

GAHC010056332018



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

Case No. : WP(C)/1985/2018

TIPJAN BEGUM
W/O. LATE AKBAR ALI, R/O. VILL. AND P.O. MAROI, P.S. SIPAJHAR, DIST.
DARRANG, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
PERSONAL (B) DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
DARRANG
MANGALDOI

4:THE SENIOR BLOCK DEVELOPMENT OFFICER
DOLGAON SIALMARI DEVELOPMENT BLOCK
KHARUPETIA
DIST. DARRANG
ASSAM

Advocate for the Petitioner : MR. B J TALUKDAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

Judgment and Order (Oral)

Date : 07-12-2023

Heard Mr. J. Chutiya, learned counsel for the petitioner. Also heard Mr. J.K. Goswami, learned Government Advocate, Assam.

2] This writ petitioner is filed by the petitioner claiming arrear salary and family pension payable to her by virtue of her husband having served under the Dolgaon, Sialmari Development Block. The late husband of the petitioner had participated in the selection process initiated by the Government of Assam, Personnel (B) Department in the year 1983. The husband of the petitioner was selected for appointment in Grade-IV post and his name appeared at serial no. 82 of the merit list. By order dated 02.05.1990 issued by the Deputy Commissioner, Darrang, the husband of the petitioner was appointed as a Jarikarok under the Khoribari Revenue Circle.

3] His service was terminated by order dated 19.12.1995 passed by the Deputy Commissioner, Darrang, which was given effect to 31.12.1995. Challenging the termination order, the petitioner filed a writ petition being in CR no. 1817 to 1996. Pursuant to the order passed by the Court on 05.08.1997

passed in CR No.1817/1996, the petitioner was again appointed by the Deputy Commissioner, Darrang as an Office Peon in the Dalgaon, Salmari Development Block on 02.06.1999. Although he continued to render his services, his salary was not released in view of the fact that the appointment order, issued by the Deputy Commissioner, Darrang, was not as per the amended Rules under "Assam Ministerial District Establishment Service Rules, 1967. As per the Rules and Procedure the Panchayat and Rural Development Authority was authorised to make appointments in Development Blocks. Subsequently, by letter dated 22.03.2000, the Director of Panchayat & Rural Development Assam requested the Deputy Commissioner, Darrang to withdraw the service of the petitioner's husband from Dolgaon Sialmari Development Block. However, the Deputy Commissioner, Darrang did not respond to the aforesaid letter and put the petitioner's husband under his establishment. Consequently, the husband of the petitioner was released from the post of Grade-IV under Dolgaon, Sialmari Development Block vide order dated 04/12/2003 issued by the Block Development Officer, Dolgaon, Sialmari Development Block. In the meanwhile, the petitioner's husband approached this Court by filing WP(C) No. 4634 of 2000 to release his salary for the period of 07.06.1999 to 30.04.2003 and the Director, Panchayat & Rural Development released his the arrear salary for the said period in terms of the judgment and order dated 07.12.2000 passed by this

Court in WP(C) No.4634/2000.

As a result of the release order dated 04.01.2003, the petitioner's husband had to continue to work in the office of the Dolgaon, Sialmari Development Block without being remunerated since 01.03.2003. Having not received his salaries, the petitioner's husband again approached this Court by filing another writ petition being WP(C) No.7480 of 2003 and the writ petition was disposed of by this Court by judgment in order dated 26.02.2009 directing the respondents to issue suitable orders for appointment of the petitioner's husband in any Grade-IV post under the establishment of the Deputy Commissioner, Darrang. This direction was made subject to the fact that eight persons below to the petitioner's husband in merit list were given regular appointment. Pursuant to this order while the process of giving regular appointment to the petitioner's husband was being carried on, suddenly the husband of the petitioner expired on 28.09.2010.

4] Under such circumstances, the petitioner is before this Court praying for a direction of this Court for release of arrear salary and other pensionary benefits payable to the petitioner insofar as the services of the petitioner's husband is concerned.

5] Mr. J. Chutia, learned counsel for the petitioner submits that because of

the apathy of the Government, the Petitioner and her husband were subjected to engage in series of litigations seeking appropriate orders from the Court for regularization, payment for the salaries, etc of the petitioner's husband. Referring to the directions of the Court passed in WP(C) no. 7480 2003 by order dated 26.02.2009 learned counsel for the petitioner submits that there is a clear direction that the petitioner's husband be given an appointment in the establishment of the Deputy Commissioner, Darrang, subject to the condition that persons below to the petitioner's husband in the merit list had also been given regular appointment. Mr. Chutia has also referred to the order dated 20.07.2010 passed by the Principal Secretary to the Government of Assam, Panchayat and Rural Development Department, wherein a report submitted by the Deputy Commissioner, Darrang, which was called for, was referred to and that the said report reflected that eight selected persons have been appointed whose names appeared below the petitioner in the select list. The Principal Secretary to the Government of Assam, Panchayat and Rural Development Department therefore directed the Deputy Commissioner, Darrang to appoint the petitioner's husband in his establishment, as per the order of the Honorable Court passed on 26.02.2009 passed in WP(C) No.7480/2003 and action taken report was directed to be submitted to the Government. However, while these steps were being taken, the petitioner expired on 28.09.2010 and a copy of the

