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

**Case No. : WP(C)/3146/2020**

JYOTISH PATHAK  
S/O. LT. KAMALA KANTA PATHAK, VILL. BHURKUCHI, P.O. NIZ NAMITI,  
P.S. TIHU, DIST. NALBARI, ASSAM, PIN-781355.

VERSUS

THE STATE OF ASSAM AND 5 ORS.  
TO BE REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,  
EDUCATION (SECONDARY) DEPTT., DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER AND SECRETARY  
TO THE GOVT. OF ASSAM  
FINANCE DEPTT.  
DISPUR  
GUWAHATI-781006.

3:THE DIRECTOR

NON FORMAL AND ADULT EDUCATION  
ASSAM  
KAHILIPARA  
GUWAHATI-781019.

4:THE JOINT DIRECTOR

ADULT EDUCATION  
ASSAM  
KAHILIPARA  
GUWAHATI-781019.

5:THE DIST. ADULT EDUCATION OFFICER

KAMRUP  
ASSAM  
PIN-781005.

6:ACCOUNTANT GENERAL (A AND E)

ASSAM  
MAIDAMGAON  
BELTOLA  
GUWAHATI-781029

**Advocate for the Petitioner** : MR H TALUKDAR, MR. S BANIK,SC, FINANCE

**Advocate for the Respondent** : SC, SEC. EDU.,

**B E F O R E**  
**HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

Advocate for the petitioner	: Mr. H Talukdar
Advocate for respondent Nos. 1, 3, 4 & 5	: Ms. H Terangpi
Advocate for respondent No. 2	: Mr. A Chaliha
Advocate for respondent No. 6	: None appears
Date of hearing and Judgment	: 22.04.2025

**Judgment & Order (Oral)**

Heard Mr. H Talukdar, learned counsel for the petitioner. Also heard Ms. H. Terangpi, learned counsel appearing on behalf of the respondent Nos.1, 3, 4 & 5 and Mr. A. Chaliha, learned counsel appears for the respondent No.2. None appears for the respondent No.6 on call.

2. By way of this petition under Article 226 of the Constitution of India, the

petitioner is seeking for a direction to the respondent authorities to calculate the length of service rendered by the petitioner as Supervisor under the National Adult Education Project towards qualifying the services of the petitioner for pension and other retirement benefits.

3. The brief facts of the case are that the petitioner was initially appointed as a Supervisor under the National Adult Education Project by an order dated 26.11.1981 on temporary basis. Accordingly, the petitioner joined the said post on 05.12.1981. Later on, the petitioner was appointed temporarily as a Project Officer under the National Adult Education Project by an order dated 18.03.1991. The petitioner was accordingly released from the post of Supervisor and thereafter, he joined his new assignment as a Project Officer on 22.03.1991 and also submitted his joining report. Thereafter, the services of the petitioner as a Project Officer was confirmed by an order dated 27.07.2012. Upon attaining the age of superannuation, the petitioner retired from service on 28.02.2011. Upon superannuation, the petitioner was given the pensionary benefits from 22.03.1991, i.e., the date of appointment to the post of Project Officer.

4. Mr. H Talukdar, learned counsel for the petitioner submits that since the petitioner was initially appointed to the post of Supervisor, which he continued without any break of service till his appointment to the post of Project Officer under the same project, he is entitled to receive pensionary benefits and other retirement benefits from the initial date of appointment, i.e., 05.12.1981 to the post of Supervisor.

5. *Per contra*, Ms. H. Terangpi, learned counsel for the respondent Nos.1, 3, 4 & 5 submits that since the initial appointment of the petitioner to the post of

Supervisor was temporary and the same having not been confirmed, the petitioner is not entitled to any pensionary benefits in respect of his services rendered in the post of Supervisor. She further submits that the petitioner having been appointed to the post of Project Officer, after being selected pursuant to an advertisement and his services to the said post of Project Officer having been confirmed, he is entitled to pensionary benefits only in respect of the services rendered in the said post of Project Officer.

