

GAHC010069692024



2024:GAU-AS:11163

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

Case No. : WP(C)/1378/2024

MD. FASHIULLAH AHMED RETIRED SECRETARY
PATHARIGHAT GAON PANCHAYAT S/O. LATE SAZIL SHEIKH
VILLAGE- GHORASAL NO -1 P.O BYASPARA
DISTRICT- DARRANG ASSAM PIN - 784145

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-06

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

3:THE COMMISSIONER AND SECRETARY 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 ZILLA PARISHAD
DARRANG PO- MANGALDAI DISTRICT- DARRANG ASSAM. PIN - 784125

7:TREASURY OFFICER DARRANG TREASURY MANGALDAI
PO- MANGALDAI DISTRICT- DARRANG ASSAM PIN - 784125

Advocate for : MR. M ISLAM
Advocate for : GA ASSAM appearing for THE STATE OF ASSAM AND 6 ORS

**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 the fixation of his pension and pensionary benefits at a lower stage in the Pension Payment Order(PPO) issued to him on account of the fact that the entire service rendered by him as a Panchayat employee, was not treated as qualifying service and only a part of such service came to be so reckoned as qualifying service for the purpose of computation of his pension and pensionary benefits vide the said Pension Payment Order(PPO).

3. As projected in the writ petition, the petitioner, herein, was initially appointed as a Secretary, Digas Primary Panchayat under Mangaldai Mahukuma Parishad on 01.01.1959. The service of the petitioner was provincialized w.e.f. 01.10.1991. The petitioner, accordingly, superannuated from his service on attaining the age of superannuation w.e.f. 31.01.1998,

while working as Secretary of Patharighat Gram Panchayat under Darrang Zilla Parishad.

4. The Director of Pension, Government of Assam, finalized the pension and pensionary benefits of the petitioner and proceeded to issue a Pension Payment Order(PPO) being No. ADP/PRI/PPO/GPO/2015/001937 and fixed his pension and other pensionary dues by reckoning only 17 years, 0 month and 24 days of the service rendered by him, as qualifying service.

5. The petitioner, herein, having rendered his service in a Panchayat w.e.f. 01.01.1959, till 31.01.1998, had so rendered his service for 39 years and 1 month. However, the respondent authorities treated 22 years 0 month and 6 days out of the said period of service rendered by the petitioner as non-qualifying service for the purpose of computation of pension and pensionary benefits. Resultantly, the petitioner was authorized his pension and pensionary benefits at a lower stage than that he was entitled to so receive.

6. Mr. Islam, learned counsel for the petitioner, by reiterating the facts as noticed hereinabove, has contended that in terms of the decision rendered by a Division Bench of this Court 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; the petitioner, herein, was entitled to reckon the entire period of his service w.e.f. 01.01.1959 till 31.01.1998, as qualifying service for the purpose of computation of his pension and pensionary benefits.

7. Mr. Islam, learned counsel for the petitioner, has further submitted that the computation of the pension and pensionary benefits in respect of the petitioner as made vide the said Pension Payment Order(PPO), noticed hereinabove; by only reckoning 17 years 0 month and 24 days, as qualifying service, is in clear violation of the decision of this Court rendered in the case of **Syed Md. Fazlay Rabbi**(supra).

8. Mr. Islam, learned counsel, has also submitted that the said Pension Payment Order(PPO) would require an interference with further direction to the respondent authorities for re-computation of his pension and pensionary benefits by reckoning his qualifying service to be the service rendered by him w.e.f. 01.01.1959 till 31.01.1998.

9. Per contra, Mr. Handique, learned standing counsel, Panchayat & Rural Development Department, and Mr. Nayak, learned standing counsel, Finance Department, in unison, have submitted that the provisions of the Assam Panchayat Employees(Provincialized) Act, 1999, defines the term "employee" to mean a person in employment of a Panchayat against a regular sanctioned post and accordingly, by reckoning the period of service rendered by the petitioner, herein, against a sanctioned post and/or against a post having a scale of pay; the qualifying service working out in respect of the petitioner was only 17 years, 0 month and 24 days and accordingly, he was authorized his pension and pensionary benefits vide the Pension Payment Order(PPO), issued to him, by making the computation in the above manner.

10. Mr. Handique, learned standing counsel, Panchayat & Rural

Development Department, and Mr. Nayak, learned standing counsel, Finance Department, have further submitted that the computation of the pension and pensionary benefits in respect of the petitioner, herein, in the said Pension Payment Order(PPO), therefore, would not, call for any interference.

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

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

13. The petitioner had rendered his service in a Panchayat w.e.f. 01.01.1959 till 31.01.1998. The service of the petitioner, herein, was, in the meanwhile, provincialized w.e.f. 01.10.1991, in terms of the provisions of the Assam Panchayat Employees(Provincialized) Act, 1999.

14. 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 a Panchayati Raj Institution(PRI). 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.

15. 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.

16. 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.

17. 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. 145/2009, 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.”

18. 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 for computation of such pension and pensionary benefits.

19. 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 the date on which such employee was authorized a scale of pay with due increments.

20. The said position was accepted by the respondent authorities and the Pension and Public Grievance Department, vide Notification, dated 17.03.2011, had ordered 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.

21. 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 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.

22. As noticed hereinabove; the petitioner had initially joined his service in the Panchayat as a Secretary on 01.01.1959. 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 petitioner is now required to be so reckoned w.e.f. 01.01.1959 and not from any date pursuant thereto.

23. It is also to be noted that the contention of the petitioner, herein, that he had joined his service of the Panchayat on 01.01.1959, has not been disputed by the respondents in the present proceeding.

24. The above discussions would go to show that the computation of the

pension and pensionary benefits in respect of the petitioner, herein, as made in the said Pension Payment Order(PPO), was so made, in clear violation of the decision rendered by the Division Bench of this Court in the case of **Syed Md. Fazlay Rabbi**(supra), and accordingly, the same cannot be sustained.

25. In view of the conclusions as drawn by this Court, hereinabove, it is held that the petitioner would be entitled to reckon as his qualifying service for computation of his pension and pensionary benefits; the service so rendered by him in the Panchayat, w.e.f. 01.01.1959 till 31.01.1998. Accordingly, the pension and pensionary benefits authorized to the petitioner vide the Pension Payment Order(PPO) being No. ADP/PRI/PPO/GPO/2015/001937, would now call for a revision.

26. Accordingly, the respondents are required to re-compute the pension and pensionary benefits receivable by the petitioner by reckoning his qualifying service to be 39 years and 1 month i.e. by reckoning the period of service rendered by him w.e.f. 01.01.1959 till 31.01.1998.

27. On the re-computation of the pension and pensionary benefits in the manner as indicated above; the respondent authorities would issue a fresh Pension Payment Order(PPO) to the petitioner, herein, in supersession of the earlier Pension Payment Order(PPO) being No. ADP/PRI/PPO/GPO/2015/001937.

28. The exercise now required to be undertaken for re-computation of the pension and pensionary benefits in respect of the petitioner, herein, 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.

29. 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.

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

JUDGE

Comparing Assistant