

GAHC010055732020



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

Case No. : WP(C)/1785/2020

APARNA BHATTACHARJEE
W/O. LT. KAUSHIK BHATTACHARJEE, VILL. UTTAR HATKHALA, P.O.
KANAIBAZAR-788724, DIST. KARIMGANJ, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
EDUCATION (ELEMENTARY) DEPTT.
DISPUR
P.O. GUWAHATI-781006
ASSAM.

3:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-781006.

4:THE DIRECTOR OF PENSION

ASSAM
HOUSEFED COMPLEX (NEW BUILDING)
DISPUR
P.O. GUWAHATI-781006
ASSAM.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER

CACHAR DISTRICT
P.O. SILCHAR-788001
ASSAM.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER

SALCHAPRA BLOCK
P.O. SALCHAPRA-788025
DIST. CACHAR
ASSAM

Advocate for the Petitioner : MR. N DHAR

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

19.06.2023.

1. Heard Mr. N. Dhar, learned counsel for the petitioner. Also heard Mr. P. N. Sarma, learned Standing Counsel for the Elementary Education Department representing the respondent Nos. 1, 2, 3, 5 and 6 and Mr. S. R. Baruah, learned State Counsel representing the respondent No. 4.
2. The petitioner is before this Court claiming family pension on the death of her husband namely Late Kaushik Bhattacharjee. It is her further case that her husband was also not paid any pension during his life time.
3. The respondent authority has taken a stand that the husband of the petitioner while posted as I/C Headmaster of Alombag B.T. M.E. School, Cachar district, Silchar, had misappropriated government funds and accordingly a criminal investigation was initiated against him. Such

criminal investigation ended in filing charge-sheet, however, during pendency of the trial, the husband of the petitioner had expired.

4. The stand of the Government is that the husband of the petitioner was not paid the pension for the reason of pendency of the aforesaid criminal proceeding as well as for the reason that the husband of the petitioner had misappropriated the government funds.
5. Coming to the criminal proceeding, as the husband of the petitioner has in the time expired, the power under Rule 21 of the Assam Services (Pension) Rules, 1969 cannot be exercised by the employer in the given facts inasmuch as even in a case where the criminal proceeding is pending, it is a bounded duty under Rule 22, of the pension Rules, 1969 to atleast pay the provisional pension till such proceeding attains finality.
6. In the case in hand, as the husband of the petitioner has in the meantime had expired and no departmental proceeding was initiated during his service period or even thereafter, therefore, such power under Rule 21 of the Rules, 1969 cannot be exercised by withdrawing the pension inasmuch as in absence of any determination fixing any liability upon the husband of the petitioner, no recovery can be made for the alleged misappropriation. Therefore, the husband of the petitioner shall be entitled for his pension and other pensionary benefits from the date of his retirement till the date of his death.
7. At the same time, as the husband of the petitioner was himself entitled for the pension in the given facts of the present case, the natural corollary is that the wife i.e. the present petitioner cannot be deprived of

the family pension for such reason, if she is otherwise entitled under the Assam Services (Pension) Rules, 1969.

8. The respondent has also taken a stand that the husband of the petitioner has misappropriated an amount of Rs. 11,50,773/- and they are seeking to recover the same from the pension, however, such course of action is not permissible in view of the determination made herein above.
9. Now another ground of the department is that the husband of the petitioner also took away his service book, therefore, the employer is not having the copy of such service book. Therefore, the pension proposal has not been initiated.
10. The State respondents has also taken a stand that the service book is being re-constructed and once the service book is properly re-constructed, the pension proposal of the petitioner shall be forwarded to the Director of Pension.
11. In view of the aforesaid determination and in view of the stand of the respondent that the service book can be re-constructed within a period of one month, it is directed that the respondents more particularly, the Director of Elementary Education Department, shall do the needful for re-construction of the service book of the husband of the petitioner and same be completed within a period of one month from the receipt of the certified copy of this order to be furnished by the petitioner.
12. This Court expects that such pension proposal shall be finalized as expeditiously as possible and not beyond three months from the re-construction of the service book.

13. With the aforesaid reasons, decision and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant