



GAHC010050482024



2026:GAU-AS:4103

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

**Case No. : WP(C)/1418/2024**

NIZARA THAKUR  
WIFE OF LATE SIBA PRASAD THAKUR, RESIDENT OF ARUNDHATI  
APARTMENT, JAYANTA NAGAR, GANESH MANDIR PATH, NEW GUWAHATI  
TINIALI, NOONMATI, GUWAHATI- 781020, DISTRICT- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM, HIGHER EDUCATION, DISPUR, GUWAHATI-06

2:THE ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM  
HIGHER EDUCATION DEPARTMENT  
DISPUR  
GUWAHATI-06

3:THE DIRECTOR OF HIGHER EDUCATION  
KAHILIPARA  
GUWAHATI-19

4:THE PRINCIPAL  
DEBRAJ ROY COLLEGE  
GOLAGHAT  
PIN- 785621  
ASSAM

5:THE ACCOUNTANT GENERAL  
GOVERNMENT OF ASSAM  
MAIDAMGAON  
BELTOLA  
GUWAHATI  
ASSAM PIN- 78102



**BEFORE  
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR**

Advocate for the Petitioner : Ms. P. Barman

Advocate for the respondent(s) : Mr. D Upamanyu for R 1, 2 & 3

Mr. R K Talukdar for R 5

Date on which judgment was reserved : **13.3.2026**

Date of pronouncement of judgment : **19.03.2026**

Whether the pronouncement is of the : **NA**  
operative part of the judgment?

Whether the full judgment has been : **Yes**  
pronounced?

**JUDGMENT & ORDER (ORAL)**

1. Heard Ms P. Barman, learned counsel appearing for the petitioner. Also heard Mr D. Upamanyu, learned Standing Counsel, Higher Education Department, and Mr P.J. Saikia, learned counsel appearing for the respondent No.4. Mr R.K. Talukdar, learned Standing Counsel, Accountant General, appears for the respondent No.5.
2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the Communication dated 03.03.2023 issued by the Additional Secretary to the Government of Assam,



Department of Higher Education, by which the application of the petitioner for the grant of family pension for the services rendered by her late husband as Lecturer has been declined. It is the case of the petitioner that family pension is admissible to her under the relevant provisions of the Assam College Employees (Provincialization) Act, 2005, which has been amended by the Assam College Employees (Provincialization) (Amendment) Act, 2012, and the Assam College Employees (Provincialization) (Amendment) Act, 2020.

3. This Court has heard the learned counsel for the contesting parties and also gone through the various undisputed records annexed to the writ petition. The relevant provisions of law applicable to the case have also been perused, and the precedents, which would have a bearing on the outcome of the case, have been duly considered.
4. The husband of the petitioner was a professor of the Debraj Roy College at Golaghat who joined as a lecturer of Botany on 30 October 1963. After serving the college for a period of 23 years, the husband of the petitioner had applied for voluntary retirement in the year 1987, and the governing body of the college approved his request for voluntary retirement on 17.02.1987. The husband of the petitioner met his demise on the fifth of January 2008.
5. The provisions of the Assam College Employees (Provincialisation) Act, 2005, to provide for the provincialisation of the services of employees of



the Non-Government Colleges in receipt of deficit grants-in-aid in the State of Assam came into force on the 1st day of December, 2005. As per the provisions of Section 3 of the Act of 2005, subject to the provisions of Article 30 and 309 of the Constitution of India, all employees of the Non-Government Colleges in Assam in receipt of deficit grants-in-aid from the Government and imparting general education in Arts, Commerce or Science stream in Graduate level, save and except the employees who exercised option to continue in the existing terms and conditions of service under clause (d) of Section 3, were deemed to have become the employees of the Government on and from the date on which the Colleges have been brought under the deficit system of grants-in-aid, on the terms and conditions laid down in the clauses that followed in the same section.

