

GAHC010069692024



2024:GAU-AS:11163

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

Case No. : WP(C)/1950/2024

SARIBUN NESSA MAZUMDAR
W/O- LATE ASADDAR ALI MAZUMDAR,
R/O- VILLAGE- TUPKHANA PART-II,
PO- TUPKHANA VIA TARAPUR RAMNAGAR,
P.S.- SILCHAR, DISTRICT- CACHAR,
ASSAM, PIN- 788003.

VERSUS

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

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR GUWAHATI-6.

3:THE COMMISSIONER AND 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 GUWAHATI-6.

6:THE CHIEF EXECUTIVE OFFICER CACHAR ZILLA PARISHAD
AT SILCHAR P.O.- SILCHAR DISTRICT- CACHAR ASSAM PIN- 788001.

7:THE TREASURY OFFICER CACHAR TREASURY AT SILCHAR
P.O.- SILCHAR DISTRICT- CACHAR ASSAM PIN- 788001

Advocate for the Petitioner : MR. M ISLAM, MS A KHATUN

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

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

Date of hearing : 11.11.2024

Date of Judgment: 11.11.2024

Judgment & order(Oral)

Heard Mr. M. Islam, learned counsel, appearing on behalf of the petitioner. Also heard Mr. P. Handique, learned standing counsel, appearing on behalf of respondents No. 1, 4 & 6; Ms. R. B. Borah, 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 a speaking order, dated 02.03.2023, issued by the Principal Secretary to the Government of Assam, Panchayat & Rural Development Department, *inter alia*, holding therein, that the date of commencement of pensionable service in respect of the provincialized Panchayat employees, would be reckonable with effect from the date of receiving the regular scale of pay and the period of service rendered prior to such receipt of regular scale of pay, being in the nature of adhoc service, would not be reckoned for the purpose of computation of pension and pensionary benefits.

3. The petitioner, herein, has also presented a challenge to the Pension Payment Order(PPO) issued to her authorizing the family pension along with the life-time arrear pension in respect of her husband, basing on the

stipulations as contained in the said order, dated 02.03.2023.

4. As projected in the writ petition, the husband of the petitioner late Asaddar Ali Mazumdar was initially appointed as a Tax Collector in the Office of the Tarapur Gram Panchayat under Cachar Zilla Parishad on 18.09.1957. The husband of the petitioner was initially so engaged on fixed pay basis and was subsequently authorized a scale of pay w.e.f. 01.06.1975. The husband of the petitioner was, thereafter, promoted to the post of Office Assistant w.e.f. 01.12.1988.

5. 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 on attaining the age of superannuation w.e.f. 31.07.1992.

6. Mr. Islam, learned counsel for the petitioner, by placing reliance on the provisions of the Assam Panchayat Employees(Provincialization) Act, 1999, has submitted that the date of appointment as defined in the said Act, means in relation to an employee the date on which, he/she had joined the service of the Panchayat. The learned counsel has further placed his reliance on 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, and has contended that this Court, in the said decision, had held that the benefits of the provisions of the Act including those for pension and other retirement dues, would be available to the provincialized

employees in service on or after 01.10.1991 on the basis of the length of their service reckoned from the date of their initial appointment.

7. Mr. Islam, learned counsel for the petitioner, has, accordingly, submitted that the initial date of appointment in respect of the husband of the petitioner, herein, would be the date, he had initially joined the service of a Panchayati Raj Institution(PRI) i.e. 18.09.1957. The learned counsel has further submitted that in pursuance of the directions passed by a co-ordinate Bench of this Court in WP(c)361/2022, vide order, dated 27.04.2022; the Principal Secretary to the Government of Assam, Panchayat & Rural Development Department, had, vide order, dated 02.03.2023, considered the issue of non-release of pension and pensionary benefits in respect of the service rendered by the husband of the petitioner late Asaddar Ali Mazumdar.

