

GAHC010012542023



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

Case No. : WP(C)/337/2023

NURJAHAN KHATUN
W/O- LATE ABDUL JALIL SARKAR,
R/O- VILLAGE BIDYAPARA,
P.O- AMCO ROAD,
P.S- DHUBRI,
DIST- DHUBRI, ASSAM, PIN-783323

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT.
OF ASSAM
PUBLIC WORKS DEPARTMENT,DISPUR, GUWAHATI-781006.

2:THE CHIEF ENGINEER PWD (ROADS)
ASSAM
CHANDMARI
GUWAHATI-781003.

3:THE EXECUTIVE ENGINEER PWD (RURAL ROADS) DIVISION
DHUBRI
DIST- DHUBRI
ASSAM

4:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-781006.

5:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX

DISPUR
GUWAHATI-06

6:THE ACCOUNTANT GENERAL
OF ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-2

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 21.04.2023

Heard Mr. M.R. Choudhury, the learned counsel appearing for the petitioner. Mr. R. Dhar, the learned counsel appears for the PWD, Mr. R. Mazumdar, the learned counsel appears for the Office of the Accountant General (A & E), Assam, Mr. H. Sarma, the learned counsel appears for the Director of Pension and Mr. R. Borpujari, the learned Standing Counsel appears for the Finance Department.

2. The case of the petitioner herein is that the husband of the petitioner was initially engaged for a period of 3 months but by reemployment order dated 28/3/1992 his service was extended until further orders. The service of the husband of the petitioner was regularised by an order dated 7/10/2005. Subsequent thereto, the husband of the petitioner retired on 31/3/2017. It is further stated in the writ petition that the husband of the petitioner received the GIS and the leave encashment but he did not receive his pension. Unfortunately the husband of the petitioner expired on 14/6/2018. The petitioner thereupon approached the respondent authorities claiming the arrear pension of the

husband of the petitioner along with other pensionary benefits as well as also for the family pension. The same having been denied, the instant writ petition has been filed. The relief sought for in the instant writ petition is for a direction upon the respondents to pay the arrear pension to which the husband of the petitioner was entitled to w.e.f. 1/4/2017 till the death of her husband i.e. 14/6/2018; for a direction to the respondents to release the arrear family pension to the petitioner w.e.f. 15/6/2018 till date as well as to continue making payment of the family pension.

3. This Court vide an order dated 23/1/2023 issued notice making it returnable on 20/2/2023 and further directed the counsels appearing on behalf of the respondents, more particularly the respondent Nos. 2 and 3 as well as the respondent Nos. 5 and 6 to apprise this Court as to why the petitioner has not been paid the arrear pension as well as the family pension. When the matter was listed on 20/3/2023, it was brought to the attention of this Court that the Public Works Department wherein the husband of the petitioner was working had not submitted the proposal for family pension to the respondent No. 5. Considering the same, this Court again fixed the matter on 3/3/2023, on which date, the learned counsel for the respondents were directed to obtain instructions from the respondent-department pertaining to arrear pension, pensionary benefits as well as the family pension to which the petitioner claims to be entitled to.

4. It further appears that on 13/3/2023 the learned counsel appearing for the PWD again sought for time to obtain instructions and accordingly this Court fixed the matter again on 29th of March, 2023, on which date the PWD was directed to apprise this Court as to whether the pension proposal of the petitioner has been sent to the Office of the Accountant General (A & E).

5. The learned counsel appearing on behalf of the Accountant General (A & E) was also directed to apprise this Court as to whether the PWD had sent the pension proposal to the Office of the Accountant General. Thereupon the matter was fixed on 29/3/2023 but the same could not be taken up for which the matter has been directed to be listed today.

6. It appears from the records that the respondent No. 2, who is the Chief Engineer of the PWD Roads Division had filed an affidavit on 27th of March, 2023. It was mentioned in the said affidavit that the husband of the petitioner was initially employed for 3 months vide an order dated 1/8/1991. Subsequent thereto, the husband of the petitioner was reemployed as unskilled Muster Roll Labour for 3 months vide an order dated 1/8/1992 and after a lapse of 9 months his service was discontinued after the aforesaid period of the appointment order. It has been further mentioned that after the expiry of 3 months period as on 30/10/1992, the husband of the petitioner was again reemployed on 28/12/1992 and until further orders with immediate effect and further his service was regularised by the Government as on 22/7/2005 and since then he has been working till retirement. It further appears from paragraph No. 7 of the said affidavit that the reason why the petitioner's husband was not given the pension was that the husband of the petitioner was reengaged/reemployed as unskilled MRL on 28/12/1992 with immediate effect and until further orders and since then he has been working continuously. Hence his service counted w.e.f. 28/12/1992 was 18 years 3 months 3 days after deducting 6 years initial service of MRL as per the Office Memorandum dated 18/3/2010.