6. There is no qualm at the bar that, as per the aforesaid provisions, the husband of the petitioner was an "employee" of such a college. The definition of "employee" is available at Section 2 (b) as "an employee of a College, both teaching and non-teaching, appointed substantively against a sanctioned post". The husband of the petitioner had already retired from his services by the time the Act of 2005 came into force. He was therefore not included in the definition of "existing employee", which is found at Section 2(c), to mean an employee of a College, both teaching and non-teaching, appointed substantively against a sanctioned



- post and who is or has been in service on or after the 1st day of January, 2005.
7. Section 8 of the Act of 2005 provides for the grant of a family pension to the family of the employees who had retired/expired before the coming into force of the Act of 2005. As per the said provision, employees who had retired/died, as the case may be, before 1st January, 2005 would be entitled to only superannuation pension or the family pension, as may be applicable under the existing pension Rules of the Government. They would not be entitled to any other pensionary benefits. It was, however, provided that the payment of such superannuation or family pension, as the case may be, would be subject to refund of the Government's share of their Contributory Provident Fund within six months from the date of coming into force of the Act, i.e., 1st of December 2005. It was further provided that if the Government's share of the Contributory Provident Fund was not refunded in respect of a retired/ deceased employee within the aforesaid stipulated period, no superannuation pension or family pension shall be admissible in respect of such employee.
  8. The husband of the petitioner, who was suffering from different ailments, did not refund the Government's share of the Contributory Provident Fund during his lifetime and he suffered his demise due to complications arising out of the ailments suffered by him in the year 2008.
  9. The Assam College Employees (Provincialisation) (Amendment) Act, 2010



came into force on 27-04-2010, whereby certain amendments had been introduced in the Act of 2005. As per the amendment introduced by Section 4 of the Amendment Act of 2010, a new provision, namely Section 8A was inserted below the existing Section 8 of the Act of 2005, which stated that notwithstanding anything contained in the provisos to section 8, the period of six months, within which the Government's share of the Contributory Provident Fund was required to be refunded in respect of the retired/deceased employees under the First proviso to section 8, shall stand further extended upto a period of six months from the date of coming into force of the Assam College Employees (Provincialisation) (Amendment) Act, 2010, and the intervening period from the date of expiry of the original period of six months under the first proviso to section 8 till the date of coming into force of the Amendment Act, shall also be deemed to have been extended for the purposes of section 8.

10. Thereafter, the Assam College Employees (Provincialisation) (Amendment) Act, 2012, was brought into force on the 27th of April 2012. The Amendment Act of 2012 had brought in certain amendments in the existing provisions of Section 8 of the Act of 2005, and it was only then that the petitioner had become aware of the Act of 2005, as it stood amended till then.

11. The petitioner, who desired to avail the benefit of family pension,



approached the authorities of the College where her husband had rendered service for the grant of family pension and at the advice of the college authorities, the petitioner deposited the 50% of the government share of the contributory provident fund amount received by her husband through a treasury challan on 9/11/2012. The Director of Higher Education had initiated a process for the grant of family pension to the petitioner, but the Accountant General, through a letter dated 10/9/2014, had returned the pension proposal with certain observations and queries. The Director of Higher Education had thereafter communicated with the Commissioner and Secretary to the Government of Assam Higher Education Department, informing that it had been decided to resubmit the pension case after modification to consider the grant of due pension in favour of the deceased husband of the petitioner with effect from the date of effect of the pension scheme, i.e. 1.12.2005, till the date of his death and for family pension to the petitioner and legal heirs thereafter, as per rules applicable in this regard. Since the Accountant General, Assam had required the submission of the pension proposal through the Government, due to the delay in submission of the proposal, the Director of Higher Education, Assam had forwarded the justification for the delay with the modified proposal to the Commissioner and Secretary to the Government of Assam, Education Higher Department for onward transmission to the Accountant General for grant



of benefit under the proposal to the petitioner.