8. Mr. Islam, learned counsel, by referring to the said order, dated 02.03.2023, had submitted that the respondent authorities, in clear violation of the decision of the Division Bench of this Court in the case of **Syed Md. Fazlay Rabbi**(supra); had concluded that the date of commencement of pensionable service in respect of a provincialized Panchayat employee would be reckonable only with effect from the date of receiving of regular scale of pay. The learned counsel has further submitted that basing on the said premises; the qualifying service of the husband of the petitioner, herein, was determined as 17 years 1 month and 30 days. The learned counsel has also submitted that thereafter, the Director of Pension, Government of Assam, had issued the Pension Payment Order(PPO) to the petitioner, herein, and therein, also; the pension and

pensionary benefits receivable by the petitioner, herein, was so computed by reckoning the qualifying service of her late husband to be 17 years and 2 months. Accordingly, the learned counsel has submitted that on account of only a part of the qualifying service of the husband of the petitioner being so reckoned; the pension as computed, for the service so rendered by her husband was so fixed at a lower stage than that she was entitled to in terms of the decision of the Division Bench of this Court in the case of **Syed Md. Fazlay Rabbi**(supra) i.e. by reckoning the entire service rendered by the husband of the petitioner w.e.f. 18.09.1957.

9. Mr. Islam, learned counsel, has, therefore, submitted that the impugned order, dated 02.03.2023, would require an interference from this Court along with an interference with the Pension Payment Order(PPO) issued in favour of the petitioner, herein, and available at Annexure-7 to the writ petition.

10. In the above premises; Mr. Islam, learned counsel for the petitioner, has submitted that a direction is called upon to the respondent authorities for re-computing the pension and pensionary benefits of the petitioner, herein, by reckoning the qualifying service of the husband of the petitioner w.e.f. 18.09.1957.

11. Per contra, Mr. Handique, learned standing counsel, Panchayat & Rural Development Department, has submitted that the provisions of the Assam Panchayat Employees (Provincialization) Act, 1999, also defines the term "employee" to mean a person in employment of the Panchayat against a regularly sanctioned post. Relying on the said definition of the term

“employee”; Mr. Handique, has submitted that the husband of the petitioner, herein, having been so appointed against a regular sanctioned post w.e.f. 01.06.1975 and authorized the scale of pay from the said date, the husband of the petitioner can be construed to be an employee of the Panchayati Raj Institution(PRI) only with effect from the date he was so authorized a scale of pay i.e. w.e.f. 01.06.1975. Accordingly, the learned standing counsel, Panchayat & Rural Development Department, has submitted that the respondent authorities, in issuing the order, dated 02.03.2023, had not committed any error in the matter. By reckoning the qualifying service of the husband of the petitioner with effect from the date, he had been authorized the scale of pay i.e. w.e.f. 01.06.1975; the husband of the petitioner having only completed 17 years 1 month and 30 days of service and not having completed the mandated 20 years of service, he was authorized a proportionate pension. Mr. Handique, learned standing counsel, Panchayat & Rural Development Department, has, accordingly, submitted that the computation of pension as made in the Pension Payment Order(PPO) issued to the petitioner, herein, reflects the correct picture and the same would not call for any interference from this Court.

12. Mr. Handique, learned standing counsel, Panchayat & Rural Development Department, by referring to an Office Memorandum, dated 03.07.2013, has contended that the sanction for payment of pension to the provincialized Panchayat employees was so done by relaxing the provisions of Rule 31 of the Assam Service (Pension) Rules, 1969.

13. Mr. Nayak, learned standing counsel, Finance Department, by

reiterating the submissions made by Mr. Handique, learned standing counsel, Panchayat & Rural Development Department, has submitted that the petitioner, herein, cannot claim that the period of adhoc service rendered by her husband w.e.f. 18.09.1957 till 31.05.1975, would also be required to be reckoned as qualifying service of the husband of the petitioner for the purpose of computation of pension and pensionary benefits. Mr. Nayak, has, accordingly, submitted that the period of service rendered by the husband of the petitioner w.e.f. 01.06.1975 till provincialization of his service being so regularized in terms of the provisions of Rule 31 of the Assam Service (Pension) Rules, 1969, and the period prior thereto, not being permissible to be so construed as qualifying service, the action on the part of the respondent authorities in determining the qualifying service of the husband of the petitioner only w.e.f. 01.06.1975 and basing therein, computing her pension and pensionary benefits; no error was so committed by the respondent authorities requiring any interference in the matter by this Court.

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

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

16. The husband of the petitioner was initially appointed as a Tax Collector on 18.09.1957 in the Office of Tarapur Gram Panchayat under Cachar Zilla Parishad on a fixed pay basis and thereafter, he was authorized the regular scale of pay with due increments w.e.f. 01.06.1975. The Assam

Panchayat Employees (Provincialization) Act, 1999, was so enacted by the State Government to provide for provincialization of the service of the employees working in the Panchayat, at all levels, established under the Assam Panchayat Act, 1994. The said Act of 1999, was brought into force with retrospective effect i.e. w.e.f. 01.10.1991. The service of the husband of the petitioner was also provincialised, in terms of the said Act of 1999, w.e.f. 01.10.1991.