7. It was further mentioned that the pension papers of the husband of the petitioner was submitted to the higher authority on 24/4/2018 in pursuance to a

Government letter dated 6/2/2018. At that relevant point of time the husband of the petitioner expired and after the expiry, the Chief Engineer, PWD Roads, Assam returned the pension papers of the husband of the petitioner with instruction for resubmission of the papers for family pension and then the pension papers was submitted in respect to the petitioner to the Chief Engineer, PWD Roads, Assam for onward submission to the Government as well as the Accountant General (A & E) for sanctioning the same vide a letter dated 23/11/2020. It has been further mentioned that the Accountant General (A & E) had finalised the pension case whereby only sanctioning the terminal gratuity. It has also been mentioned that it is on account of the Office Memorandum dated 18/3/2010 and the Circular of the Accountant General (A & E) dated 6/3/2013 wherein it is laid down that the total qualifying service less 20 years are not eligible for pension/gratuity.

8. To the said affidavit-in-opposition filed by the respondent No. 2 an affidavit in reply has been filed by the petitioner wherein reference was made to the judgment of the Coordinate Bench of this Court in the case of ***Sanchita Roy Vs. The State of Assam and 4 Ors.*** reported in ***2019 (2) GLT 805*** and more particularly to paragraph Nos. 30 and 31, whereby it has been held that the deduction of a period of 6 years while computing the qualifying service was not permissible.

9. Today when the matter has been taken up, Mr. R. Mazumdar, the learned counsel appearing on behalf of the Office of the Principal Accountant General (A & E), Assam placed on record an instruction being issued by the Senior Accounts Officer, Legal Cell wherein it has been mentioned that the petitioner is entitled to the relief in terms with the judgment of the Coordinate Bench of this Court in the case of ***Sanchita Roy*** (supra) but as no Office Memorandum has

been issued by the respondent authorities, the benefits of the said judgment could not be given to the petitioner.

10. The copy of the said communication dated 18/3/2010 is kept on record and marked with the letter "X".

11. I have heard the learned counsels for the parties and have perused the materials on record.

12. It is an admitted fact as could be seen from the affidavit filed by the respondent No. 2 that the husband of the petitioner has been in continuous service w.e.f. 28/12/1992 and he was confirmed vide an order dated 22/7/2005. The husband of the petitioner subsequently retired on 31/3/2017. Therefore his period of service pursuant to the confirmation order dated 22/7/2005 would have to be counted from 28/12/1992 to 31/3/2017 for the purpose of pension which would be 24 years 3 months 3 days. The service of the husband of the petitioner pursuant to his confirmation on 22/7/2005 would come within the ambit of pensionable service in terms with the Assam Services (Pension) Rules 1969 (for short 'the Rules of 1969) inasmuch as the requirements as stipulated in Rule 31 of the Rules of 1969 are duly met.

13. Considering the above, the husband of the petitioner therefore would be entitled to pension as well as other pensionary benefits which any other Government servant of corresponding rank would be entitled to.

14. Upon a perusal of Rule 139, 140 and 143 of the Rules of 1969, the petitioner herein would also be entitled to the family pension. In that view of the matter, this Court therefore disposes of the instant writ petition directing the respondent authorities to pay the arrear pension from 1/4/2017 to 14/6/2018 as well as other pensionary benefits which the husband of the petitioner would

have been otherwise entitled to, had he been alive as well as the other benefits and further the arrear family pension from 15/6/2018 till the date of the instant judgment and further continue to pay the family pension to the petitioner as per the mandate of law. The said exercise be completed by the concerned respondent authorities i.e. the respondent Nos. 1, 2, 3 and 6 within a period of 3 months from the date a certified copy of the instant order is served upon the respondent No. 2 as well as the respondent No. 6.

15. With the above observations and directions, the petition stands disposed off.

JUDGE

Comparing Assistant