

GAHC010180102023



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

Case No. : WP(C)/4735/2023

JYOTIRMOY PURKAYASTHA
SON OF LATE KAMINI KUMAR PURKAYASTHA, RESIDENT OF HOUSE NO.
12, MATRI BHAWAN, BYE LANE-5, BARSAPARA, PO BINOVA NAGAR
GUWAHATI- 781018, PS FATASIL AMBARI DISTRICT OF KAMRUP (M)
ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE, R.K.PURAM,
NEW DELHI 110066

2:THE PAY AND ACCOUNTS OFFICER
CENTRAL PENSION ACCOUNTING OFFICE
MINISTRY OF FINANCE
GOVT. OF INDIA
TRIKOOT II COMPLEX
BHIKAJI CAMA PLACE
R.K.PURAM
NEW DELHI- 110066

3:THE SENIOR ACCOUNTS OFFICER
ZONAL ACCOUNTS OFFICE
CENTRAL BOARD OF DIRECT TAXES
2ND FLOOR
CHERRILYS DUPLEX
LAITUMKHRAH
SHILLONG- 793003

4:THE MANAGER (CENTRAL CIVIL PENSION)
STATE BANK OF INDIA
CENTRALIZED PENSION PROCESSING CENTRE

NORTH EASTERN CIRCLE
3RD FLOOR
SONJUKTA SQUARE
LOKHRA CHARIALI
NH-37
GUWAHATI- 781040

5:THE BRANCH MANAGER
STATE BANK OF INDIA
VINOBANAGAR BRANCH
PO BINOVA NAGAR
GUWAHATI- 78101

Advocate for the Petitioner : MR. M DUTTA

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 22.02.2024

Heard Mr. M. Dutta, learned counsel for the petitioner. Also heard Mr. R. K. Devchoudhury, learned DSGI, assisted by Ms. L Devi, learned CGC and Mr. K Das, learned counsel appearing for the SBI.

2. This writ petition has been filed by the petitioner, who superannuated from his service on completion of 60 years as Assistant Commissioner of Income Tax. Petitioner superannuated on 30.04.2004. The date of birth projected by the writ petitioner is 16.04.1944.

3. The grievance of the petitioner before this Court is that as per his date of birth, he has entered into the 80th year on 1st April 2023, and therefore he is entitled to the benefits as prescribed under the office memorandum dated 2nd September, 2008. As per the said Office Memorandum, he is entitled to the

benefits, which accrues to the pensioner from 80 years to less than 85 years and the benefit accrued is 20% of the pension. It is this claim of the writ petitioner which has not been granted to him and therefore he has approached this Court.

4. According to the learned counsel for the petitioner, he having entered the 80th year of his life on 1st April 2023, the benefits conferred on him by way of Office Memorandum dated 2nd September, 2008 ought to have been granted to him. He represented before the respondents, however, the claim was rejected.

5. Learned counsel for the writ petitioner submits that the interpretation of whether the benefit would accrued to him upon entering the 80th year of his life or after settled by a decision of this Court rendered in ***Virendra Dutt Gyani Vs Union of India*** reported in ***2018 (2) GLT 26***.

6. Learned counsel for the petitioner has relied upon the Judgment of a Division Bench of this Court, where a similar issue had arisen in the case of a former Judge, who had superannuated and had claimed similar benefits as payable under the provisions of the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2009, which was brought in to amend the parent Act.

7. Learned counsel for the petitioner, referring to the Judgment, submits that in the said amendment, similar benefit was conferred on a pensioner from the 80 year to less than 85 years and the benefit conferred is 20% of the basic family pension. Learned counsel for the petitioner has drawn the attention of the Court to the ratio laid down in the Judgment by a Division Bench of this Court wherein it was interpret that the said benefit will have to be given from the first day of the month in which the pensioner enters his 80th year. It is

further submitted that being aggrieved by the said judgment, an SLP was preferred by the Union before the Supreme Court and by Judgment and Order dated 08.07.2019 and which the SLP however came to be dismissed. It is submitted that this Judgment has attained finality and therefore, the interpretation rendered in the judgment will also be applicable the facts of this case.

