

GAHC010058452023



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

Case No. : WP(C)/1553/2023

SAMSER ALI AHMED
S/O- LATE TALEB ALI,
R/O- VILLAGE PAHARSINGPARA,
P.O- DUBAPARA, P.S- MORNOL, DIST- GOALPARA, ASSAM,
PIN-783125

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR, GHY-06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCE DEPARTMENT
DISPUR
GHY-06

3:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GHY-06

4:THE COMMISSIONER

PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
JURIPAR
GUWAHATI-37

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

6:THE CHIEF EXECUTIVE OFFICER
BARPETA ZILLA PARISHAD

P.O AND DIST- BARPETA
ASSAM
PIN-781301

7:TREASURY OFFICER
BARPETA TEASURY

P.O AND DIST- BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. M ISLAM

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : **12.04.2023**

Heard Mr. M. Islam, the learned counsel appearing on behalf of the petitioner and Ms. M. Borah, the learned Standing counsel appearing on behalf of the respondent Nos.1, 4 and 6. I have also heard Mr. C. S. Hazarika, the learned Standing counsel appearing on behalf of the respondent Nos. 2 and 5 and Mr. A. Chaliha, the learned Standing counsel appearing on behalf of the respondent Nos. 3 and 7.

2. The case of the petitioner herein is that the petitioner was initially

appointed on 02.11.1960 and thereupon he had retired on 28.02.2002. In total, the petitioner had rendered service of 41 years 3 months 27 days. However, while computing the pension, the Director of Pension has excluded 14 years 7 months 4 days and only 26 years 8 months 27 days have been taken into account as the net qualifying service. Being aggrieved by such actions, the petitioner has approached this Court by filing the instant writ petition.

3. This Court vide an order dated 20.03.2023 had issued notice. On the said date, the learned Standing counsel appearing on behalf of the Director of Pension was directed to obtain instruction as to why 14 years 7 months 4 days have been excluded while computing the pension of the petitioner more so, when the similar issue has already been decided by the Division Bench of this Court in the case of ***State of Assam Vs. Syed Md. Fazlay Rabbi*** dated 24.03.2010 in Writ Appeal No.145/2009. Thereupon, the matter was again listed on 27.03.2003 wherein the learned Standing counsel appearing on behalf of the Director of Pension has sought for instructions. Accordingly, the matter was fixed on 03.04.2003. On the said date also, the learned Standing counsel for the Director of Pension had sought for accommodation for want of instructions.

4. Today, Mr. C. S. Hazarika, the learned Standing counsel appearing on behalf of the Director of Pension has submitted that the exclusion of the period of 14 years 7 months 4 days was done by the Director of Pension on the basis of a communication issued by the Joint Secretary to the Government of Assam dated 01.06.2004 whereby it was mentioned that the adhoc period shall not be counted towards the pension.

5. I have heard the learned counsels for the parties and have perused the materials on record. The Division Bench of this Court in the case of ***Syed Md.***

Fazlay Rabbi (supra) had categorically observed that the benefit of the provisions of the Assam Panchayat Employees (Provincialisation) Act, 1999 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 of their initial appointments.

6. In view of the said declaration of law laid down by the Division Bench in the case of **Syed Md. Fazlay Rabbi (supra)**, this Court finds no justifiable reason for the Director of Pension to exclude the period of 14 years 7 months 4 days while computing the pension of the petitioner.

7. Accordingly, this Court therefore disposes of the writ petition with a direction to the respondent authorities more particularly to the Directorate of Pension to consider the total length of service of the petitioner from the date of his initial appointment on 02.11.1960 till the date of his retirement on 28.02.2002 for pension and pay the full pension and other retirement benefits including the arrear pension to the petitioner. The same be done within a period of 3 (three) months from the date a certified copy of the instant order is served upon the Director of Pension.

8. The instructions so produced by Mr. C. S. Hazarika, the learned Standing counsel is kept on record and marked with the letter "X".

9. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant