



GAHC010129442022

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

Case No. : WP(C)/4397/2022

NUR HUSSAIN MOLLAH
S/O. MEZER UDDIN MOLLAH, VILLAGE- MADAIKHALI, P.O.-
ASHARIKANDI, DISTRICT- DHUBRI, ASSAM, PIN- 783331.

VERSUS

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

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

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
JURIPAR
PUNJABARI
GUWAHATI- 37.

5:THE DIRECTOR OF PENSION
ASSAM



HOUSEFED COMPLEX
GUWAHATI-6.

6:THE CHIEF EXECUTIVE OFFICER

DHUBRI ZILLA PARISHAD
P.O. AND DISTRICT- DHUBRI
ASSAM
PIN- 783101.

7:THE TREASURY OFFICER
DHUBRI TREASURY
P.O. AND DISTRICT- DHUBRI
ASSAM
PIN- 783101

Advocate for the Petitioner : MR. M ISLAM

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 05-08-2022

JUDGMENT & ORDER (ORAL)

Heard Mr. M Islam, learned counsel for the petitioner, Mr. S Dutta, learned counsel for the respondents in the P&RD Department, Government of Assam, Mr. JK Parajuli, learned counsel for the respondents No. 2 and 5 being the authorities in the Pension and Public Grievance Department and Mr. B Gogoi, learned counsel for the respondents in the Finance Department.

2. The petitioner was appointed as a Gaon Panhayat Secretary on 08.10.1993 temporarily on muster roll basis at a fixed remuneration of Rs. 900/- per month. The service book of the petitioner indicates that he continued to remain in service and ultimately retired on 03.07.2021. In course of his service, the petitioner was subjected to provincialisation of the service under the Assam

Panchayat Employees Provincialisation, Act 1999 (in short Act of 1999).

3. As per section 3 of the Act of 1999, all employees of the Panchayats under the State Government shall be deemed to have been provincialised on and from the appointed date. Section 2(a) of the Act of 1999 defines appointed date to mean the date on which the Act came into force i.e. 01.10.1991. Section 2(b) defines date the date of appointment in relation to any employee to mean the date on which he joined the service of the Panchayat.

4. Having interpreted the appointed date and date of appointment, the Division Bench of this Court in its judgment dated 24.03.2010 in WA 145/2009 in paragraph 9 thereof had provided as extracted:-

“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 01.10.19 91 on the basis of the length of their service reckoned from the date(s) of their initial appointments.”

5. A reading of the afore-extracted provision of the judgment of the Division Bench dated 24.03.2010, makes it discernible that it had been declared by the Division Bench that the provision of the Act of 1999 including those for pension and other retirement dues would be available to the provincialised 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, meaning thereby the date of appointment defined in Section 2(b) or in other words, the date on which they had joined the service of the Panchayat.

6. In the instant case admittedly the petitioner in whatever manner he may have been initially appointed had joined the service of the Panchayat on 08.10.1993. Therefore, his length of service as per the provisions of the judgment of the Division Bench dated 24.03.2010 would be from 08.10.199 till



the date of his retirement on attaining the age of superannuation which is 03.07.2021.

7. A stand has been taken by the Finance Department that the petitioner would not be entitled to pension in view of the New Defined Contribution Pension Scheme, inasmuch as, the petitioner was regularized in service after 01.02.2005.

8. The said contention that the petitioner would not be entitled for pension in view of the provisions of the New Defined Contribution Pension Scheme would not be applicable in the present case inasmuch as, there is a judicial conclusion being arrived at in the judgment and order dated 24.03.2010 in WA 145/2009 that the pension of the provincialised Panchayat employees would be reckoned from the date of appointment i.e. the initial date of joining services under the Panchayat for the purpose of pensionary benefits. Therefore, although the order of provincialisation may be after 01.02.2005, but the entire service from the date of appointment in the Panchayats would consist of the qualifying period for the purpose of pension. We have also taken note of that the New Defined Contribution Pension Scheme was notified by the notification dated 06.10.2009 whereas the judgment of the Court is dated 24.03.2010, meaning thereby that the provision in the order of the Division Bench that the pension of the Panchayat employees would be reckoned from the date of their appointment for entering the services in the Panchayat was made after the New Defined Contribution Pension Scheme was brought in force and the principles of constructive res-judicata would mean that the respondent authorities in the Finance Department had raised the issue of the New Defined Contribution Pension Scheme before the Court in WA 145/2009 itself. Accordingly, by applying the principles of constructive res-judicata the said plea that the

Panchayat employees will not be entitled to pension as because of the New Defined Contribution Pension Scheme which came into effect from 01.02.2005 cannot be raised in the writ petition as it would be barred by the principles of res-judicata.

9. We have been told that against the judgment of the Division Bench dated 24.03.2010 in WA 145/2009, there was an appeal preferred before the Hon'ble Supreme Court being Special leave to Appeal (Civil) No. 19351-19360/2010, which was dismissed by the order dated 02.08.2010, meaning thereby that the provisions of the judgment of the Division Bench in WA 145/2009 had attained its finality.

10. Further, it is further noticed that Section 1(3) of the Provincialisation Act, 1999 provides that the Act shall be deemed to have come into force on 01.10.1991 and Section 2(a) defines appointed date to mean the date on which the Act came into force i.e. the appointed date would also be 01.10.1991. Further section 3 of the Provincialisation Act 1999 provides that all employees of the Panchayat under the State Government shall be deemed to have been provincialised on and from the appointed date i.e. it is deemed that they were provincialised from 01.10.1991. The aforesaid aspect had been discussed in paragraph 9 of the judgment dated 24.03.2010 in WA 145/2009 that the Act came into force on 01.10.1991 and appointed date means the date on which the Act came into force and that the employees of the Panchayat are deemed to have been provincialised from the appointed date i.e. 01.10.1991. Accordingly, it was provided in paragraph 9 itself, that the provisions of the Act including those for pension and other retirement benefits would be available on an after 01.10.1991 on the basis of the length of service reckoned from the dates of their initial appointments. OM dated 06.10.2009 introducing the New Defined



Contribution Scheme provides that the New Defined Contribution Pension Scheme would be applicable to all new entrance joining State Government services on regular basis against sanctioned vacant posts on or after 01.02.2005.

11. In the instant case, as there is a deeming provision that the services of the petitioner was provincialised on 01.10.1991, he would not be covered by the New Defined Contribution Pension Scheme even if any consequential orders were subsequently passed by the authorities as under the law their entry into Government service was not after 01.02.2005.

12. For the purpose of the pension, the respondents in the Panchayat and Rural Development Department are accordingly directed to pass necessary order on the entitlement of the petitioner for pension by taking note of the law laid down by the Division Bench in WA 145/2009.

13. The reasoned order be passed and the consequential pension be paid within a period of two months from the date of receipt of a certified copy of this order.

The writ petition is allowed to the extent as indicated above.

JUDGE

Comparing Assistant