

GAHC010073052024



2024:GAU-AS:11735

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

**Case No. : WP(C)/2051/2024**

MST SOKINA BEWA  
W/O- LATE ABDUL KUDDUS MIAH,  
R/O- VILLAGE BARKALIA SHERSO,  
P.O- BARKALIA SHERSO, DIST- DHUBRI, ASSAM, PIN-783330

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REP. BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM,  
DEPARTMENT OF PANCHAYAT AND RURAL DEVELOPMENT  
DISPUR, GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY  
TO THE GOVT. OF ASSAM  
PENSION AND PUBLIC GRIEVANCE DEPARTMENT  
ASSAM

DISPUR  
GUWAHATI-06

3:THE COMMISSIONER AND SECRETARY  
TO THE GOVT. OF ASSAM  
FINANCE DEPARTMENT  
DISPUR  
GUWAHATI-

4:THE COMMISSIONER  
OF PANCHAYAT AND RURAL DEVELOPMENT  
JURIPAR  
PANJABARI  
GHY-781037  
ASSAM

5:THE DIRECTOR OF PENSION  
ASSAM HOUSEFED COMPLEX DISPUR GUWAHATI-06.

6:THE CHIEF EXECUTIVE OFFICER DHUBRI ZILLA PARISHAD.  
P.O AND DIST- DHUBRI ASSAM PIN-783301

7:THE TREASURY OFFICER DHUBRI TREASURY  
P.O AND DIST- DHUBRI ASSAM PIN-78330

**Advocate for the Petitioner** : MR. M ISLAM, MS A KHATUN  
**Advocate for the Respondent** : GA, ASSAM, SC, FINANCE,SC, P AND R.D.

**BEFORE**  
**HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

**Date of hearing** : 27.11.2024

**Date of Judgment** : 27.11.2024

**Judgment & order(Oral)**

Heard Mr. M. Islam, learned counsel, appearing on behalf of the petitioner. Also heard Mr. S. Dutta, learned standing counsel, appearing on behalf of respondents No. 1, 4 & 6; Mr. D. Bora, learned Government Advocate, Assam, appearing on behalf of respondents No. 2 & 5; and Mr. P. Nayak, learned standing counsel, Finance Department, appearing on behalf of respondents No. 3 & 7.

**2.** The petitioner by way of instituting the present proceeding, has presented a challenge to the computation of the pension and pensionary benefits as made by the respondent authorities in the Pension Payment Order(PPO) being No. ADP/PRI/PPO/GPO/2012/000346, issued to the petitioner, herein.

**3.** As projected in the writ petition, the husband of the petitioner late

Abdul Kuddus Miah was initially appointed as an employee of Dhubri Mahukma Parishad, on 28.04.1961. In terms of the provisions of the Assam Panchayat Employees (Provincialization) Act, 1999; the service of the husband of the petitioner was provincialized w.e.f. 01.10.1991. The husband of the petitioner, thereafter, retired from his service as a Road Mahurar (Grade-III employee) on attaining the age of superannuation w.e.f. 30.04.2000.

**4.** The Director of Pension, Government of Assam, thereafter, had finalized the pension and pensionary benefits of the husband of the petitioner by issuing a Pension Payment Order(PPO) being No. ADP/PRI/PPO/ GPO/2012/000346 and therein, by reckoning the qualifying service of the husband of the petitioner as only 24 years, 11 months and 0 days; proceeded to compute the pension and other retirement benefits receivable by him. The husband of the petitioner expired on 05.12.2000.

**5.** It is the contention of the petitioner that on account of wrong fixation of the pension and pensionary benefits receivable by her husband vide the Pension Payment Order(PPO) being No. ADP/PRI/PPO/GPO/2012/000346; the petitioner, herein, is also in receipt of family pension at a much lower stage than that she was entitled to.

**6.** Mr. Islam, learned counsel for the petitioner, by reiterating the facts as noticed hereinabove, has submitted that the pension and pensionary benefits as computed in respect of the husband of the petitioner, herein, vide the above-noted Pension Payment Order(PPO), having been so computed on erroneous conclusion that the service rendered by the

husband of the petitioner for 24 years, 11 months and 0 days, would only be reckonable for the purpose of computation of pension and pensionary benefits; had fixed the pension of the husband of the petitioner at a much lower stage than that he was required to be so authorized given the length of service rendered by him with effect from the date of his initial appointment on 28.04.1961 till the date of his superannuation from service on 30.04.2000.

