

GAHC010031432023



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

WP(C)/3471/2020

HASNA BEGUM
W/O- LT. MD. IDRIS ALI
R/O- VILL AND P.O. GULCHARA
DIST.- KARIMGANJ
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE SECY. TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GHY-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-06

4:THE TREASURY OFFICER
KARIMGANJ TREASURY
P.O. KARIMGANJ
DIST.- KARIMGANJ
ASSAM
PIN- 788710

5:THE INSPECTOR OF SCHOOLS
HDC
HAILAKANDI
P.O. HAILAKANDI

DIST.- HAILAKANDI
ASSAM
PIN- 788710

Advocate for : MR. M KHAN
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 04.04.2023

Heard Mr. M. Khan, the learned counsel appearing on behalf of the petitioner. Mr. P.N. Sarma, the learned counsel appears on behalf of the respondent No. 1, 2 and 5, Mr. S.R. Baruah, the learned counsel appears for the respondent No. 3 and Mr. R. Borpujari, the learned counsel appears on behalf of the respondent No. 4.

2. The case of the petitioner herein is that the husband of the petitioner one Idrish Ali (since deceased) was temporarily appointed as an Office Assistant in Ghulchara Muhammadia Senior Madrassa with effect from 01/11/1977 and the said appointment was subject to the approval of the Secretary State Madrassa Education Board, Assam. It further appears that on 03/12/1985 the said appointment was approved by the Deputy Director of Madrassa Education, Assam . The records further reveal that the Ghulchara Muhammadia Senior Madrassa received full grant-in-aid/adhoc grant-in-aid during the period 1984-85 as would be apparent from the communication dated 07/10/1985 issued by the Secretary State Madrassa Board. The records further reveal that on 30th of March, 1993, the Governor of Assam was pleased to take over 25 numbers of Senior Madrassa/Title Madrassa in Arabic College under full grant-in-aid system

w.e.f. 01/10/1992. This was done with the concurrence of the Finance Department. Amongst the 25 Madrassas, the Ghulchara Muhammadia Senior Madrasa was one of such Madrassas. It further appears that on 29/06/1993, the Deputy Director, Madrasa Education, Kahilipara have approved the various resolutions of the Madrassas, Arabic Colleges, appointing the persons named against each with effect from the date indicated therein. The husband of the petitioner's name can be seen at Serial No. 19 of the order dated 29/6/1993. The husband of the petitioner thereupon continued to render his service and retired w.e.f. 30/9/2011. Thereupon the pension papers of the husband of the petitioner were submitted to the concerned authority. On 14/12/2011, the husband of the petitioner was granted provisional pension of Rs.5,290/- per month plus other relief allowances under the Rules w.e.f. 01/10/2011 for one year. Further to that, the total entitlement of the DGRG of the petitioner was worked out at Rs.2,29,639/- and by withholding an amount of Rs. 5,000/-, the balance amount of Rs. 2,24,639/- was disbursed.

3. Subsequently as reveals from the record that there were certain deficiencies found in the entitlement of the husband of the petitioner which resulted in excess payment of the provisional DCRG inasmuch as, the total entitlement of DGRG of the husband of the petitioner was found at Rs. 1,54,485/- and the provisional DCRG which was paid to the petitioner's husband was Rs.2,24,639/-. It further reveals from the records that there were various representations submitted by the husband of the petitioner during his life time stating inter alia that his entitlement to the pension has to be taken into account from 01/03/1984. However, before the dispute could be settled the husband of the petitioner unfortunately expired. It further reveals that the petitioner herein having granted the family pension vide an order dated 6/3/2020 of Rs.3,920/-

w.e.f. 01/10/2011 to 31/03/2016 and thereafter Rs.9,730/- per month upto 02/01/2019 and 100% share from the family pension w.e.f. 03/01/2019 @ Rs. 7,890/-. On the same date vide another order issued by the Finance and Account Officer of the Director of Pension, it was reiterated that the provisional pension which was given to the petitioner's husband was Rs. 2,24,639/- but the total amount to which the husband of the petitioner was entitled to was Rs. 1,54,484/- .

4. The petitioner herein being aggrieved by the fact that the respondent authorities having not taken into consideration the entitlement of the husband of the petitioner from the date on which the Ghulchara Muhammadia Senior Madrassa wherein the husband of the petitioner was working had received grant-in-aid for the purpose of his pension but rather had arbitrarily deducted certain periods which resulted in reduced pension as well as the family pension, has filed the instant writ petition seeking re-adjustment of the pension as well as the family pension by taking into account the entitlement of the husband of the petitioner from 01/03/1984 as well as also for correction as regards the pension, family pension and the quantum of the DCRG.

