must meet three requirements to be entitled to pension and pensionary benefits. They are; (i) his service must be under the Government of Assam, (ii) the post he or she held must be substantive and permanent and, (iii) he must have been paid by the Government of Assam. Thereafter, the learned counsel submitted that the entity i.e. the FFDA which appointed the petitioners and under whom they served was one created by the Government of Assam for advancing the welfare of Fisherman in the State of Assam and, the post in which they were appointed and served till their retirement on superannuation was substantive and permanent because after their retirement some other people were appointed to the vacancies and, they were paid from the fund provided by the Government of Assam. Therefore, the petitioners met all the requirements given under Rule-31 of Assam Services (Pension) Rules.

Mr. Nair also submitted that the petitioners were allowed to enjoy all the benefits of pay revisions made by the Government of Assam from time to time and they were also given all the allowances paid to the other employees of the Government of Assam. As such, there is no reason to deny pension and pensionary benefits to the petitioners. On a query made by the Court the learned counsel submitted that other employee of the agency who retired earlier have

also not been paid pension.

In support of his submission that the petitioners are entitled to pension, the learned counsel cited the judgment of a Division Bench of this High Court passed in the case of **Dolley Borpujari –versus- State of Assam and Others**, reported in **2010(2) GLT 147**. The relevant paragraphs relied upon are paragraph-2, 3, 5, 6, 12, 13, 14, 15 & 18. The contents of these paragraphs are reproduced below;

*“2. This appeal is presented against the judgment and order dated 16.6.06 in W.P.(C) 3053/04, whereby the learned Single Judge held that the writ petitioner does not qualify for pension under the second condition of Rule 31 of the Assam Services (Pension) Rules, 1969 (hereinafter referred to as the Rules) as she was not holding any post on substantive and permanent basis. By the impugned judgment the learned Single Judge by referring to the Proviso to Rule 31 which enables the Governor to relax the rigor of the Rule in individual cases, remitted the claim of the writ petitioner who had rendered 14 years of service under the Assam Official Language (Translation of Central Laws) Commission (hereinafter referred to as the Commission) as the functioning of the Commission was found to be continuing and is expected to continue in foreseeable future.*

*3. The appellant was appointed as a Language Officer under the Commission constituted by Notification dated 21.7.86, for a period of 3 years or till the continuation of the Commission, whichever is earlier by appointment order dated 8.5.87. Subsequently by promotion order dated 1.9.90 she was appointed on promotion as Sr. Language Officer for a period upto 21.7.91 or till the Commission continues, whichever is earlier. Continuance of the appellant's service was ensured by passing of retention order from time to time, for the post held by the appellant and others employees in the Commission. The appellant served in the Commission in this fashion till 1.9.2001 when she was superannuated from service on attaining the age of 58 years. Thereafter she submitted her pension papers for granting of pension. Since no positive response was received, the appellant being aggrieved filed W.P.(C) 3053/04 seeking a direction from the Court for grant of pensionary benefit by contending that 14 years service rendered with the Commission should be considered as*

*eligible for grant of pension. The said claim was opposed by the respondents by contending that the appellant was appointed on contract basis and pension for such contract services are inadmissible under the provisions of Rule 23 (f) of the Rules.*

5. *Before proceeding any further, it may be appropriate now to refer to some of the provisions of the Assam Services (Pension) Rules, 1969. Rule 9 defines "pension". Rule 11 defines "superior service" to mean any kind of service which is not Class-IV service. Rule 111 provides that service of an officer does not qualify for pension unless, (i) the service is under the Government; (ii) the employment must be substantive and permanent and (iii) the servant must be paid by the Government. By the proviso to the Rule, the Governor is empowered to declare a service to qualify for pension, even though such service does not fulfil the qualification criteria laid down under Rule 31. Rule 36 additionally provides that unless an officer holds a substantive office on a permanent establishment, it shall not qualify for pension. It is also provided that temporary or officiating service rendered in a non-pensionable establishment shall not count towards pension. Rule 37, inter-alia, indicates that an establishment which is employed for a period exceeding 6 months in a year is a permanent establishment and that service in such an establishment including the period during which the establishment is not employed, qualifies for pension. In Chapter-V of the Rules, conditions of grant of pension are prescribed. Under Rule 68, pensions are divided into 4 classes and "superannuation Pension" is dealt with by Rule 93. When an officer is compelled by a Rule to retire at a particular age, "superannuation Pension" is payable to him under Rule 93. Whereas "retiring Pension" is granted to an officer who is permitted to retire after completing qualifying "superior Service" as may be prescribed.*

(6) *In the instant case, since the appellant was under service of the Commission which is an establishment under the Government, we must understand her service under the Commission, to be under the Government. It is also not in doubt that the salaries of the appellant were paid for by the Government. Therefore the first 2 conditions of Rule 31 having been satisfied*



