

GAHC010030622024



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

**Case No. : WP(C)/831/2024**

ABUL KASHEM PRODHANI  
W/O- LATE ANSAR ALI PRODHANI,  
R/O- VILLAGE AND P.O- BARUNDANGA,  
P.S- GOLAKGANJ, DIST- DHUBRI, ASSAM, PIN-783334

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REP. BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM,  
DEPARTMENT OF PANCHAYAT AND RURAL DEVELOPMENT  
DISPUR, GUWAHATI-6

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

3:THE COMMISSIONER AND SECRETARY  
TO THE GOVERNMENT OF ASSAM  
FINANCE DEPARTMENT

DISPUR  
GUWAHATI-6  
ASSAM.

4:THE COMMISSIONER  
PANCHAYAT AND RURAL DEVELOPMENT  
JURIPAR  
SIXMILE

PANJABARI  
GUWAHATI- 781037.

5:THE DIRECTOR OF PENSION  
ASSAM  
HOUSEFED COMPLEX  
GUWAHATI-06

6:THE CHIEF EXECUTIVE OFFICER  
DHUBRI ZILLA PARISHAD  
AT DHUBRI

P.O AND DIST- DHUBRI  
ASSAM  
PIN-783301

7:THE TREASURY OFFICER  
DHUBRI TREASURY

P.O AND DIST- DHUBRI  
ASSAM  
PIN-78330

**Advocate for the Petitioner : MR. M ISLAM**

**Advocate for the Respondent : GA, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**21.02.2024**

Heard Mr. M. Islam, learned counsel for the petitioner. Also heard Mr. P Handique, learned counsel for the respondents No. 1, 4 & 6; Ms. M. Bhattacharjee, learned Addl. Sr. Government Advocate for the respondents No. 2 & 5 and Mr. R. Borpujari, learned Standing Counsel for the respondents No. 3 & 7.

**2.** The matter pertains to non-payment of the arrear pension benefits. The case of the petitioner is that his father was appointed as a Tax Collector (Grade-

III Post) on 02.03.1961 in the office of the Moterjhar Gaon Panchayat under Dhubri Zilla Parishad on a fixed payment of Rs.50/- per month. Subsequently, the deceased father of the petitioner was expanded to the post of Office Assistant (Grade-III) and he was transferred to the Bisondai Gaon Panchayat. Thereafter, his father was paid the salaries as per the scale of pay of Rs. 175/- per month with effect from 01.03.1975. The aforesaid pay scale was subsequently revised due to increment as per the fact fixed by the competent authority of the Government. Thereafter, on 20.02.1990, the petitioner's father was promoted to the post of Secretary of Bishodai Gaon Panchayat and on 13.07.1990, he was transferred to the Office of the Sahebganj Gaon Panchayat where his service was Provincialised vide order under memo No. 169/91/70-A dated 16.11.1991 w.e.f. 01.10.1991. In terms of the Assam Panchayat Employees (Provincialisation) Act, 1999, the employees of the Panchayat institutions were provincialised and were given the pensionary benefits with retrospective from 01.10.1991.

**3.** The petitioner's father had retired from service on superannuation on 31.10.1991. However, as far the aforesaid Act of 1999, the petitioner's father is entitled to provincialisation and also pensionary benefits. Accordingly, the present petition filed by the petitioner claiming for retirement benefits including the pensionary benefits with effect from 31.10.1991. It is the case of the petitioner that since the petitioner's father was entitled the family pension, upon his death, the mother of the petitioner would have entitled to the family pension. Unfortunately, the petitioner's mother also died on 20.08.2022 and she did not receive any family pension during her lifetime. Accordingly, the present petition has been filed seeking payment of the arrear pension in respect of the service rendered by the father of the petitioner as well as family pension

entitled to the petitioner's mother.

**4.** Raising these grievances, the petitioner preferred a representation dated 29.05.2023 prayed before the authorities to pass appropriate orders. The said representation is stated to be still pending and not disposed of by the respondent authorities.

**5.** Mr. Islam, the learned counsel for the petitioner has drawn the attention of this Court to the decision rendered by the Division Bench of this Court in WA No.145 of 2009 and others, passed on 24.03.2010 in which the Court held as follows:

*“We are, therefore, of the considered view that the benefit of the provision 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 appointment.”*

**6.** Having heard the learned counsel for the parties, this Court is of the opinion that there cannot be any dispute as regards the entitlement of the petitioner's father to pension as well as to the family pension by the petitioner's mother. The Judgment rendered in Syed Md. Fazlay Rabbi [W.A. No. 145/2009] has clearly laid down the law regarding the entitlement of pensioners and other retirement benefits in respect of employees who had rendered services and superannuated and are governed by the Assam Panchayat Employees (Provincialisation) Act, 1999.

**7.** This Court is of the opinion that confirmation of service is not required in view of the specific provision of the Assam Panchayat Employees (Provincialisation) Act, 1999. Section 3 of the aforesaid Act provides that subject to the provision

of Article 31 of the Constitution of India, all employees of the Panchayat under the State Government shall be deemed to have been provincialised on and from the appointed day (i.e. 01.10.1991) on the following terms and conditions mentioned there under. Therefore, apart from the effective date which will be decided by the authorities, all the employees including the petitioner's father had the right to be provincialised in terms of Section 3 of the Act.

**8.** Accordingly, in view of above, this Court is of the opinion that there should not be any difficulty on the part of the authorities to release the pensionary benefits after making the necessary verification of the service records of the petitioner's father and on account of the service rendered by the petitioner's father from the date of his initial appointment up to the date of his death and thereafter, the authority will also workout the entitlement of the petitioner's mother, who would be entitled to family pension from the date of the death of the petitioner's father till the death of the petitioner's mother. This exercise shall be undertaken within a period of 60 (sixty) days from the date of receipt of a certified copy of this order so that the petitioner can be granted aforesaid benefits.

**9.** Writ petition stands allowed. Copies of this order be furnished to the learned counsel for the respondents.

**JUDGE**

**Comparing Assistant**