8. Mr. R. K. Devchoudhury, learned DSGI, assisted by Ms. L Devi, learned CGC and Mr. K Das, learned counsel appearing for the SBI, submits that this interpretation is no longer applicable in view of the repeal of the CCS pension Rules, and a new set of Rules being CCS pension Rules, 2021 has been brought and the same was made effective from 20.12.2021 pursuant to the gazette notification. It is submitted that in terms of Rule 44(6) of the CCS Pension Rules, 2021, the benefit that will accrue to a pensioner to the extent of 20% of the basic pay between the age of 80 to less than 85 will accrue upon completion of the 80 years of age. Learned counsel for the respondents submit that the controversy has been laid to rest by the new set of Rules and therefore, the interpretation rendered by the Division Bench Judgment sought to be relied upon by the petitioner will no longer be applicable anymore. Under the earlier Rules, the benefit was conferred by an Office memorandum. In the new Rules, it is a part of the Rules itself, more particularly, Rule 44(6) and the Rules are categorical that the benefit would be applicable to the pensioner from the first day of the month after completion of 80th years. It is further submitted that a similar amendment has also been brought with the same effect pertaining to the similar benefits to be made available to pensioners under the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2021. This amendment was also brought in effect on 20.12.2021. It is further

submitted by the learned counsel for the respondents that as per the age of the writ petitioner, he will complete his 80th year on 1st April, 2024 and therefore, the benefit of 20% of the basic pension payable to the petitioner will be payable only upon completion of the said period of time.

9. Mr. M. Dutta, learned counsel for the petitioner fairly submits that the averments made in the affidavit are correctly quoted from the Rules.

10. Rule 44 (6) is extracted below:-

“44(6) After completion of eighty years of age or above by a retired Government servant, in addition to a pension or a compassionate allowance admissible under this rule, additional pension or additional compassionate allowance shall be payable to the retired Government servant in the following manner, namely:-

Sl.No	Age of pensioner	Additional pension/additional compassionate allowance
(1)	(2)	(3)
(i)	From 80 years to less than 85 years	20% of basic pension/compassionate allowance
(ii)	From 85 years to less than 90 years	30% of basic pension/compassionate allowance
(iii)	From 90 years to less than 95 years	40% of basic pension/compassionate allowance
(iv)	From 95 years to less than 100 years	50% of basic pension/compassionate allowance
(v)	100 years or more	100% of basic pension/compassionate allowance”

(b) The additional pension or additional compassionate allowance shall be payable from first day of the calendar month in which it falls due.

Illustration: A pensioner born on 20th August, 1942 shall be eligible for additional

pension at the rate of twenty percent of the basic pension with effect from 1st August, 2022. A pensioner born on 1st August, 1942 shall also be eligible for additional pension at the rate of twenty percent of the basic pension with effect from 1st August, 2022”.

11. Upon careful perusal of Rule 44 (6) of the CCS Pension Rules, it is seen that under the said Rules the 20% of the basic pension is payable to a pensioner will be only after completion of 80 years or above by the pensioner. Such being the position the interpretation given by this Court in ***Virendra Dutt Gyani Vs Union of India (supra)*** will no longer be applicable as the said interpretation was prior to the amendments brought in by Rule 44 (6) of the CCS Pension Rules, 2021. The new CCS Pension Rules, 2021 were became effective from 20th December, 2021. Admittedly, the petitioner’s claim for grant of the additional benefit of 20% of the basic pay arose only in the year 2023. In the absence of Rule 44 (6) of the CCS Pension Rules, 2021, the benefits claimed for by the writ petitioner would have been payable to him in view of the Judgment of a Division Bench of this Court rendered in ***Virendra Dutt Gyani Vs Union of India (supra)***. However, pursuant to Rule 44(6) of the CCS Pension Rules, 2021 the interpretation rendered by this Court will not be applicable as the Rules itself makes it abundantly clear that the additional benefit will be granted after completion of 80 years of age or above.

12. Learned counsel for the respondents submits that the petitioner will complete 80 years of age in April, 2024. Such position on facts is also not disputed by the learned counsel for the petitioner.

13. Under such circumstances, we don't find any merit in the claims made by the writ petitioner in view of the amendments carried out. The writ petition in

any case has been filed pursuant to the amendments made. The writ petition accordingly stands dismissed as not maintainable.

14. Interim orders, if any, are vacated. Notwithstanding the above order, it is made clear that the benefits, which will accrued to the writ petitioner upon completion of his 80th year in terms of the Rule 44.6 of the Pension Rules, 2021 will be made payable to the writ petitioner immediately upon satisfying the criteria provided under the Rules.

15. Writ petition accordingly stands closed in terms of the above.

JUDGE

Comparing Assistant