*the 3<sup>rd</sup> key issue that has to be decided to qualify the service of the appellant for pension is, whether such employment is substantive and permanent.*

*(12) From the contentions raised as noticed above, the first thing that needs to be determined is the nature and character of the service rendered by the appellant with the Commission. It may be recorded that several posts under the Commission including the posts of Sr. Language Officer in which the appellant served, have been incorporated as posts under the Legislative Department. The position is clear from the schedule appended to the Assam Service (Revision of Pay), Rules, 1998 (hereinafter referred to as the R.O.P.Rules) which is produced by Mr. Bhattacharyya. Now if the post under the Commission is accepted to be post under the Legislative Department of the State under the R.O.P. Rules 1998, and the appellant having served with the Commission till her retirement on 1.9.2001, it would be reasonable to conclude that she served in a post under the legislative Department of the Government”.*

*(15) As is already notice that the Commission is expected to function practically for all time to come as it is entrusted with the responsibility of translating into vernacular, the Laws of the Country and since law making process in India is never ending, we can reasonably conclude that the employment under the Commission is permanent for the employees and they are entitled to serve till reaching the age of retirement or unless their services are shortened by way of dismissal, removal etc. in accordance with the Disciplinary Laws applicable for Government servants.*

*18. In the present case the entire defence of the State is that the appellant is not governed by any Rules framed by the State under Article 309 and her service was not purely contractual. The State also argued that the post which was occupied by the appellant (for a long 14 years) was a temporary post and therefore, appointment of the appellant is not entitled to the benefits of pension. We are of the opinion that the entire exercise of the State is an exercise in semantics. If the stand of the State is that the service of the appellant is not governed by any statutory Rule framed under Article 309 and purely contractual it is not understood as to how the appellant could be said to have retired on*

*attaining the age of superannuation. Admittedly no contract stipulating the age of superannuation is placed before the Court. On the other hand, the appellant was made to retire on reaching the age of superannuation prescribed for all other employees of the State of Assam whose services are otherwise regulated by Rules framed under Article 309. If service of the appellant is purely contractual, to our mind, the only known mode of putting an end to the service is either by efflux of time stipulated by the contract or by termination of the contract by an appropriate procedure. We are also not convinced with the submission that the employment of the appellant is purely temporary in view of the fact that the appellant was employed for long period of 14 years and since the retirement of the appellant. Obviously the work and the need to employ somebody to do work continues. The employment remains “contractual” only or mischievously omitted to frame statutory Rules governing the service of the appellant. In either case it would be an arbitrary omission on the part of the State to discharge a constitutional obligation flowing from Article 41 of the Constitution.”*

**5.** Mr. Nayak and Ms. M.D Bora, learned counsel appearing for the State respondents submitted that the petitioners were appointed by the Fish Farmers Development Agency and their salaries were paid from the fund provided by the State Government in the form of grant-in-aid from time to time and they were not paid from non-plan salaries ahead of account. Therefore, they were not employees of the Government of Assam. The learned counsels also submitted that the agency i.e. Fish Farmers Development Agency was not a Government Department but an agency created under the centrally sponsored scheme. As such, it may cease to exist the moment the scheme comes to an end. Thus, it is not a permanent establishment and, the service of the petitioners who were employed by it does not meet the requirement of Rule-31 of the Assam Services (Pension) Rules, 1969.

The two learned counsels also submitted that just because the petitioners served for a long time in the agency does not change the nature of their service as the Agency remains under the centrally sponsored scheme. Therefore, they

cannot be entitled to pension. In support of their submission they referred to the judgment of the Hon'ble Supreme Court in the case of **Md. Abdul Kadir & Others** -versus- **Director General of Police, Assam & Others**, reported in **(2009) 6 SCC 611** particularly, paragraph-6 & 7 of the judgment. The contents of the two paragraphs are given here below;

*“6. At the outset, the learned counsel for the appellants stated that the prayer for relief based on the Scheme dated 14.6.1984 relating to Assam Special Peace Keeping Force, was not pressed. Therefore only two issues arise for our consideration: (i) whether the persons engaged under the PIF Additional Scheme, 1987, are entitled to be regularized in service; (ii) whether the procedure introduced by circular dated 17.3.1995 is valid.*

