

GAHC010045782024



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

Case No. : WP(C)/1282/2024

FIRUZA BEGUM
W/O LATE DILOWAR HUSSAIN, R/O VILL- DHANSIRIKHUTI, P.O.-
SHYAMTILA, DIST- DARRANG, ASSAM, PIN-784190

VERSUS

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

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
PENSION AND PUBLIC GRIEVANCE DEPARTMENT
ASSAM
DISPUR
GUWAHATI-6

3:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

4:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
JURIPAR
SIX MILE
GUWAHATI-37

5:THE DIRECTOR OF PENSION
ASSAM

HOUSEFED COMPLEX
DISPUR
GUWAHATI-6

6:THE CHIEF EXECUTIVE OFFICER
DARRANG ZILLA PARISHAD
P.O. AND DIST-MANGALDAI
ASSAM
PIN-784125

7:TREASURY OFFICER
DARRANG TREASURY
DARRANG
P.O. AND DIST- DARRANG
ASSAM
PIN-78412

Advocate for the Petitioner : MR. M ISLAM

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

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

06.03.2024

Heard Mr. M. Islam, learned counsel for the petitioner. Also heard Mr. P. Handique, learned Standing Counsel, P&RD Department and Mr. R. Borpujari, learned Standing Counsel, Finance Department.

2. The prayer in this writ petition is for grant of full pension and other retiral benefits by considering the total length of service reckoned from the date of initial appointment of the petitioner's husband in the service of the Panchayat.

3. The petitioner's husband, namely, Dilowar Hussain retired from service on

31.01.2002 as a Lower Division Assistant (LDA) from the Office of the Daipam Gaon Panchayat under the Zilla Parishad, Darrang, Assam, on reaching the age of superannuation. The petitioner's husband was appointed in the service of the Panchayat on 01.11.1956. During the tenure of his service, the State Government had enacted the Assam Panchayat Employees [Provincialisation] Act, 1999 [the Act, for short] and as per the provisions of the Act, the provincialised Panchayat Secretaries are to be provided pension and other retirement dues in terms of the provisions of the Act. The services of the petitioner's husband came to be provincialised accordingly in terms of the provisions of the Act. The husband of the petitioner died on 29.12.2006.

4. When a dispute arose as regards the date from which the period of services of the provincialised Panchayat Secretaries was to be counted for the purpose of pension and other retirement dues under the provisions of the Act, litigations ensued. A Division Bench of this Court in a writ appeal, Writ Appeal no. 145/2009 [The State of Assam & another vs. Syed Md. Fazlay Rabbi] and a batch of writ petitions in its common judgment and order dated 24.03.2010 set the issue at rest by holding that the benefits of the provisions of the Assam Panchayat Employees [Provincialisation] Act, 1999 [the Act] including those for pension and other retirement dues would be available to the provincialised employees in service on or after 01.10.1991 on the basis of the length of their

services reckoned from the dates of their initial appointments. Special leave petitions, Special Leave to Appeal [Civil] Nos. 19351– 19360/2010 preferred against the common judgment and order dated 24.03.2010 were dismissed by the Hon'ble Supreme Court of India on 02.08.2010. Thereafter, the State Government in the Pension and Public Grievances Department issued a Notification dated 17.03.2011, whereby, it had ordered that the benefits of the provisions of the Assam Panchayat Employees [Provincialisation] Act, 1999 [the Act] including those for pension and other retirement dues applicable to the State Government Employees, would also be available to the provincialised Panchayat Employees who were in service on or after 01.10.1991 on the basis of the length of their service reckoned from the dates of their initial appointments in the service of Panchayats. The said Notification was issued with the concurrence of the Finance Department.

5. The Pension Payment Order being PPO No. ADP/PRI/PPO/2015/000082, issued in respect of petitioner's husband has specifically stated that the date of petitioner's husband entry in service is 01.11.1956 and his date of retirement is 30.11.1998. The total period of service rendered by the petitioner was 42 years 29 days. Yet, the pension disbursal authority had calculated the petitioner's monthly pension @ Rs. 1,225/- per month with the observation that a period of 24 years 8 months and 8 days could not be counted for the purpose of pension

and the petitioner's net qualifying service would be only 17 years 26 days.

6. A conjoint reading of the judgment and order dated 24.03.2010 passed in a writ appeal, Writ Appeal no. 145/2009 [The State of Assam & another vs. Syed Md. Fazlay Rabbi], the Notification dated 17.03.2011, unerringly points out to the position that for the purpose of pension and other retirement dues, the entire period service 42 years 29 days from the petitioner's husband's date of entry in service i.e. 01.11.1956 to till his date of retirement, 30.11.1998 is required to be counted for the purpose of pension and other retirement dues. As such, the decision not to count a period of 24 years 8 months and 8 days for the purpose of pension and making calculation of the pension amount on that basis is found to be incongruent and impermissible and accordingly, the same are set aside.

7. As a corollary, the respondent authorities shall now work out the entitlement of the pension and other retirement dues of the petitioner's husband by counting his total period of service as 42 years 29 days and issue a fresh Pension Payment Order in supersession of the earlier Pension Payment Order. The entire exercise shall be undertaken and completed within a period of 2 [two] months from the date submission of a certified copy of this order by the petitioner at the office of the respondent no. 4 and the respondent no. 5. In the

event such exercise is not completed within a period of 2 [two] months from the said date, the same will carry an interest of 6% per annum.

8. The writ petition stands allowed and disposed of in terms of the above.

JUDGE

Comparing Assistant