

GAHC010010342017



2024:GAU-AS:11159

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

Case No. : WP(C)/252/2017

AHMED ALI @ MD. AHMED ALI
S/O. LT. JASI MANDAL, VILL. BANDIA CHAPARI, P.O. and P.S. MONGALDOI,
DIST. DARRANG, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, P and R D,
ASSAM, DISPUR, GHY.-06.

2:THE DIRECTOR OF PANCHAYAT and RURAL DEVELOPMENT
ASSAM PANJABARI GUWAHATI-22.

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

4:THE JOINT SECRETARY
O/O. THE COMMISSIONER OF PENSION and R.D.
ASSAM DISPUR GUWAHATI-6.

5:THE DIRECTOR OF PENSION AND PUBLIC GRIEVANCE DEPTT.
HOUSEFED COMPLEX LAST GATE DISPUR GUWAHATI-6.

6:THE ACCOUNTANT GENERAL ASSAM MAIDAMGAON
BELTOLAGUWAHATI PENSION and PUBLIC GRIEVANCE DEPTT

Advocate for the Petitioner : MR A N AHMED, MS.M DAS

**Advocate for the Respondent : MR.C BARUAHSC, PandPG, GA, ASSAM,MR.M NATH(SC,
P&RD)**

Linked Case : I.A.(Civil)/912/2022

ON THE DEATH OF AHMED ALI @ MD. AHMED ALI HIS LEGAL HEIRS
JAHURA KHATUN AND ANR
W/O LATE AHMED ALI @ MD. AHMED ALI
R/O VILLAGE BANDIA CHAPARI
PO AND PS MANGALDAI
DIST. DARRANG
ASSAM

2: AZIAUR RAHMAN
W/O LATE AHMED ALI @ MD. AHMED ALI
R/O VILLAGE BANDIA CHAPARI
PO AND PS MANGALDAI
DIST. DARRANG
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM DISPUR GUWAHATI-6

2: THE DIRECTOR OF PANCHAYAT AND RURAL DEVELOPMENT
ASSAMPANJABARI GUWAHATI-22

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

4: THE JOINT SECRETARY
O/O THE COMMISSIONER OF PENSION AND R O
ASSAM DISPUR GUWAHATI-6

5: THE DIRECTOR OF PENSION AND PUBLIC GRIEVANCE DEPTT
HANREFED COMPLEX LAST GATE DHANREFED COMPLEX
LAST GATE DISPUR GUWAHATI-6

6: THE ACCOUNTANT GENERAL ASSAM
MAIDAMGAON BELTOLA GUWAHATI

Advocate for : MR A N AHMED
Advocate for : SC P AND R.D. appearing for THE STATE OF ASSAM AND 5 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. A. N. Ahmed, learned counsel, appearing on behalf of the petitioners. Also heard Mr. P. Handique, learned standing counsel, appearing on behalf of respondents No. 1, 2 & 3; Ms. R. B. Borah, learned Government Advocate, Assam, appearing on behalf of respondents No. 4 & 5; and Mr. B. Sharma, learned standing counsel, Accountant General, Assam, appearing on behalf of respondent No. 6.

2. The present proceeding was instituted by Ahmed Ali @ Md. Ahmed Ali, inter alia, praying for being authorized, his pension and pensionary benefits on his retirement as a Tax Collector in Chapoi Gaon Panchayat. During the pendency of the present proceeding, the original petitioner i.e. Ahmed Ali @ Md. Ahmed Ali expired on 21.03.2021. Thereafter, his wife and son, namely, Jahura Khatun and Azizur Rahman, respectively, instituted an interlocutory application being IA(c)912/2022, praying for substituting themselves in place of the original petitioner in the present proceeding i.e. WP(c)252/2017. The substitution, as prayed for, in the said interlocutory application, was allowed by this Court vide order, dated 15.03.2024. However, it is seen that the names of the substituted petitioners have not been reflected in the Cause Title of the present writ petition. Accordingly, Registry is required to effect the necessary corrections in the Cause Title of the writ petition and also in the CIS, in terms of the directions passed by

this Court vide order, dated 15.03.2024, in IA(c)912/2022, as well as the order, dated 15.03.2024, passed in the present proceeding.

3. Situated thus, the instant writ petition is being considered by reckoning Jahura Khatun and Azizur Rahman as the writ petitioners.

4. The original petitioner, namely, Ahmed Ali @ Md. Ahmed Ali was initially appointed as Secretary in Kharpuri Gaon Panchayat w.e.f. 17.05.1962. He, accordingly, joined his service on 22.05.1962. The original petitioner was, thereafter, transferred to Chapoi Gaon Panchayat as a Tax Collector. The service of the original petitioner was provincialized in terms of the Assam Panchayat Employees (Provincialized) Act, 1999, w.e.f. 01.10.1991. The original petitioner retired from his service on attaining the age of superannuation w.e.f. 30.11.2000.

5. The materials brought on record, reveal that the pension papers of the original petitioner was forwarded by the Commissioner, Panchayat & Rural Development Department, to the Director of Pension, Government of Assam, on 27.03.2014 and therein, it was indicated that the original petitioner was authorized provisional Pension and provisional DCRG. The said pension proposal of the petitioner was not finalized by the Director of Pension, Assam, on the ground that the original petitioner had not completed 20 years of qualifying service.

6. Mr. Ahmed, learned counsel for the petitioners, by placing reliance on the provisions of the Assam Panchayat Employees(Provincialization) Act, 1999, has submitted that the term "date of appointment" has been defined

in the said Act, to mean 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. Ahmed, learned counsel for the petitioner, has, accordingly, submitted that the original petitioner would be entitled to reckon the service rendered by him w.e.f. 22.05.1962 till the date of his superannuation on 30.11.2000, as his qualifying service for the purpose of computation of his pension and pensionary benefits.