**7.** Mr. Islam, learned counsel for the petitioner, by referring to the decision of a Division Bench of this Court rendered in the case of ***State of Assam & anr. v. Syed Md. Fazlay Rabbi*** and other analogous matters, vide judgment & order, dated 24.03.2010, in WA No. 145/2009, has submitted that the computation as made in the said Pension Payment Order(PPO) issued to the husband of the petitioner, is in clear violation of the directions passed by this Court in the above-referred matter. Mr. Islam, learned counsel, accordingly, has submitted that the Pension Payment Order(PPO) as issued to the husband of the petitioner and the manner in which the pension and pensionary benefits were so computed, would require an interference from this Court with a further direction to the respondent authorities to issue a fresh Pension Payment Order(PPO) to the petitioner, herein, by computing the pension and pensionary benefits receivable by her husband, and the consequential family pension receivable by the petitioner, by reckoning the service rendered by him w.e.f. 28.04.1961 till 30.04.2000.

**8.** Per contra, Mr. Dutta, learned standing counsel, Panchayat & Rural Development Department, and Mr. Nayak, learned standing counsel, Finance Department, in unison, have submitted that the provisions of the

Assam Panchayat Employees(Provincialized) Act, 1999, defines the term "employee" to mean a person in employment of a Panchayat against a regular sanctioned post and accordingly, by reckoning the period of service rendered by the petitioner, herein, against a sanctioned post and/or against a post having a scale of pay; the qualifying service working out in respect of the petitioner was only 24 years, 11 months and 0 days and accordingly, he was authorized his pension and pensionary benefits vide the Pension Payment Order(PPO), issued to him, by making the computation in the above manner.

**9.** Mr. Dutta, learned standing counsel, Panchayat & Rural Development Department, and Mr. Nayak, learned standing counsel, Finance Department, have further submitted that the computation of the pension and pensionary benefits in respect of the petitioner, herein, in the said Pension Payment Order(PPO), therefore, would not, call for any interference.

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

**11.** It is to be noted that the service particulars of the husband of the petitioner as noticed hereinabove, are not in dispute.

**12.** The husband of the petitioner had rendered his service in a Panchayati Raj Institution(PRI) w.e.f. 28.04.1961 till 30.04.2000. The service of the husband of the petitioner, was, in the meanwhile, provincialized w.e.f. 01.10.1991, in terms of the provisions of the Assam

Panchayat Employees(Provincialized) Act, 1999.

**13.** The provisions of Section 2(a) of the said Act of 1994, defines the term "appointed day" to mean, the date on which the said Act of 1999 came into force. The provisions of 2(b) of the said Act of 1999, defines the term "date of appointment" to mean, in relation to an employee, the date on which, he joined the service of a Panchayati Raj Institution(PRI). The provisions of 2(d) of the said Act of 1999, defines the term "employees" to mean a person in the employment of Panchayat against a regularly sanctioned post.

**14.** The Panchayat employees not being granted, the pension and pensionary benefits in terms of the provincialization of their service; proceedings came to be instituted before this Court which ultimately resulted in institution of a writ appeal being WA No. 145/2009 i.e. **State of Assam & anr. v. Syed Md. Fazlay Rabbi**. The said writ appeal was given a final consideration by the Division Bench of this Court vide judgment & order, dated 24.03.2010, along with other analogous matters.

**15.** The Division Bench of this Court, vide the judgment & order, dated 24.03.2010, examined the various provisions of the Assam Panchayat Employees (Provincialization) Act, 1999, and with regard to the term "date of appointment"; the Division Bench of this Court had concluded that the same indicates unerringly to be one vis-à-vis such employees, the date on which, he/she had joined the service of the Panchayat. It was further concluded by this Court that on a scrutiny of the provisions of the said Act of 1999, it was discernible that the term "appointed day" was provided to

indicate a cut-off date for provincialization of the service of the existing employees while the term "date of appointment" was comprehended for the purpose of continuity of service of such employees on and from the date of their initial appointment to determine their entitlements under the legislation including the pension and other retirement benefits.

**16.** In view of the said conclusions; the Division Bench of this Court had vide the judgment & order, dated 24.03.2010, passed in WA No. 145/2009, held, as follows:

*"..... We are, therefore, of the considered view that the benefit of the provisions of the Act including those for pension and other retirement dues would be available to the provincialized employees in service on and after 01.10.1991 on the basis of the length of their service reckoned from the date(s) of their initial appointments."*

**17.** The said decision of the Division Bench of this Court in the case of the **Syed Md. Fazlay Rabbi**(supra), was carried upon appeal by the State Respondents before the Hon'ble Supreme Court, however, the same came to be dismissed. The decision of this Court in the case of **Syed Md. Fazlay Rabbi**(supra), settled the position with regard to the entitlement of the pension and other pensionary benefits to provincialized Panchayat employees and also the period reckonable for computation of such pension and pensionary benefits.

