GAHC010065882021

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 2517/2021

Smt. Sandhyarani Das,
W/o Lt. Sachindra Kr. Das,
Resident of Vill-Bokajan Town, Ward No.3,
PO & PS-Bokajan, Dist.-Karbi Anglong, Assam.

.....*Petitioner*.

-Versus-

1. The State of Assam,
   Represented by the Commissioner & Secretary to the
   Government of Assam, Education Elementary Department,
   Dispur, Guwahati-6, Dist.-Kamrup(M), Assam.

2. The Director of Elementary Education, Assam,
   Kahilipara, Guwahati-19,
   Dist.-Kamrup(M), Assam.

3. Karbi Anglong Autonomous Council, Diphu,
   Represented by its Principal Secretary.

4. Accountant General,
   Maidamgaon, Beltola, Guwahati-29.

5. District Elementary Education Officer,
   Diphu, Karbi Anglong.

6. The Treasury Officer,
   Diphu, Hamren, Bokajan,
   Dist.-Karbi Anglong, Assam.

7. Headmaster,
   Bibekananda L.P. School, Bokajan,
   Dist.-Karbi Anglong, PO-Bokajan, Pin-782480.

.....*Respondents*.

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Petitioner	:	Mr. H. Das. ……Advocate.
For the Respondents	:	Mr. J. Chutia, SC, KAAC, Mr. B. Kaushik, SC, Ele. Edu. ……Advocates.
Dates of Hearing	:	07.11.2024 & 12.11.2024
Date of Judgment	:	20.12.2024.

JUDGMENT AND ORDER

Heard Mr. H. Das, learned counsel for the petitioner. Also heard Mr. J. Chutia, learned standing counsel, Karbi Anglong Autonomous Council (KAAC), appearing for the respondent Nos.3, 5 and 7 and Mr. B. Kaushik, learned standing counsel, Education (Elementary) Department, appearing for respondent Nos.1 and 2.

2. In this petition under Article 226 of the Constitution of India, the petitioner Smt. Sandhyarani Das has prayed for issuing direction to the respondent authorities for releasing family pension to her w.e.f. 13.07.1992.

3. The background facts leading to filing of the present petition, is briefly stated as under:-

> "Late Sachindra Kr. Das was working as Head Pandit of Bibekananda L.P. School, Bokajan, Karbi Anglong. During the period of his service, he expired on 12.07.1992. After his death, his wife, the present petitioner, has approached the respondent authorities for granting her family pension, but the same has been denied and being aggrieved she approached this Court by filing the present petition seeking the relief as aforesaid."

4. The respondent No.5, the District Elementary Education Officer, Karbi Anglong, Diphu, has filed affidavit-in-opposition, wherein it is stated that the Karbi Anglong Autonomous Council (KAAC) has been given the authority to make law, applicable within the district of Karbi Anglong, in respect of Primary and Secondary Education as per paragraph 3A(1)(d) of the 6th Schedule of the Constitution of India and that the Assam Elementary Education (Provincialisation) Act, 1974 was enacted by the Government of Assam for provincialisation of the services of the teachers and employees of Elementary Schools and Section 1(2) of the Act provides that the Act is extended to the whole Assam except the Autonomous District, provided that the Governor may, with the consent of District Council concern, extend all or any of the provisions of the Act to all or any of the Autonomous District on such day or dates as may be notified in this behalf. Thereafter, in exercise of power conferred by Section 1(2) of the Act, the Governor of Assam after consultation and with consent of Karbi Anglong Autonomous Council, extend all the provisions of the Assam Elementary Education (Provincialisation) Act, 1974 to the Karbi Anglong Autonomous Council w.e.f. 01.08.2003 and thereafter, pursuant to the Government notification dated 08.08.2003,

the Governor of Assam provincialized 1411 nos. of L.P. Schools with 2859 nos. of L.P. School teachers w.e.f. 01.08.2003 and extended the benefit of general provident fund accounts and other financial benefits. The said notification also stipulates that in future the provincialisation of Assam Elementary Education (Provincialisation) Act, 1974 will be applicable in terms of Office Memorandum dated 31.12.1996 and thereafter, the Secretary to the Government of Assam, Education (Elementary) Department issued Notification No.AEE.384/2005/Pt/165 dated 06.10.2009, by which the services of 343 nos. of retired/expired L.P. School teachers were provincialized, who had been working from 01.01.1995 to 31.07.2003 on the condition that the pension/family pension is to be given and not for other pensionary benefits w.e.f. 01.08.2003 and the arrear salary from 01.01.1996 to 31.07.2005 are not entitled by the retired/families of expired teachers, and since the husband of the petitioner was appointed by the Secretary, Primary Education Board, Karbi Anglong District Council, Diphu, by an order dated 24.01.1969 and he died on 12.07.1992, before provincialisation of the services of the teachers of Bibekananda L.P. School, the pension papers of the husband of the petitioner could not be processed from his office and therefore, it is contended to dismiss the petition.

5. Mr. Das, learned counsel for the petitioner, submits that the husband of the petitioner was appointed as an Assistant Teacher in the Bibekananda L.P. School, Bokajan, Karbi Anglong, on 01.01.1969 and while he was working as Head Pandit of Bibekananda L.P. School, Bokajan, he died on 12.07.1992 and after the death of her husband, the petitioner filed an application to the Headmaster of the school on 02.03.1996 seeking family pension. But, the same has been denied and that her husband received pay scale w.e.f. 01.01.1969 till 31.12.1987 and

the same has been duly recorded in his service book and the colleagues of her late husband have been receiving regular pension and other pensionary benefits, but when she approached the Headmaster of the school, the same has been denied to her and as the husband of the petitioner was in regular service, his family members are entitled to receive family pension and therefore, Mr. Das has contended to allow this petition by directing the respondent authorities to release the family pension in favour of the petitioner. In support of his submission, Mr. Das has referred to the decisions of this Court in **Khagendra Chandra Dev Sarma Vs State Of Assam And Ors. [WP(C) No.3267/2006, decided on 19.07.2006]** and in **Mrs Purnima Tamuli Phukan Vs State Of Assam And Ors. [WP(C) No.2319/2011, decided on 18.06.2013]**.