8. Mr. Ahmed, learned counsel, has further submitted that the stand as taken by the respondent authorities in the matter that the original petitioner would not be entitled to be authorized any pension and pensionary benefits on account of having less than 20 years of qualifying service is on the face of it perverse and in violation of the decision of the Division Bench of this Court rendered in the case ***of Syed Md. Fazlay Rabbi***(supra).

9. In the above premises, Mr. Ahmed, learned counsel for the petitioner, has submitted that the original petitioner was entitled to be authorized his

pension and pensionary benefits by reckoning the service rendered by him w.e.f. 22.05.1962 till 30.11.2000, as qualifying service for pension. The original petitioner having already expired; Jahura Khatun, his wife, would now be required to be authorized the pension and pensionary benefits along with the life-time arrears of the pension receivable by the original petitioner till the date of his death.

10. 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.

11. Mr. Handique, learned standing counsel, Panchayat & Rural Development Department, has submitted that by applying the said principle, it having been found that the original petitioner did not have the requisite length of service of 20 years, the pension and pensionary benefits could not be authorized to him.

12. Mr. Handique, learned standing counsel, Panchayat & Rural Development Department, has also submitted that the Director of Pension, Assam, having not authorized the pension and pensionary benefits to the original petitioner on the ground that he had not completed the mandated 20 years of qualifying service; the same would not call for any interference by this Court. Further, no pension having been authorized to the original petitioner, the present petitioners, more particularly, Jahura Khatun, would not be entitled to claim for being authorized family pension.

13. Mr. Handique, learned standing counsel, Panchayat & Rural Development Department, has further submitted that name of the original petitioner did not figure in the list of 354 numbers of provincialized Panchayat employees who had retired from service on or after 01.10.1991 after rendering more than 10 years of qualifying service but less than 20 years of qualifying service in view of specific relaxation extended only to persons whose names were included in the said list of 354 persons. Accordingly, the original petitioner not having 20 years of qualifying service, would not be entitled to any pension or pensionary benefits.

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 original petitioner as noticed hereinabove, are not in dispute.

16. The original petitioner as noticed hereinabove, was initially appointed as a Secretary in Kharpuji Gaon Panchayat w.e.f. 17.05.1962 and he had joined his service on 22.05.1962. The original petitioner was, thereafter, transferred to Chapoi Gaon Panchayat as a Tax Collector. The service of the original petitioner was provincialized in terms of the Assam Panchayat Employees(Provincialized) Act, 1999, w.e.f. 01.10.1991. The original petitioner, thereafter, retired from his service on attaining the age of superannuation w.e.f. 30.11.2000.

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. 145/2009, 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.”

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 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 the date on which such employee was 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 refer to the term "date of appointment" finding mention in the said Act of 1999, to mean the date of first entry by the provincialized Panchayat employee in the service of a Panchayati Raj Institution(PRI). 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 original petitioner had initially joined his service in the Panchayat as a Secretary on 22.05.1962. 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. 22.05.1962 and not from any date pursuant thereto.

26. It is also to be noted that the contention of the original petitioner, herein, that he had joined the service of the Panchayat on 22.05.1962, has not been disputed by the respondents in the present proceeding.

27. The Division Bench of this Court in the case of **Syed Md. Fazlay Rabbi**(supra), 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 pensionary benefits 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 original petitioner, herein, his pension and pensionary benefits. The original petitioner by reckoning the date of his initial entry into the service of a Panchayati Raj Institution(PRI) w.e.f. 22.05.1962, had qualifying service of more than 20 years.

28. Accordingly, in view of the above position, this Court is of the considered view that the original petitioner was entitled to be authorized his pension and pensionary benefits by reckoning the service rendered by him in Secretary in Kharpuji Gaon Panchayat w.e.f. 22.05.1962 till the date

of his superannuation on 30.11.2000, by considering the entire period of his qualifying service.

29. In view of the above conclusions drawn by this Court in the matter; the following directions are issued:

- (1).** The Commissioner, Panchayat & Rural Development Department, and the Director of Pension, Government of Assam, shall process the pension and pensionary benefits required to be authorized to the original petitioner Late Ahmed Ali @ Md. Ahmed Ali by reckoning the period of service rendered by him w.e.f. 22.05.1962 till 30.11.2000, as his qualifying service for his pension.
- (2).** On such computation of pension being so made in respect of the service rendered by the original petitioner; the arrears so working out in the matter w.e.f. 01.12.2000 till the date of his death i.e. 21.03.2021, shall be released to his wife Jahura Khatun, the substituted petitioner, after deducting the provisional pension paid. The DCRG due, be also released after deducting provisional DCRD, if any paid.
- (3).** On computation of the pension required to be authorized to the original petitioner, the life-time arrears working out in respect of the original petitioner; the Commissioner, Panchayat & Rural Development Department, and the Director, Pension, Government of Assam, shall also finalize the family pension required to be authorized to Jahura Khatun pursuant to the death of the original petitioner, herein, and release to her, the

amount so working-out.

- (4). The above exercise now required to be undertaken by the Commissioner, Panchayat & Rural Development Department, and Director, Pension, Government of Assam, shall be so initiated and completed with the issuance of the Pension Payment Order(PPO) to the wife of the original petitioner, namely, Jahura Khatun, in the manner indicated above, within a period of 3(three) months from the date of receipt of a certified copy of this order.
- (5). It is further provided that considering the inordinate delay occasioning in authorizing to the original petitioner his pension and pensionary benefits and the consequential family pension benefits to Jahura Khatun, this Court further provides that the Pension Payment Order(PPO), if not issued within a period of 3(three) months from the date of receipt of a certified copy of this order, and the amount due not so released; the arrears working-out shall 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