
(2013) 11 GAU CK 0013
In the Gauhati High Court
Case No : Writ Petition (C) No. 5924 of 2006

Sybannesa Khatun

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2013) 5 GLT 722

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : H.R.A. Choudhury, for the Appellant; S.M.T. Shisti, SC Education Department and Mr. U.K. Nair, SC, Director of Pension, for the Respondent

Final Decision : Disposed Off

Judgement

T. Vaiphei, J.—Aggrieved by the refusal of the State-respondents to pay pension to the deceased pensioner, this writ petition had been initially filed by the pensioner himself, and is now continued by his wife as his legal heir after his death. Late Md. Lutfur Rahman, who died on 13.3.2012 during the pendency of this writ petition, was appointed as Arabic Teacher of Digendra Nath M.E. School on 1.4.1975 to cater to the needs of the locality. The deceased also claimed to be the founder teacher of the School. The School got ad-hoc grant on 1.10.1977, and was provincialised by the Government of Assam on 23.2.1980: his name got dropped at the time of the provincialisation. Aggrieved by that, he had at one time approached this Court through the Classical (Arabic) Teachers Association, Karimganj in Civil Rule No. 1677 of 1990 for regularization of his service and that of his colleagues. This Court disposed of the writ petition on 24.1.1994 by directing the authority to consider the case of the petitioner-Association, among others, for regularization of the services of members of their Association including that of the petitioner. In compliance with the order of this Court, the respondent authorities regularized the service of the petitioner vide the order dated 3.8.1999 issued by the respondent No. 1 with immediate effect. The respondent No. 4 thereafter by the order dated 5.11.1999 adjusted the service of

the petitioner against the vacant post of Arabic Teacher at Kanishail M.E. Madrassa on a regular pay scale and other allowances. He was thereafter released from Digendra Nath ME School, and joined Kanishail M.E. Madrassa on 6.11.1999 till 31.8.2004 when he retired from service on attaining the age of superannuation.

2. Immediately after regularization of his service, the petitioner on 16.10.2000 filed a representation to the respondent No. 4 for regularization of his dropped period with effect from 23.2.1980 i.e. the date of provincialization of the school with supernumery approval to the post of Arabic Teacher for enabling him to receive pension benefits and for his adjustment against regular vacant post. His representation was never accepted till the date of his retirement. Therefore, by the time he had retired from service on 31.8.2004, he hardly had five years of regular service. As he did not have the qualifying service of ten years, the application of the petitioner for pension benefits was rejected by the respondent authorities. Having failed to convince the State-respondents for retrospective regularization of his dropped period even after repeated representations made by him, this writ petition is now filed by the petitioner for appropriate orders.

3. The writ petition is opposed by the State-respondents, who have also filed their affidavit-in-opposition through the respondent No. 2 (the Director of Elementary Education, Assam). The stance taken by the respondent authorities is that the School received ad-hoc grant w.e.f. 1.10.1977 and was provincialized w.e.f. 28.2.1980 and that at the time of the provincialization, the post of Arabic Teacher was not sanctioned whereupon the name of the petitioner had to be, and was dropped. However, in compliance with the order of this Court in CR No. 1577 of 1990, the District Elementary Education Officer, Karimganj, in pursuance of the letter dated 3.8.1999 issued by the Government, had adjusted the honorary service of the petitioner against a vacant post of Arabic Teacher at Kanishail ME Madrassa w.e.f. 6.11.1999 i.e. from the date of joining the School. It is stated by the answering respondent that the pension papers of the petitioner were returned by the respondent No. 3 as he was not entitled to it for rendering less than 10 years of continuous service in a sanctioned post: this was intimated to him by the respondent No. 4 vide his letter dated 18.8.2006. It is, therefore, submitted by the answering respondent that the petitioner is not entitled to any relief, and the writ petition is liable to be dismissed.

4. Mr. HRA Choudhury, the learned senior counsel for the petitioner, submits that the service of the petitioner was under the Government of Assam and was serving against substantive and permanent post and his emoluments were paid by the Government of Assam and Rule 31 of the Assam Services (Pension) Rules, 1969 ("the Rules" for short) does not say as to the number of years an employee served to qualify himself to get pension. He, therefore, maintains that the deceased was entitled to pension even if he did not complete of continuous service of ten years. Alternatively, he contends that proviso (i) to Rule 31 of the Rules empowers the Governor of Assam to relax the conditions imposed by Rule

31 by declaring that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension and that any shortage in the number of years of service of the petitioner to qualify for pension can thus be condoned by making the above declaration. In support of his contentions, he relies on the following decisions of this Court Jiban Ch. Deka and Others Vs. State of Assam and Others, Pulin Goswami Vs. State of Assam and Others, , Naoman Ch. Kalita Vs. State of Assam and Others, On the other hand, Mr. SMT Chisti, the learned standing counsel for Education Department, supports the impugned decision of the respondents and submits that when the petitioner did not complete the qualifying service of 10 continuous years, it will be contrary to law to claim pension. He strenuously urges this Court to dismiss the writ petition, which is devoid of merits.

5. After giving my anxious consideration to the rival submissions made by the learned counsel appearing for the parties, I am of the view that regularization of the service of the petitioner for a bare five years or so thereby disabling him to receive pension is an exercise in futility, and does not help the condition of the petitioner at all. If an employee like the petitioner happened to be a dropped teacher, and if his service was subsequently regularized, denial of pension to him will defeat the very object of the regularization. It is apparently with a view to remove such hardship being caused to a regularized employee having no qualifying service for pension that a provision is enacted in the proviso (i) to Rule 31 of the Rules empowering the Governor of Assam to declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension. In this case, the petitioner had admittedly been serving as Arabic Teacher from 1.4.1975 till 28.2.1980 when the School was provincialised and the deceased found his name dropped from service. His service came to be regularized with effect from 3.8.1999. By the order dated 5.11.1999, his service was adjusted against the vacant post of Arabic Teacher at Kanishail M.E. Madrassa, which post he held till his retirement from service on 31.8.2004 on superannuation. Therefore, even without counting the dropped period also, he had rendered a total of 20 years or so as Arabic Teacher, albeit, on two different spells. In this view of the matter, the case of the deceased deserves serious consideration at the hands of the State-respondents by invoking proviso (i) to Rule 31 of the Rules. The result of the foregoing discussion is that this writ petition is disposed of by directing the respondent authorities to consider the case of the deceased pensioner for invoking the provision of proviso (ii) to Rule 31 of the Assam Service (Pension) Rules, 1969 for enabling the petitioner to receive the pension arrears and family pension of her husband within a period of two months from the date of receipt of a copy of this judgment.