6. Per contra, Mr. Chutia, learned standing counsel, KAAC, appearing for the respondent Nos.3, 5 and 7 submits that in the district of Karbi Anglong, the Assam Elementary Education (Provincialisation) Act, 1974 was extended w.e.f. 01.08.2003 by a notification dated 08.08.2003 and that the Governor of Assam, thereafter, provincialized 1411 nos. of L.P. Schools with 2859 nos. of L.P. School teachers w.e.f. 01.08.2003 and thereafter, vide notification dated 06.10.2009, 343 nos. of retired/expired L.P. School teachers were provincialized, who had been working from 01.01.1995 to 31.07.2003 for giving pensionary benefits. But, the husband of the present petitioner expired before 01.01.1995 and as the school and the service of the husband of the petitioner was not provincialized, so his pensionary benefit cannot be extended to him and therefore, Mr. Chutia contended to dismiss the petition.

6.1. However, Mr. Chutia submits that there is a provision in the Assam Services (Pension) Rules, 1969, i.e. Rule 67 which gives the power to the

Governor to condon any deficiency of service, not exceeding 12 months in respect of qualifying service of an officer and that similar relief was granted by this court in **WP(C)/3786/2021 (Sabita Sutradha vs. State of Assam and 7 others).**

7. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record.

8. It is not in dispute that the husband of the petitioner was appointed as Assistant Teacher w.e.f. 01.01.1969 in the Bibekananda L.P. School, Bokajan. It is also not in dispute that her husband suffered demise on 12.07.1992, while he was working as Head Pandit of Bibekananda L.P. School, Bokajan. Further, it is also not in dispute that the Assam Elementary Education (Provincialisation) Act, 1974 was extended to the Karbi Anglong Autonomous Council w.e.f. 01.08.2003 and thereafter, the Governor of Assam had provincialized 1411 Nos. of L.P. Schools with 2859 Nos. of L.P. School teachers w.e.f. 01.08.2003 and thereafter, vide another Notification dated 06.10.2009 under No.AEE.384/2005/Pt/165, 343 nos. of retired/expired L.P. School teachers were provincialized, who had been working from 01.01.1995 to 31.07.2003. Admittedly, the name of the husband of the petitioner was not there in the aforementioned list and as the husband of the petitioner suffered demise prior to provincialisation of the school, in which he was working. And since his name is not there in the list of 343 Nos. of retired/expired L.P. School teachers, who had been working from 01.01.1995 to 31.07.2003, the family pension, as prayed for by the petitioner could not be extended to her, as her husband suffered demise before 01.01.1995. There is no provision in the said Act to extend such the benefit to the petitioner.

9. It is to be noted here that Rule 31 of the Assam Services (Pension) Rules, 1969 provides as under:-

> **"31. Conditions to qualifying service.- The service of an officer does not qualify for pension unless it conforms to the following three conditions:**
>
> **Firstly, the service must be under Government;**
>
> **Secondly, the employment must be substantive and permanent;**
>
> **Thirdly, the servant must be paid by Government.**
>
> **Provided that the Governor may, even though either or both of conditions (1) and (2) above are not fulfilled, -**
>
> **(i) declare that any specified kind of service rendered in a non-Gazetted capacity shall qualify for pension, and**
>
> **(ii) in individual cases and subject to such conditions as he may think fit to impose in each case allow service rendered by an officer to count for pension."**

10. Rule 140 of the Assam Services (Pension) Rules 1969 provides as under:-

> **"140.Except as otherwise provided in Rule 142 a family pension not exceeding the rate mentioned in Rule 141 will be admissible in case of death of an officer while in service or after 1st January, 1964, if at the time of death the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. In case of death while in service, the Government servant should have completed a minimum period of one year of service."**

11. Rule 67 of the Assam Services (Pension) Rules 1969 provides that upon such conditions as he may think fit in each case to impose, the Governor may condone a deficiency not exceeding twelve months in the qualifying service of an officer.

12. In the case in hand, it is not in dispute that the husband of the petitioner rendered service w.e.f. 01.01.1969, till his death on 12.07.1992, for a period of more than 20 years. But, as his service was not under the Government and his employment was not permanent and as the service was not paid by the Government, the requirement of Rule 31 could not be fulfilled so as to receive the pension/pensionary benefit.

13. I have carefully gone through the decisions, referred by Mr. Das, the learned counsel for the petitioner in **Khagendra Chandra Dev Sarma** (supra) and in **Mrs. Purnima Tamuli Phukan** (supra) and I find that the ratio laid down therein are not application to the facts herein this case as the facts in those cases are clearly distinguishable from the present case.

14. Under such circumstances and also taking note of Rule 67 of the 1969 Rules, this Court is inclined to dispose of this petition by granting liberty to the petitioner to approach the Director of Elementary Education and to file a fresh representation addressing the Governor of the State, for consideration of invocation of the power provides under Rule 67 and for further consideration of condoning the deficiency of qualifying services in respect of her late husband. It is further provided that on receipt of such representation, the Director of Elementary Education shall ensure that the application is forwarded to the Office of the Governor of the State as per procedure and thereafter, the Secretariat of the Governor shall do the needful for kind consideration of the Hon'ble Governor in view of Rule 67 of the 1969 Rules.

15. In terms of above, this writ petition stands disposed of. The parties have to bear their own cost.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant