GAHC010038282021

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

**Case No. : WP(C)/1455/2021**

JINU BEZBORA SHARMA
W/O- LT. LOKESWAR SHARMA, R/O- VILL- POTANI MOHARCHUK, P.O. POTANI GOMOTHAGAON, P.S. NAGAON, DIST.- NAGAON, ASSAM, PIN-782102

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPTT., DISPUR, GHY-6

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCE DEPTT.
DISPUR
GHY-6

3:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
PANJABARI
JURIPAR
GHY-37

4:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
GHY-6

5:THE CHIEF EXECUTIVE OFFICER
NAGAON ZILLA PARISHAD
NAGAON
DIST.- NAGAON
ASSAM

PIN- 782001

6:THE TREASURY OFFICER
NAGAON TREASURY
DIST.- NAGAON
ASSAM
PIN- 78200

**Advocate for the Petitioner** : MR. K R PATGIRI

**Advocate for the Respondent** : GA, ASSAM

**BEFORE**
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**Date : 28-08-2023**

Heard Mr. K.R. Patgiri, learned counsel for the petitioner. Also heard learned Standing Counsel, P&RD Department.

2. The petitioner before this Court is the widow of late Lokeswar Sharma. The husband of the petitioner was served as a Gaon Panchayat Secretary in the district of Nagaon. He joined his service on 23.01.1994 and his service was regularized with effect from 01.01.2006. Pursuant to his regularization of service, he served in various places and had also received regular pay scale. His last place of posting was Deb-Narikoli Gaon Panchayat under the administrative control of the Chief Executive, Nagaon Zilla Parishad, Nagaon. During the course of his service there, the husband of the petitioner expired on 14.04.2016 leaving behind the petitioner and one minor son. Pursuant to the demise of the

husband of the petitioner, she had been approaching the respondent's authorities for release of the family pension benefits.

3. It is submitted by the learned counsel for the petitioner that the family pension papers were duly submitted to the respondent no.5 namely, The Chief Executive Officer, Nagaon Zilla Parishad, Nagaon, for being forwarded to the office of the respondent no.3, namely, The Commissioner, Panchayat & Rural Development Department. Pursuant to the application made by the petitioner, only the GIS amount and leave encashment benefits were released to the petitioner. However, the family pension benefits have not yet been released in spite of approaching the respondent authorities on several times.

4. The respondent no. 3 has filed an affidavit contesting the claims of the petitioner and it is submitted that by virtue of the Office Order dated 23.11.2006 the petitioner's husband was redeployed as a Gaon Panchayat Secretary in Jeomari Gaon Panchayat, Dibrugarh Zilla Parishad and in terms of the said order it was mentioned that the regularization and provincialisation will be with prospective effect from the date of joining in the said respective Gaon Panchayat under the non-Sixth Scheduled areas of the redeployment. The said office order superseded all other earlier orders issued by the Zilla Prarishad relating to engagement and transfer of Gaon Panchayat Secretaries.

5. By the said affidavit the contention of the petitioner is disputed and it is stated that they are covered under the new pension scheme.

6. Learned counsel for the parties have been heard. The counsels in the Bar are in agreement that the entitlement of pensionary benefits to Gaon Panchayat Secretaries have been upheld by a Division Bench of this Court in WA 145/2009 (the State of Assam vs. Syed Md. Fazlay Rabbi) by the judgment and order dated 24.03.2010. That apart, the order issued by the Panchayat and Rural Development in respect of entitlement of pensionary benefits to the Gaon Panchayat Secretaries by order dated 28.03.2018 have been interfered with by another Division Bench of this Court rendered in WA No. 133/2023 by judgment and order dated 05.08.2023. The Division Bench upheld the impugned judgment and order dated 05.08.2022 passed by another co-ordinate Bench in WP(C) No.4397/22. The Division Bench in its judgment held that in view of the communication dated 30.05.2003 issued by the Government that employees of the Panchayat Raj Institute will be treated as regular employees of the Panchayat Raj Institution, the subsequent communications or orders passed by the Government holding that the benefit of regularisation will be with prospective effect from the date they have joined in the post created *ex-post-facto* for giving them the benefit of regular service. Consequently, the Division Bench held that those employees who were given regular benefits by creation of

*ex-post-facto* cannot be treated as "*new entrants*" joining the State Government services subsequently after introduction of new pension scheme. They have to be treated as employees who had joined as Government employees under the old pension scheme. It was held by the division bench that such employees could not be brought under the new pension scheme.

7. The judgment and order dated 24.03.2010 passed in W.A. No.145/2009; the judgment dated 05.08.2022 passed in WP(C) No. 4397/2022 and the judgment and order dated 05.08.2023 passed in W.A. No.133/2023 have been carefully perused. Having perused those judgments, it is found that the issue involved in the present writ petition stands squarely covered by the said judgments rendered in W.A. No 145/2009 on 24.03.2010 and WA No.133/2023 on 05.08.2023.

8. In that view of the matter the writ petition stands allowed. The respondents are directed to immediately process the pension papers of the late husband of the petitioner and take necessary steps so that the pensionary benefits can be granted to the petitioner as expeditiously as possible within the outer limit of 90 days from the receipt of a certified copy of this order. The petitioner will furnish a certified copy of this order before the respondent no.1 who in turn will issue necessary directions to the concerned

respondents/officials to prepare the pension papers of the late husband of the petitioner and forward the same to the Director of Pension, Assam within a period of 30 (thirty) days from the date of receipt of the certified copy of this order. The Pension Department will thereafter take necessary steps for release of the pension of the petitioner's husband within outer limit of 60 (sixty) days thereafter. The petitioner shall furnish all the necessary particulars to the respondents required for processing the family pension of the petitioner.

Writ petition stands allowed and disposed of in terms of the above.

Interim order, if any, stands vacated.

Pending Interlocutory Applications, if any, are closed.

**JUDGE**

**Comparing Assistant**