6. Mr. A. Chaliha, learned counsel for the respondent No.2 submits that it is apparent from the affidavit-in-opposition filed by the Education Department that the petitioner has not even served for 10 years in the post of Supervisor. That apart, he submits that the services of the petitioner having not been confirmed in respect of the post of Supervisor, he is not entitled to any retirement benefits against the said post.

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

8. It appears that the petitioner was initially appointed to the post of Supervisor under the National Adult Education Project on a temporary basis by order dated 26.11.1981 in the fixed pay of Rs.500/- per month for the period up to 31.12.1981. It further appears that the petitioner joined the said post on 05.12.1981 and subsequently on 06.12.1990, his pay was revised to Rs.875/- per month. It further appears that pursuant to an advertisement for the post of Project Officer under the National Adult Education Project, he applied for the said post and upon being selected, by order dated 18.03.1991, he was temporarily appointed to the said post of Project Officer. The aforesaid

appointment order reads as hereunder:-

“GOVERNMENT OF ASSAM

EDUCATION (DEVELOPMENT) DEPARTMENT

NO. EDG 556/90/749:- The following persons are appointed temporarily as Project Officer under Adult Education Programme in the scale of pay of Rs. 670-35-845-EB-1020-EB-40-1500- P.M. plus other allowances as admissible under the rules as per recommendation of the Assam Public Service Commission vide their letter No.117PSC/A-9/8/85-86 dtd. 8.11.90 with immediate effect and posted against their names below :-

Name of persons with home address

Place of Posting

1.....  
.....  
.....  
.....

14. Shri Jyotish Pathak, S/O.- Shri Kamala Kt.  
Pathak, Vill.- Bhurkuchi, P.O.- Niz- Namiti,  
Dist.- Nalbari

– SAEP, Kumarikhata  
Dist.- Nalbari

Sd/- N.A. Hazarika,

Deputy Secretary to the Govt. of Assam,  
Education Department

Memo No. EDG 556/90/749\_A

Dtd. Kahilipara, the 18th March, 1991.”

9. It appears that subsequently the petitioner on 22.03.1991 joined the said post of Project officer and later on by order dated 27.07.2012 the services of the petitioner was confirmed w.e.f. 27.02.2011 against the post of Project Officer. The aforesaid confirmation order dated 27.07.2012 reads as hereunder-

*“GOVERNMENT OF ASSAM  
EDUCATION (SECONDARY) DEPARTMENT*

*ORDERS BY THE GOVERNOR OF ASSAM*

*NOTIFICATION*

*Dated Dispur, the 27th Day Of July/12*

*NO. ASE. 510/2009/49:- without prejudice to inter- Se- Seniority, Sri Jyotish Pathak, Project Officer (since retired) under Directorate of N.F. & A.E., Assam is hereby confirmed with effect from 27.02.2011 against the post of Project Officer created vide letter No. EDG.291/86/29 dated 29.02.87 and made permanent vide this Dept's letter No. A(2) A&NF. 93/2/99 dated 16.02.99*

*Sd/-M.M. Hussain, IAS,  
Secretary to the Govt. of Assam  
Education (S) Department.*

*Memo No. ASE.510/2009/49-A*

*Dated 27th July, 2012.”*

10. Thus, what transpires from above is that the services of the petitioner was confirmed against the post of Project Officer. Hence, the employment of the petitioner became substantive and permanent from the date of appointment to the post of Project Officer. It further appears that the petitioner has not challenged the aforesaid confirmation order dated 27.07.2012. It further appears that after the petitioner retired on 28.02.2011, the pensionary benefit was given from the date of appointment to the post of Project Officer. Apt at this juncture to refer to the relevant paragraphs of the affidavit-in-opposition filed by the respondent Education Department, which reads as hereunder:-

*“5. That, with regards to the statement made in paragraph 2 of the writ petition answering deponent begs to submit that the petitioner was initially appointed as a Supervisor under the National Adult Education Project by an order vide Memo No. AEK/110/81/1864-1870 dated 26.11.1981 on temporary basis in a fixed pay of Rs. 500/-(Five Hundred) only per month for the period upto 31.12.1981. Accordingly the petitioner joined the service on 05/12/1981. Subsequently, vide Govt. Notification No.FPC-24/90/181 dated. 06.12.1990 the petitioner had come under revised fixed pay of Rs. 875/- (Eight Hundred and Seventy Five) per month and fixed Travelling Allowances of Rs. 150/-Per Month. The appointment of the petitioner as the supervisor was on the basis of fixed pay and on purely temporary basis, therefore the post of Supervisor cannot be considered as substantive post.*

*It is also mentioned here that the National Adult Education Project was a Centrally Sponsored Scheme (CSS) with specific objective for which a large number of field workers i.e. Supervisors were engaged for proper functioning at the Field level.*

*6. That, with regards to the statement made in paragraph 3 of the writ petition answering deponent begs to submit that thereafter vide Memo No. EDG.556/90/749 dated 18.03.1991 the petitioner was temporarily appointed as Project Officer under the Adult Education Programme in the scale of pay of Rs. 670-35-845-EB-1020-EB-40-1500/- p.m (pre-revised) plus other allowances and he was released from the post of Supervisor and joined as a Project Officer vide Order No. DAEB/Estt.2/88-89/225-28 dated 21/03/1991. Accordingly on 22.03.1991 the petitioner was joined as Project Officer under the Adult Education Programme. However, the service of the petitioner was confirmed vide notification No. ASE.510/2009/49 dated 27.07.2012 with effect from 27/02/2011 against the post of Project Officer and the said post is a substantive one.*

*7. That, with regards to the statement made in paragraph 4 of the writ petition answering deponent begs to state the petitioner was retired from the Govt. service on 28.02.2011 after attaining the age of Superannuation.*

*Therefore, the service period of the petitioner as a regular and permanent employee has counted from 22.03.1991 to 28.02.2011 and his total period of*

*service as a permanent employee is 19 years 11 months and 10 days which is clearly shown by the Accounted General in P.P.O No. 927201030984. It is also pertinent to mention that in a similarly situated matter like Sri Dilip Kr. Sarma who claimed that his Past Service should be counted w.e.f. 01/04/1981 to 26/05/1991 on the ground that he was engaged as a Supervisor on fixed pay but his appointment was purely temporary and non-pensionable. In the instant case also his service was qualified for the pension and pensioner benefit with effect from 27.05.1991 only. In this regard, on 06/07/2018 Joint Secretary to the Govt.of Assam, Secondary Education Department had issued a letter vide No. ASE.654/2012/69 dated 06.07.2018 on the basis of communication with the Pension & Public Grievances Department vide U/O No. PPG (P)284/17 dated 14/09/2017.”*

11. A reading of the aforesaid paragraphs, it is further apparent that the pensionary benefits of the petitioner was given from the date of his appointment to the substantive post. It further appears that the action of the respondent authorities in giving the pensionary benefits to the petitioner for the post of Project Officer is in conformity with Rule 31 of the Assam Services (Pension) Rules 1969. Rule 31 of the Assam Services (Pension) Rules 1969 reads as hereunder:-

**“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."*

12. Reading of the aforesaid Rule, it is apparent that in order for the service of an Officer to be qualified for pension, one of the essential conditions is that the employment must be substantive and permanent. In the present case, the initial appointment of the petitioner to the post of Supervisor cannot by any stretch of imagination be considered to be substantive and permanent. That being so, this Court is of the unhesitant view that the writ petitioner has failed to make out any case in support of the relief prayed in this writ petition. Hence, the writ petition is devoid of any merit whatsoever.

13. Accordingly, the writ petition stands dismissed. No cost.

**JUDGE**

**Comparing Assistant**