12. By the impugned order dated 03-03-2023 issued by the Additional Secretary to the Government of Assam, Higher Education Department, the Government took a stand that the provisions of the Assam College Employees (Provincialisation) (Amendment) Act, 2012, do not apply to the deceased husband of the petitioner, who had retired in the year 1987. It was further stated that, as an established principle of law, no retrospective effect can be given to law. It was also stated that since the Act of 2012 had a provision of "option" to continue or not in the then existing terms and conditions applied only to existing employees, the question of refund of CPF or of extension of time did not arise, as deceased employees were not covered by the definition. It is this letter dated 03.03.2023 which requires an adjudication with regard to its rationality and legality.

13. There is no quarrel that the Act of 2005 itself provides for the grant of pension in respect of "employees" who had retired before the Act of 2005 came into force, and it also provides for family pension to the family of those "employees" who had expired before the Act of 2005 came into force. The issue of "retrospective" applicability of the Act of 2005, as found in the letter dated 03.03.2023, is an absurd proposition, since a reasoned perusal of the provisions of section 8 of the Act of 2005 would reveal that the facility of pension and/or family pension



would apply to "employees" who had retired or expired prior to the coming into force of the Act of 2005, provided the Government share of CPF benefit received by such "employee" were refunded within the time frame given by the Act of 2005 itself. It is thus evident that the provisions of the Act of 2005 sought to give relief to "employees" who had already retired/expired and therefore could not exercise the option to either avail or reject the benefits of provincialisation, when such an option was available to the "existing employees".

14. The author of the letter under consideration had referred to the contents of the Amendment Act of 2012. The contents of the Act of 2012 brought in certain amendments to the provisions of Section 3 of the Act of 2005, which related to "existing employees" and to "retired employees". By the term retired employees in the Act of 2012, reference obviously had to be drawn to the employees who might have exercised the option to continue in the service conditions existing when the Act of 2005 was brought into force, but were now retired. By the Amendment Act of 2012, such existing and retired employees, who had exercised the option to remain under the service conditions existing at the introduction of the Act of 2005, were allowed to withdraw the option by refunding the CPF money with up-to-date interest. The provisions of the Amendment Act of 2012 had no reference to the employees who had already retired or passed away on the date when the Act of 2005 had been brought into



force.

15. A Division Bench of this Court in Narendra Pratap Singh And 2 Ors Versus The State of Assam and 4 Ors, (WA 384 / 2024 Decided On: 17-02-2025) reported in 2025 0 Supreme(Gau) 274 has held as follows:

*“20. The services of the appellants, herein, admittedly, had not been provincialized under the provisions of the Assam College Employees (Provincialization) Act, 2005, in-as-much as, they were deemed to have superannuated from their service on a date prior to 01.01.2005.*

*21. Accordingly, for the purpose of the provisions of the Assam College Employees (Provincialization) Act, 2005, the appellants, herein, cannot be deemed to be an “existing employee” merely on the ground that they had continued to render their services in the said College beyond 01.01.2005.*

*22. In order to bring the employees who had served in the Colleges of the State, but, had superannuated, or, deemed to have superannuated, considering the date of such superannuation in respect of similarly situated government employees; the Assam College Employees (Provincialization) Act, 2005, provides in Section 8, the mode of grant of pension to employees who had retired or died prior to 01.01.2005. The provisions of Section 8, being relevant, is extracted hereinbelow:*

*“8. Mode of pension to employees who retired/died prior to 1st January, 2005- Employees who retired/died, as the case may be, prior to 1st January, 2005 shall be given only superannuation pension or the family*



*pension, as may be applicable under the existing pension Rules of the Government. They shall not be entitled to any other pensionary benefits:*

*Provided that the payment of such superannuation or family pension, as the case may be, are subject to refund of the Government's share of their Contributory Provident Fund within six months from the date of coming into force of this Act :*

*Provided further that if the Government's share of Contributory Provident Fund is not refunded in respect of a retired/deceased employee within the aforesaid stipulated period no superannuation pension or family pension shall be admissible in respect of such employee."*

