

GAHC010088612023



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

Case No. : WP(C)/2304/2023

SUSHMA DAKUA
W/O LT. ANNA RAM DAKUA R/O VILL. PIPLIBARI P.O. HARIBHANGA DIST.
NALBARI ASSAM PIN 781378

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP.BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT DISPUR GUWAHATI 6

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM PENSION AND PUBLIC GRIEVANCE DEPTT.
ASSAM DISPUR GUWAHATI 6

3:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM FINANCE DEPTT DISPUR GUWAHATI 6

4:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT ASSAM JURIPAR SIXMILE
GUWAHATI 37

5:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX DISPUR GUWAHATI 6

6:THE CHIEF EXECUTIVE OFFICER
NALBARI ZILLA PARISHAD P.O. AND DIST. NALBARI ASSAM PIN 781335

7:TREASURY OFFICER
TIHU SUB TREASURY TIHU P.O. TIHU DIST NALBARI ASSAM PIN 78137

Advocate for the Petitioner : MR. M ISLAM

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 19.01.2024

Heard Mr. M. Islam, learned counsel for the petitioner. Also heard Mr. N. K. D. Nath, learned standing counsel, P & RD.

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 in the service of the Panchayat.

3. The petitioner retired from service on 30.11.1999 as a Grade-III post (Office Assistant) of No.68, Kadamtola Gaon Panchayat under Nalbari Zilla Parishad, who joined in service in the same capacity on 20.05.1963 at Pipulbari Gaon Panchayat. The authorities while preparing the Pension Payment Order (PPO) recorded the gross service rendered by the petitioner as 36 years 6 months and 10 days, however, deducted 12 years 9 months and 20 days as non-qualifying and thus, recorded the qualifying service period as 23 years 8 months and 25 days, which according to the petitioner is not permissible in view of the decision in Writ Appeal No. 145 of 2009, in the case of *The State of Assam and Anr. Vs. Syed Md. Fazlay Rabbi*, disposed of on 24.03.2010, by which this Court held that the benefit of the provisions of the Assam Panchayat Employees (Provincialization) Act, 1999 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 dates of their initial appointments. It was further held that the provisions of the

pension rules applicable to the State Government would apply subject to the above. Viz-a-viz, the provincialized employees who have expired on or after 01.10.1991, the benefits in terms of the Act as well as contemplated pension rules would be available to those eligible thereunder.

4. Pursuant to the aforesaid judgment of the Division Bench of this Court, Government of Assam issued a notification to the same effect, vide Notification dated 17.03.2011 in which it has been clearly mentioned that "*benefits of the Provisions of the Assam Panchayat Employees (Provincialisation) Act, 1999 including....sic.. for payment of pension and other retirement dues applicable to the State Government Employees, would be applicable to the Provincialised Panchayat Employees who were in service on or after 01.10.1991 on the basis of the length of the service reckoned from the date(s) of initial appointment in the service of Panchayats*".

5. Learned counsel for the petitioner submits that since the petitioner was already in service on 01.10.1991 and as he retired from service on 30.11.1999, the same benefit is to be granted to the petitioner by taking into account the entire length of service reckoned from the initial appointment in the service of Panchayat, i.e. 20.05.1963.

6. As regards this plea, the State respondents have filed their affidavit, in which it has been stated in para No. 6 thereof that the pension and other retirement benefits have been authorized to the petitioner as the petitioner joined the Panchayat Service on 20.05.1963 and he had retired from service on 30.11.1999 as a Grade-III post (Office Assistant).

7. After hearing the learned counsel for the parties and on perusal of materials on record, this Court is of the view that the case of the petitioner is squarely

covered by the decision taken by the Division Bench in *Sayed Md. Fazlay Rabbi (supra)* and as such entitled to count the entire length of service w.e.f. 20.05.1963 for the purpose of grant of pension and other retiral benefit.

8. 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 20.05.1963 till the date of his retirement on 30.11.1999 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 of receipt of certified copy of this order.

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

JUDGE

Comparing Assistant