*7. The fact that the appellants were employed under the PIF Additional Scheme is not disputed. The duration of PIF Additional Scheme under which they are employed was initially two years, to be reviewed for continuation along with the original PIF Scheme. The said scheme is being extended from time to time and is being continued. If the temporary or ad-hoc engagement or appointment is in connection with a particular project or a specific scheme, the ad hoc or temporary service of the persons employed under the Project or Scheme would come to an end, on completion/closure/cessation of the Project or the Scheme. The fact that the Scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularization. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts co-terminus with the scheme and not of permanent posts. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such Project or Scheme cannot claim any right to continue in service, nor seek regularization in some other project or service. (See [Bhagwan Dass v. State of Haryana](#) - 1987 (4) SCC 634, [Delhi Development Horticulture Employees Union v. Delhi Administration](#) - 1992 (4) SCC 99, [Hindustan Steel Works Construction Ltd., vs. Employees Union](#) - 1995 (3) SCC 474, [UP Land Development Corporation vs. Amar Singh](#) - 2003 (5) SCC 388, [Madhyamik Shiksha Parishad UP v. Anil Kumar Mishra](#) - 2005 (5) SCC 122, [Secretary, State of Karnataka v. Umadevi](#) - 2006 (4) SCC 31, [Indian Council of Medical Research vs. K. Rajyalakshmi](#) - 2007 (2)*

SCC 332, and [Lal Mohammed vs. Indian Railway Construction Co. Ltd.](#) - 2007 (2) SCC 513). *In view of this settled position, the appellants will not be entitled to regularization.*”

**6.** I have considered the submissions of the learned counsels representing the parties and also perused the record. Rule-31 & 32 of the Assam Services (Pension) Rules, 1969 reads as follows;

**“31. Conditions to qualifying service.** –*The service of an officer does not qualify for pension unless it conforms to the following three conditions:*

*Firstly, the service must be under Government;*

*Secondly, the employment must be substantive and permanent;*

*Thirdly, the servant must be paid by Government. Provided that the Governor may, even though either or both of conditions (1) and (2) above are not fulfilled,-*

*(i) Declare that any specified kind of service rendered in a non-Gazetted capacity shall qualify for pension, and*

*(ii) in individual cases and subject to such conditions as he may think fit to impose in each case allow service rendered by an officer to count for pension.*

**Section II-First-Condition-Service under Government**

**32.** *The service of an officer does not qualify unless he is appointed and his duties and pay are regulated by the Government, or under conditions determined by the Government.*

*The following are examples of officers excluded from pension by this rule:*

*Example. –(1) Officers of a Municipality.*

*(2) Officers of Grant-in-aid Schools and institutions.*

*(3) Subordinates appointed by Treasurer on their responsibility.*

*Note 1. –The service of Potdars whether appointed by the District Officers or by the Treasurer is non-pensionable but the Governor may consider applications for pension or gratuities in the case of Potdars who retire after purring in not less than ten years’ satisfactory service.*

*Note 2. –The service of treasury assistants is pensionable.*

*Note 3. –The fact that the whole or part of the pay of Government servant in pensionable service is recovered by Government from a third party does not operate to render his service other than pension if the Government servant is appointed controlled and paid by Government.*

*Note 4. –The service of section-writers is non-pensionable”.*

Reading together of the first condition given in Rule-31 and first para of Rule-32 would reveal that the words “service must be under Government” (Condition No.1 in Rule-31) would mean the employee should have been appointed by the Government and his duties and pay should have also been regulated by the Government. The condition given at Rule-31 must be read together with the provision of Rule-32. It cannot be read in isolation. Rule-32 clearly mentioned that the service of an officer does not qualify unless he is **appointed** and his duties and pay are regulated by the Government or under conditions determined by the Government. In this case, there is no dispute that the petitioners were appointed by the agency and their duties and pay were regulated by the agency itself though their salaries were given from the fund provided by the Government in the form of grant-in-aid. In view these provisions of the Assam Services (Pension) Rules, 1969, this Court is of the view that the petitioner’s service did not meet the condition No.1 of Rule-31.

Further, reading of the first para of the Rule-31 specially the words “*unless it conforms to the following three conditions*” makes it amply clear that all the three conditions given therein must be fulfilled before an employee is said to be entitled to pension and pensionary benefits.

Furthermore, it is undisputed fact that the Fish Farmers Development Agency was created under the centrally sponsored scheme. As such, it is a child of centrally sponsored scheme and its existence and continuance is also dependent on the scheme. In other words, it is co-terminus with the centrally sponsored scheme. Therefore, the establishment or the agency cannot be term as permanent. The fact that the petitioners continued in service till the age of superannuation will not change the nature of their service as the character of the agency remains the same.

There is a clear distinction between the case referred to by the learned Sr. counsel, Mr.

Nair and the case of the petitioners. In the case referred to by the learned counsel, the services of the employees of the law commission were incorporated under the legislative department whereas in the case of the petitioners their service has never been incorporated in the Fishery department or any department of the State Government. Therefore, the judgment of the Division Bench of this High Court in that case cannot be taken as a precedence.

In view of the above discussions and conclusions, this Court is unable to grant the prayer of the petitioners. However, keeping in view the length of the service of the petitioners, and the fact that the agency has been in existence for a long time, the Government of Assam in exercise of the power provided under the provision of Rule-31 of the Assam Services (Pension) Rules, 1969 may consider granting of pension to the petitioners.

The two writ petitions are disposed of.

**JUDGE**

**Comparing Assistant**