17. 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 the Panchayat. 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.

18. 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.

19. 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.

20. 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. 145/200, 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.”

21. 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 as qualifying service for computation of such pension and pensionary benefits.

22. 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 on being authorized a scale of pay with due increments.

23. 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.

24. 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 appointment", which is nothing but 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.

25. As noticed hereinabove; the husband of the petitioner had initially joined his service in the Panchayat as a Tax Collector on 18.09.1957. 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. 18.09.1957 and not from any date pursuant thereto.

26. It is also to be noted that the contention of the petitioner, herein, that her husband had joined the service of the Panchayat on 18.09.1957, has not been disputed by the respondents in the present proceeding.

27. Having drawn the above conclusions; this Court would now examine the order, dated 02.03.2023, passed by the Principal Secretary to the Government of Assam, Panchayat & Rural Development Department.

28. On a perusal of the said order, dated 02.03.2023; it is seen that while the petitioner had claimed that the total length of service rendered by her husband, was 35 years in-as-much as he was initially appointed in a Panchayat in the year 1957 and had retired from service in the year 1992. However, the Panchayat & Rural Development Department, had only

admitted that the husband of the petitioner had a qualifying service of 17 years 1 month and 30 days with effect from the date, he was authorized the scale of pay i.e. w.e.f. 01.06.1975. Thereafter, by noticing that the period of service rendered by the husband of the petitioner w.e.f. 18.09.1957 till 31.05.1975, was on a fixed pay basis and he was absorbed in a post carrying a regular scale of pay w.e.f. 01.06.1975; it was concluded in the said order, dated 02.03.2023, that the pension and pensionary benefits due on account of the service rendered by the husband of the petitioner would be so computed reckoning the date of receiving a regular scale of pay and the period prior to the date of receipt of such regular scale of pay being adhoc, would not be reckonable for the purpose of pension and pensionary benefits. Accordingly, the qualifying service in respect of the husband of the petitioner was held to be reckonable only w.e.f. 01.06.1975, till the date of his superannuation.

29. The decision as contained in the said order, dated 02.03.2023, is in clear violation of the law laid down by the Division Bench of this Court in the matter, in the case of **Syed Md. Fazlay Rabbi**(supra). The Division Bench of this Court in the said case, having held that the benefit of the provisions of the Assam Panchayat Employees (Provincialization) Act, 1999, including those stipulated therein for authorization of 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 date of their initial appointments and the said position having been accepted and notified by the Pension and Public Grievance Department, Government of Assam, vide Notification, dated 17.03.2011; it was not open to the departmental authorities to draw conclusions contrary to the said position and thereby, deny to the

petitioner, herein, her pension and pensionary benefits, at the stage, she is entitled to receive the same in terms of the decision of this Court rendered in the case of **Syed Md. Fazlay Rabbi**(supra).

30. Accordingly, the order, dated 02.03.2023, being in clear violation of the decision rendered by the Division Bench of this Court in the case of **Syed Md. Fazlay Rabbi**(supra); cannot be sustained and accordingly, the same stands set aside.

31. In view of the above conclusions drawn by this Court in the matter and it being also concluded that the qualifying service for pension and pensionary benefits in respect of the husband of the petitioner, is required to be reckoned w.e.f. 18.09.1957, and not w.e.f. 01.06.1975; the pension and pensionary benefits authorized to the petitioner, herein, would now be required to be revised. The computation of the pension of the petitioner, herein, by reckoning the qualifying service of her late husband to the extent of only 17 years and 2 months, also stands set aside.

32. In view of the above position, the respondent authorities are now directed to re-compute the entitlement of pension and pensionary benefits due to the petitioner, herein, by reckoning the qualifying service of her late husband w.e.f. 18.09.1957, and thereafter, to issue a fresh Pension Payment Order(PPO) in supersession of the earlier Pension Payment Order(PPO). The fresh computation would also be in relation to the life-time arrear pension required to be authorized to the petitioner, herein, in respect of the pension and pensionary benefits that was required to be so authorized to her husband for the period after his superannuation till the

date of his death.

33. 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 the arrears working out in the matter 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.

34. 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.

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

JUDGE

Comparing Assistant