5. This Court vide an order dated 9/10/2020 had issued notice. The respondents have not filed any affidavit till date.

6. The learned counsel for the petitioner has also drawn the attention of this Court to an additional affidavit filed on 12th of October, 2020 wherein a document has been enclosed, which is a document received on the basis of a RTI information from the Director of Pension. From the said document dated 25/9/2020, it transpires that the total length of service rendered by the husband of the petitioner was taken as 27 years 6 months 29 days w.e.f. 01/03/1984 to

30/09/2011. However, it further appears that there were certain deductions in the services of the husband of the petitioner and on account of such deduction, the total qualifying service has been taken as 18 years 11 months 28 days.

7. I have heard the learned counsel for the parties.

8. The answer to the dispute involved can be found from a perusal of Section 4(2) of the Assam Madrassa Education (Provincialisation) Act, 1995 which is reproduced herein under :-

“4(2) All employees going on superannuation under sub-section (1) shall be eligible to pension or gratuity or both in accordance with the pension rules, applicable to the Government servants of equivalent rank subject, however, to the condition that for the pensionary benefits of the employees whose service are provincialised under the provisions of this Act, the services of any such employees shall be counted—

(a) in case such employee has joined the Madrassa subsequent to the date of this Madrassa receiving the grant under the ad-hoc system of grants-in-aid, from the date of his joining the service on regular appointment in the Madrassa receiving grant under ad-hoc system of grant-in-aid ; or

(b) in case such employee had joined the Madrassa on regular appointment prior to the Madrassa receiving grant under the ad-hoc system grants-in-aid, from the date of this Madrassa receiving grant under ad-hoc system of grants-in-aid.”

9. A perusal of Section 4(2) shows that all employees going on superannuation under sub-section (1) shall be eligible to pension or gratuity or both in accordance with the pension rules, applicable to the Government servants of equivalent rank subject, however, to the condition that for the pensionary benefits of employees whose service are provincialised under the provisions of this Act, the services of any such employees shall be counted ---

- (a) in case such employees has joined the Madrassa subsequent to the date of the Madrassa receiving the grant under ad-hoc system of grants-in-aid, from the date of his joining the service on regular appointment in the Madrassa receiving grant under ad-hoc system of grant-in-aid ; or
- (b) in the case of such employee having joined the Madrassa on regular appointment prior to the Madrassa receiving grant under the ad-hoc system grants-in-aid, from the date of this Madrassa receiving grant under ad-hoc system of grants-in-aid.

10. It transpires from the records that the appointment of the husband of the petitioner was approved by the Deputy Director of Madrassa Education on 03/12/1985. At this stage, let this Court take into consideration the definition of an employee as given in Section 2(e) of the Assam Madrassa Education (Provincialisation) Act, 1995 which is extracted herein below :-

“2(e) “Employee” means a person in the teaching or non-teaching employment of a Madrassa working against a regularly sanctioned post as per standard staffing pattern and whose appointment has been approved by the Deputy Director of Madrassa Education, Assam.”

11. From the above, it would be seen that the “employee” means a person in the teaching or non-teaching employment of a Madrassa working against a regularly sanctioned post as per standard staffing pattern and whose appointment has been approved by the Deputy Director of Madrassa Education, Assam.

12. Taking into account the communication dated 03/12/1985 whereby the appointment of the husband of the petitioner was approved by the Deputy

Director of Madrassa, Education, Assam, the husband of the petitioner came within the ambit of the term "employee" as defined in Section 2(e) of the Assam Madrassa Education (Provincialisation) Act, 1995. Therefore by applying the provisions of Section 4(2) (a), the service of the husband of the petitioner has to be reckoned only from the date of approval given by the Deputy Director of Madrassa as claimed by the petitioner to be 03/12/1985 and not as 01/03/1984 as has been submitted by the petitioner or on 01/10/1992 as has been done by the respondents.

13. In that view of the matter, this Court therefore disposes off this writ petition with a direction to the respondent authorities, more particularly, the respondent No. 2 to verify as to whether the appointment of the husband of the petitioner was approved by the Deputy Director of Madrassa, Education, Assam on 03/12/1985 and thereupon, if it is found that on 03/12/1985 the service of the petitioner's husband was approved by the Deputy Director of Madrassa, Education, Assam, the respondent No. 2 shall send a revised pension proposal to the Director of Pension. This exercise be completed by the Director of Secondary Education within a period of one month from the date a certified copy of this order is served upon the Director of Secondary Education. The petitioner is further directed to produce all such documents as sought by the Director of Education for carrying out the verification which is limited to only the approval dated 3/12/1985.

14. The Director of Pension after receiving the revised proposal hereupon shall do the needful in terms with the revised proposal and re-fix the pension, the family pension as well as the DCRG on the basis of the proposal submitted by the Director of Secondary Education. The said exercise be carried out within a period of two months from the date of receipt of such proposal. The petitioner

is further directed to submit a certified copy of the instant order to the Director of Pension also for needful compliance.

15. It is made clear that in the circumstance, the Director of Secondary Education upon verification is of the opinion that there is no such approval dated 3/12/1985, then the directions so issued for sending the revised pension proposal to Director of Pension would not arise.

16. With the above observations and directions, the petition stands disposed of.

JUDGE

Comparing Assistant