*23. A perusal of the provisions of Section 8 of the Assam College Employees (Provincialization) Act, 2005, would go to reveal that the employees who had retired/died, as the case may be, prior to 01.01.2005, shall be authorized only a superannuation pension or a family pension, as may be applicable under the existing pension rules of the Government.*

*24. Accordingly, the appellants No. 1, 2 & 3, herein, given the dates of birth, having attained the age of 58 years prior to 01.01.2005; they would be deemed to have so retired from their service on 30.06.2003, 31.09.2003, and 31.10.2003, respectively. Hence, the cases of the appellants, herein, would be covered by the provisions of Section 8 of the Assam College Employees (Provincialization) Act, 2005, and not by the definition of the term "existing employee" as finding mention in Section 2(c) of the said Act of 2005. "*

16. Thus, it is apparent that the respondent authorities in the Higher Education Department were required to have considered the case of the petitioner for payment of family pension based on the service rendered by her husband, subject to the fulfilment of the terms and conditions required to be fulfilled before becoming entitled to such pension.



However, for reasons unknown and undisclosed, the author of the letter dated 03.03.2023, which is stated to be with the approval of the ARTPPG Department, has referred to the provisions of the Amendment Act of 2012, which provisions are alien and unconnected to the facts required to have been considered in the case of the petitioner. When authorities deemed competent in law to take authoritative decisions, fail to consider relevant facts and law and rather, abstain from referring to facts and refer to irrelevant provisions of law, this court has no option but to strike down such decisions. This Court, having duly considered the entire gamut of the matter, finds the reasoning given in the letter dated 03.03.2023 under reference, not only to be irrational but to be bordering on perversity, insofar as it seeks to reject the claim of the petitioner for family pension. It rather appears to be an attempt to illegally deny the petitioner her entitlement to a family pension despite the lawful and legal service rendered by her deceased husband.

17.Having said so and having noticed that the husband of the petitioner had expired in the year 2008 and that the petitioner had refunded the Government's share of the CPF on 9.11.2012, this Court is of the considered opinion that the claim of the petitioner for grant of family pension deserves to be decided in the present petition itself since a remand to the department for a fresh consideration may cause further substantial delay and agony to the petitioner.



18.It is a settled proposition that a pension is neither a bounty nor a matter of grace. It is a payment for the past services rendered. It is a social welfare measure for rendering socio-economic justice to those who, in the heydays of their life, toiled for the employer on the assurance that they would not be left in the lurch in their old age. Family pension flows to the family of the pensioner, to ensure that the immediate and eligible family members do not suffer penury when the retired employee, who drew a pension, leaves them behind in this world. Provisions of law granting access to pension and/or family pension are beneficial legislation and deserve liberal interpretations. While referring to the effect of Section 8 of the Act of 2005, the Division Bench of this Court, in Narendra Pratap Singh (supra), has observed as follows:

“26. A perusal of the conclusions so drawn by the learned Single Judge in the said judgment & order, dated 21.03.2023, in WP(c)620/2018, as extracted hereinabove, would go to reveal that the same have been so done on a strict interpretation of the provisions of the Assam College Employees (Provincialization) Act, 2005, read with the provisions of the “ Assam Aided College Employees Rules, 1960”. The learned Single Judge, has, in detail, analysed the provisions of the Act of 2005, to determine the extent, to which the same would be applicable to the case of the appellants, herein, and thereafter, has reached conclusions in the matter.”

19.Similarly, in the present case, even a strict interpretation of the applicable provisions would demonstrate the entitlement of the petitioner to a family pension for the services rendered by her husband.

20.The provisions of Section 8 of the Act of 2005 had undergone



amendment twice, once in 2010, with the insertion of Section 8A and then in 2020, with an amendment being made to Section 8A. The provisions of Section 8, as it stood on 1.1.2005, and Section 8A, as was inserted in 2010 and Section 8A as amended in 2020, are as follows:

**In 2005**

*“8. Employees who retired/died, as the case may be, before 1st January, 2005 shall be given only superannuation pension or the family pension, as may be applicable under the existing pension Rules of the Government. They shall not be entitled to any other pensionary benefits:*

*Provided that the payment of such superannuation or family pension, as the case may be, are subject to refund of the Government's share of their Contributory Provident Fund within six months from the date of coming into force of this Act: Provided further that if the Government's share of Contributory Provident Fund is not refunded in respect of a retired/ deceased employee within the aforesaid stipulated period no superannuation pension or family pension shall be admissible in respect of such employee.”*

**In 2010**

*“8A. Notwithstanding anything contained in the provisos to section 8[ the period of six months, within which the Government's share of the Contributory Provident Fund was required to be refunded in respect of the retired Ideceased employees under the first proviso to section 8, shall be further extended upto a period of six months from the date of coming into force of the Assam College Employees (Provincialisation) (Amendment) Act, 2010, and the Intervening period from the date of expiry of the original period of six months under the first proviso to section 8 till the date of coming into force of this Amendment Act, shall also be deemed to have been extended for the purposes of section 8.”*

**In 2020**



*“2. In the principal Act, in section 8A, after the existing provision, the following proviso shall be inserted, namely:- "Provided that the period of six months, within which the Government's share of Contributory Provident Fund was required to be refunded in respect of the retired/deceased employees under section 8 which was further extended for a period of six months under this section, vide the Assam College Employees (Provincialisation) (Amendment) Act, 2010, hereinafter referred to as the Amendment Act, 2010, shall further be extended for a period of six months from the date of commencement of the Assam College Employees (Provincialisation) (Amendment) Act, 2020, hereinafter referred to as this Amendment Act, and the intervening period from the date of expiry of the period of six months extended under the Amendment Act, 2010, till the date of commencement of this Amendment Act, shall also be deemed to have been extended for the purposes of Section 8."*

21. It is not in dispute that the petitioner had refunded the Government share of CPF received by her late husband at the time of retirement on 9.11.2012. The time frame for such a refund had been extended up to October 2010 by the Amendment Act of 2010 and up to April 2021 by the Amendment Act of 2020. The case of the petitioner is covered by the extension granted by the amendment of 2020. In her writ petition, the petitioner has made a specific averment that similarly situated families have been receiving the family pension, and the affidavit in opposition does not controvert the assertions. Therefore, this Court has no hesitation to hold that the petitioner is entitled to a family pension in accordance with the applicable provisions of law governing such pension. Drawing cue from the words of this Court in *Bidya Chandra Singha Versus State of Assam and Ors*, reported in 2016 (3) GauLT 686, this



Court is also of the considered opinion that, on a misconceived notion, the petitioner has been denied her entitled pension. Such action of the authorities is antagonistic to law and strikes a body blow on the concept of Article 14 of the Constitution of India.

22.The writ petition is accordingly allowed, holding the petitioner to be entitled to the grant of family pension with effect from 5.1.2008, i.e. the date of demise of her husband. Some proposals appear to have been processed by the Director of Higher Education, Assam, but it also appears that the same did not reach its logical conclusion and had lost entity.

23.Accordingly, to ensure the timely delivery of the fruits of the successful litigation, it is directed that the petitioner shall approach the Director of Higher Education, Assam, within 15 days from today with a certified copy of this order. The Director of Higher Education shall, within 7 days, indicate to the petitioner the requisites to be carried out on the part of the petitioner for preparation of a fresh proposal. On the petitioner completing the requisites, the Director of Higher Education shall, within a period of 15 days, submit a fresh proposal to the Secretary to the Government of Assam, Higher Education Department, for the grant of family pension to the petitioner. Within 15 days of receipt of the proposal, the Secretary to the Government of Assam, Higher Education Department, shall forward the same, complete in all aspects and with the



necessary justifications, if required, for the delay, to the Accountant General, Assam. The Accountant General, Assam, shall thereafter complete all necessary formalities for the grant of the family pension to the petitioner within 30 days of receipt of the proposal.

24.Writ petition disposed of on the terms above.

25.No costs.

**JUDGE**

**Comparing Assistant**