**18.** The Division Bench of this Court in the aforesaid case, having laid down that the pension and other retirement dues would be available to the provincialized Panchayat employees in service on or after 01.10.1991 on the basis of the length of their service reckoned from the entry of their initial appointments; such prescription would mean the date of first entry

into service by such an employee in a Panchayati Raj Institution(PRI). The Division Bench of this Court in the above-noted case, had not restricted the term "date of appointment", to mean, the date of such appointment of a provincialized Panchayat employee in a Panchayat against a regular sanctioned post and/or the date on which such employee was authorized a scale of pay with due increments.

**19.** The said position was accepted by the respondent authorities and the Pension and Public Grievance Department, vide Notification, dated 17.03.2011, had prescribed that the benefits of the Assam Panchayat Employees(Provincialization) Act, 1999, including those for pension and other retirement dues as applicable to the State Government employees, would be available to the provincialized Panchayat employees who were in service on or after 01.10.1991 on the basis of the length of their service reckoned from the date of their initial appointments in the service of the Panchayat.

**20.** The term "initial appointment" as finding place in the said Notification, dated 17.03.2011, issued by the Pension and Public Grievance Department, Government of Assam, would mean the date of first entry by the provincialized Panchayat employee in the service of a Panchayat. The Pension and Public Grievance Department, Government of Assam, had, thereafter, vide Notification, dated 22.12.2014, reiterated the said position.

**21.** As noticed hereinabove; the husband of the petitioner had initially joined his service in the Panchayat as an employee on 28.04.1961. A conjoint reading of the conclusions and directions as contained in the



decision rendered by the Division Bench of this Court in the case of **Syed Md. Fazlay Rabbi**(supra), as well as the Notification, dated 17.03.2011, issued by the Pension and Public Grievance Department, Government of Assam; the qualifying service of the husband of the petitioner is now required to be so reckoned w.e.f. 28.04.1961 and not from any date pursuant thereto.

**22.** It is also to be noted that the contention of the petitioner, herein, that the husband of the petitioner had joined his service of the Panchayat on 28.04.1961, has not been disputed by the respondents in the present proceeding.

**23.** The above discussions would go to show that the computation of the pension and pensionary benefits in respect of the husband of the petitioner, as made in the said Pension Payment Order(PPO), was so made, in clear violation of the decision rendered by the Division Bench of this Court in the case of **Syed Md. Fazlay Rabbi**(supra), and accordingly, the same cannot be sustained.

**24.** In view of the conclusions as drawn by this Court, hereinabove, it is held that the husband of the petitioner would be entitled to reckon as his qualifying service for computation of his pension and pensionary benefits; the service so rendered by him in the Panchayat, w.e.f. 28.04.1961 till 30.04.2000. Accordingly, the pension and pensionary benefits authorized to the petitioner vide the Pension Payment Order(PPO) being No. ADP/PRI/PPO/ GPO/2012/000346, would now call for a revision.

**25.** Accordingly, the respondents are required to re-compute the pension and pensionary benefits receivable by the husband of the petitioner by reckoning his qualifying service to be 39 years 0 months and 2 days i.e. by reckoning the period of service rendered by him w.e.f. 28.04.1961 till 30.04.2000. The same would also call for a revision of the family pension authorized to the petitioner, herein.

**26.** On the re-computation of the pension and pensionary benefits in the manner as indicated above; the respondent authorities would issue a fresh Pension Payment Order(PPO) to the petitioner, herein, in supersession of the earlier Pension Payment Order(PPO) being No. ADP/PRI/PPO/GPO/2012/000346.

**27.** The exercise now required to be undertaken for re-computation of the pension and pensionary benefits in respect of the husband of the petitioner, in terms of the directions passed, hereinabove, shall now be carried-out by the respondent authorities, more particularly, the respondents No. 4 & 5, and concluded with the issuance of the fresh Pension Payment Order(PPO) to the petitioner along with release of the arrears working-out, including the arrears of pension and other pensionary benefits required to be authorized to the husband of the petitioner during his life time, as well as family pension, to be authorized to the petitioner, herein, within a period of 3(three) months from the date of submission of a certified copy of this order by the petitioner to the respondents No. 4 & 5, herein.

**28.** It is also provided that in the event, the fresh Pension Payment Order(PPO) upon re-computation of the pension and pensionary benefits in

the manner directed hereinabove, is not issued within the period of 3(three) months as prescribed vide the present order; the amount now becoming due to the petitioner, herein, would carry an interest at the rate of 6% per annum with effect from the date of conclusion of the period of 3(three) months from the date of receipt of a certified copy of this order by the respondent Nos. 4 & 5.

**29.** With the above directions and observations, this writ petition accordingly stands disposed of.

**JUDGE**

**Comparing Assistant**