

GAHC010277902023



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

Case No. : WP(C)/7263/2023

BHOGI RAM BHARALI
S/O- LATE ANATH BHARALI,
VILLAGE- CECHAMUKH,
P.O.- KULHATI,
DIST.- KAMRUP, ASSAM,
PIN- 781104.

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
THE GOVERNMENT OF ASSAM
PENSION AND PUBLIC GRIEVANCE DEPARTMENT

ASSAM
DISPUR
GUWAHATI-6.

3:THE COMMISSIONER AND SECRETRAY
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
KAMRUP ZILLA PARISHAD
PO- AMINGAON
DISTRICT- KAMRUP

ASSAM
PIN- 783031.

7:TREASURY OFFICER
KAMRUP TREASURY
PO-AMINGAON
DISTRICT- KAMRUP

ASSAM
PIN- 781031

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 KARDAK ETE

ORDER

Date : 23.10. 2024

Heard Mr. M. Islam, learned counsel for the petitioner. Also heard Mr. K. Konwar, learned senior Standing Counsel, Panchayat and Rural Development Department, Assam, appearing for the respondent No. 4 and Mr. D. Borah, learned State counsel appearing for the respondent No 1 as well as Mr. R. Barpujari, the learned Standing Counsel, appearing for the Finance Department, Government of Assam.

2. By filing this writ petition, the petitioner has put to challenge the pension payment order PPO No. ADP/ PRI/ PPO/ GPO/ 2014/001837 to the extent of deduction of 15 years 2 months and 15 days out of the gross service period of 35 years, 3 months and 10 days. The petitioner further prayed for payment of full pension and other retiral benefits.

3. The petitioner has rendered 35 years, 3 months and 10 days of service in the Panchayat and Rural Development Department (P&RD), Government of Assam. He was appointed on 20.01.1961 as Tax Collector in the office of the erstwhile Bahana Checha G.P. under Kamrup Zilla Parishad. The service of the petitioner was provincialised with effect from 01.10.1991 and the petitioner has retired on 30.04.1996 on attaining the age of superannuation from Manahkuchi-Bahana-Hadala-Chechamukh Gaon Panchayat under Kamrup Zila Parishad.

4. It is the contention of the learned counsel for the petitioner that the similarly situated employees from the Department of Panchayat and Rural Development, Government of Assam have approached this Court for payment of pension and other retirement benefits of the employees of P&RD Department, which was registered as W.P.(C) No. 4597/2002 (Sayed Md. Fazlay Rabbi Vs. State of Assam & Ors.). The said writ petition was disposed of vide judgment and order dated 13.05.2004, whereby the claim of the writ petitioner for payment of pension and other retirement benefits of the petitioner was allowed.

5. The said judgment and order dated 13.05.2004, passed in W.P.(C) No.

4597/2002 (Sayed Md. Fazlay Rabbi Vs. State of Assam & Ors.) was put to challenge in the Writ Appeal No. 145/2009 preferred by the State of Assam. Similar writ petitions were also filed before this Court claiming similar relief. The above writ appeal and connected writ petitions were disposed of by a judgment and order dated 24.03.2010 by upholding the claims of the petitioners in the writ petitions regarding pension and other retirement benefits.

6. Against the said judgment and order 24.03.2010, passed in Writ Appeal No. 145/2009, Special Leave Petition being SLP (Civil) No(s.) 19351-19360/2010 was preferred by the State of Assam, however, the said SLPs were dismissed on 02.08.2010 by the Hon'ble Supreme Court.

7. The Division Bench in the case of Sayed Md. Fazlay Rabbi (supra), has held that the benefit of provisions of Assam Panchayat Employees (Provincialisation) 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 services reckoned from the dates of their initial appointment. It was further held that the provision of the pension rules applicable to the State Government would apply subject to above. Vis-à-vis the provincialised employees who have in service on or after 01.10.1991, the benefit in terms of the Act as well as contemplated pension rules would be available to those employees thereunder.

8. Pursuant to the above judgment of the Division Bench, the Govt. of Assam issued a Notification No. PPG(P). 116/2010/28 dated 17th March, 2011 in which

it has been mentioned that the benefit of the provision of Assam Panchayat Employees (Provincialiation) Act, 1999 for payment of pension and other retirement benefits 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 their service reckoned from the date (s) of their initial appointments in the service of Panchayat.

9. It is contended by the learned counsel for the petitioner that similarly situated persons have been given such benefits and the above judgment squarely covered the case of the petitioner.

10. It is noticed that in a similar writ petition, being Writ Petition (C) No. 6840/2017, the coordinate Bench of this Court has allowed the claim of the petitioner therein by holding that the case of Sayed Md. Fazlay Rabbi (supra) is squarely covered the case of the petitioner.

11. The learned counsel for the petitioner as well as the learned State counsels have fairly submitted that the relief claimed in this writ petition is squarely covered by the judgment and order dated 24.03.2010, passed in Writ Appeal No. 145/2009 and the other connected writ petitions, whereby the claim of the employees of the P&RD Department, Government of Assam have been allowed.

12. Admittedly the petitioner was appointed on 20.01.1961 as the Tax Collector in the office of the erstwhile Bahana Checha G.P. under Kamrup Zila Parishad and he had retired on 30.04.1996 on attaining the age of

superannuation from Manakuchi Bahana Hadala Chechamuk GP under Kamrup Zila Parishad after service of the petitioner was provincialised with effect from 01.10.1991. The petitioner has rendered for about 35 years 3 months and 10 days in the Department of P&RD as Tax Collector.

13. Having considered the submissions of the learned counsel for the parties and on perusal of the judgment and order dated 24.03.2010, passed in Writ Appeal No. 145/2009 and the other connected writ petitions in the case of State of Assam & Ors. Vs. Sayed Md. Fazlay Rabbi, I am of the view that the case of the petitioner is squarely covered by the decision of the Division Bench in Sayed Md. Fazlay Rabbi (supra). Thus, the entire length of service of the petitioner with effect from 20.01.1961 to 30.04.1996 is entitled to be counted for the purpose of granting pension and other retiral benefits .

14. Accordingly, the respondent authorities are directed to issue a fresh pension order in supersession of the earlier pension payment order within a period of 8 (eight) weeks from the date of receipt of the certified copy of this order.

15. The writ petition accordingly stands disposed of. No order as to costs.

JUDGE

Comparing Assistant