

GAHC010055702022



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

Case No. : WP(C)/2247/2022

SMTI. SUMITRA DEKA
W/O SRI TANKESWAR DEKA, M/O LATE JAYANTA DEKA, R/O BENGBARI,
P.O.-BENGBARI, DIST-UDALGURI, ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENT THROUGH THE SECRETARY TO THE GOVT. OF ASSAM,
INDUSTRIES AND COMMERCE DEPARTMENT, ASSAM, DISPUR,
GUWAHATI-06

2:COMMISSIONER OF INDUSTRIES AND COMMERCE
ASSAM
BAMUNIMAIDAM
GUWAHATI-21
KAMRUP

3:THE GENERAL MANAGER
DISTRICT INDUSTRIES AND COMMERCE CENTRE
UDALGURI
BODOLAND TERRITORIAL REGION
DIST-UDALGURI
PIN-784509

4:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06
KAMRUP(M)

5:THE ACCOUNTANT GENERAL
ASSAM

MAIDAMGAON
BELTOLA
GUWAHATI-29

6:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
GUWAHATI-06
DIST-KAMRUP(M)

7:BODOLAND TERRITORIAL REGION
REPRESENTED BY ITS PRINCIPAL SECRETARY
KOKRAJHAR
ASSAM

8:SMTI. RINA TERANGPI
W/O LATE JAYANTA DEKA
R/O VILL-BORHOLA
JAKHALABANDHA
KALIABOR
DIST-NAGAON
ASSAM
PIN-782136

9:SMTI KRISHITA DEKA
D/O LATE JAYANTA DEKA
R/O VILL- BORHOLA
JAKHALABANDHA
KALIABOR
DIST- NAGAON
ASSAM
PIN-782136 (BEING MINOR REPRESENTED BY HER MOTHER
RESPONDENT NO. 8

Advocate for the Petitioner : MR D K NATH

Advocate for the Respondent : SC, INDUSTRIES AND COMMERCE

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 27/03/2023

Heard Mr. D.K. Nath, learned counsel for the writ petitioner. Also heard Mr. A. Kalita, learned

Standing Counsel, Industries Department, Assam, appearing for the respondent nos. 1, 2 & 3. Mr. P. Nayak, learned Standing Counsel, Finance Department, Assam, has appeared on behalf of the respondent no. 4 and Mr. B. Chakraborty, learned CGC has appeared on behalf of the respondent no. 5. Mr. C.S. Hazarika, learned Government Advocate, Assam is present on behalf of the respondent no. 6. Ms. A. Devi, learned counsel has appeared on behalf of the respondent nos. 8 and 9.

It appears from the materials on record that late Jayanta Deka, who was serving as a Junior Assistant in the establishment of the General Manager, District Industries and Commerce Centre, Udalguri at BTR, died in harness leaving behind his wife i.e. the respondent no. 8 and a minor daughter i.e. the respondent no. 9. At the time of death of the deceased employee, the age of his minor daughter was about 1½ years. As per the scheme floated by the Government of Assam, viz. "compassionate family pension in lieu of compassionate appointment" as notified on 14th September, 2017, the respondent nos. 8 and 9 would be entitled to receive compassionate family pension. However, the mother of the deceased employee has approached this Court by filing this writ petition seeking a Writ of Mandamus directing the official respondents to pay 1/3rd of the compassionate family pension and other financial benefits to her. It appears that the claim of the petitioner is based on the fact that as per para 5.1 of the scheme, the expression "family" of the deceased employee will be the same as ascribed to the definition of family in the Assam Service (Pension) Rules, 1969, which include parents.

Mr. Nath, learned counsel for the petitioner submits that after the death of Jayanta Deka, the respondent no. 8 has started living with her parents along with the respondent no. 9. Contending that as the mother of the deceased, even she is entitled to receive a part of the family pension and that the respondent no. 8, to that extent, would have some duty towards her mother-in-law.

The respondent nos. 8 & 9 have filed a joint affidavit opposing the prayer made in the writ petition. The statements made in paragraph 6 of the counter affidavit filed by the respondent nos. 8 &

9 would be relevant and is, therefore, reproduced herein below for ready reference :-

“6. That the statements made in paragraph 4 and 5 of the Writ Petition are not wholly true and correct, and the incorrect statements are hereby denied. In this connection it is stated that after marriage, the deponent and her deceased husband used to live separately, from the petitioner and other family members. Hence, after death of her husband, the deponent having no source of income could not maintain herself and her minor daughter and so she with her minor daughter went to her parent’s house to stay there, and presently are staying with her parents. The deponent further states that the deponent has obtained the Next of Kin Certificate as it is required to submit in the office, where her deceased husband was working, for the purpose of her family pension. As per the Assam Services Pension Rules, 1969 the deponent and her minor daughter are entitled to the family pension and other retirement benefit. The deponent has not suppressed the said fact from the petitioner and the same is revealed from the statement of the petitioner in the paragraph under reply.”

The respondent nos. 1, 2 and 3 have also filed a joint affidavit asserting that the writ petitioner not only has two other sons who are earning but even her husband is drawing pension. If that be so, it is evident that the writ petitioner has sufficient alternative source to support herself. Moreover, there is nothing to show that the writ petitioner was dependant on her deceased son. It is also the admitted position of fact that the petitioner was not living with her deceased son Jayanta Deka as his dependent. On the on contrary, it is the respondent nos. 8 and 9 who were all along living with Jayanta Deka as solely dependent on him.

It is to be noted herein that the respondent no.8, having suffered a pre-mature death of her husband, who was the sole bread earner of the family, is undoubtedly in a difficult situation today and she also has the responsibility of up-bringing her minor daughter.

It is no doubt correct that under the scheme of 2017, an eligible member of the family including mother and/ or father may also be entitled to a part of the family pension. However, such claim would have to be considered after ascertaining the facts and circumstances of each case. If it can be

shown that the parents of the deceased employee were ordinarily living with him/her and were solely dependent on the deceased Government employee, in such a situation, there may be some justification for splitting the family pension amongst the dependent family members of the employee. However, if it is found that the parents have other source of livelihood and were never living with the deceased employee as his or her dependent then in that event, the matter may be different. If a claim/complaint is made by the parent of the employee before the authorities, the same has to be considered as per law. However, no such claim/complaint has been made by the writ petitioner before the departmental authorities till today. Therefore, having regard to the facts and circumstances of this case, I do not find any justifiable ground to entertain the writ petition. The same is accordingly dismissed.

The petitioner is, however, left at liberty to avail appropriate legal remedy, if so advised.

JUDGE

sukhamay

Comparing Assistant