death certificate to that effect is enclosed to the pleadings. It is submitted that under such circumstances where there is clear finding arrived at by the Court as well as by the various departmental functionaries, that the husband of the petitioner is entitled to be appointed, the orders for regularization of the petitioner's husband ought to have been passed by the Department expeditiously and upon failure of the respondent authorities to implement these orders in due time, the petitioner is now therefore entitled to the retirement benefits and arrear salary of her late husband and therefore, prays before this Court to pass specific orders directing the regularization of the service of the petitioner's husband, if required, by creating a supernumerary post, and thereafter, regularizes services and release all pensionary benefits.

6] *Per contra*, Mr. J.K. Goswami, learned Additional Senior Government Advocate for the respondents submits that he has received instructions from the Department that the matter is under active consideration. However, some further time is necessary.

7] Mr. J.K. Goswami refers to the affidavit-in-opposition filed on behalf of the respondent no.3, namely, Assistant Commissioner, Darrang, wherein he submits that the appointment of the petitioner in the regular post under the establishment of the Deputy Commissioner, Darrang could not be made due to

non availability of sufficient number of vacant posts in the amalgamated establishment of Deputy Commissioner, Darrang, Mangaldai. He further submits that it is because there were no vacancies available in the Office of the Deputy Commissioner, Darrang, that the Deputy Commissioner, Darrang requested the Director of Panchayat & Rural Development to continue the service of the petitioner's husband at Dalgaon Sialmari Development Block and which appointment subsequently was terminated by the P&RD Department. He, however, submits that the Department has constituted a committee to examine the claims of the petitioner and thereafter necessary orders as required will be passed.

8] The learned counsel for the parties have been heard. Pleadings available on record have been carefully perused. What is noticed here is that notwithstanding separate orders being passed by the Court in a series of litigations which the petitioner's husband had to resort to in pursuance of his claims, the petitioner's husband services were never regularised. There is no dispute, as is evident from the pleadings on record, that the petitioner's husband was working for more than 15 years under the establishment of the Deputy Commissioner, Darrang as well as under the Sialmari Development Block. The Co-ordinate Bench of this Court had issued clear directions to the Deputy Commissioner, Darrang to appoint the petitioner's husband subject to

the condition that persons below the petitioner in the merit list have been given regular appointments.

9] From the submissions of the learned counsel for the parties as well as from a perusal of the pleadings on record, it is seen that the direction contained in the order dated 26.02.2009 passed WP(C) no.7480/2003 has attained finality, as no appeal has been filed against this order by the respondent authorities. For convenience, the specific directions contained in Paragraph 8 & 9 of the judgment and order dated 26.02.2009 passed in WP(C) No.7480/2003 is extracted below:

“8. That the petitioner was a selected candidate, as already noticed, is not in dispute. If that be so, the petitioner will have a right of being considered for appointment if persons below him in the select list had been appointed. Whether any persons below the petitioner in the select list had been appointed is not known as the State Government has chosen to maintain a stony silence in the matter. No material in this regard has been laid by the petitioner either. However, the fact that the petitioner was appointed by the Deputy Commissioner by order dated 02.09.1999 following the order of the Court in Civil Rule No.1817/1996 strongly indicates that the entitlement of the petitioner to appointment was considered by the Deputy Commissioner on the basis of his merit position in the select list. Such a conclusion has to be drawn by the Court as it cannot be assumed that the Deputy Commissioner had appointed the petitioner by the order dated 02.06.1999 without an examination of his entitlement to such appointment. In such an event even if the Court is to accept the fact that the Deputy Commissioner was not competent to make the said appointment and it is the Panchayat & Rural Development Department alone who could have appointed the petitioner in the Dalgaon Sialmari Development Block, the order that should have been passed is to give the petitioner appointment against the post for which he was selected appointment against the post for which he was selected. Instead of so acting the respondents had virtually edged out the petitioner from service by bringing in the respondent no.4 against the post held by him and by further directing that it is respondent no.4, who would henceforth draw salary against the said post and not the petitioner.

9. The above facts leaves the Court satisfied that the petitioner has not been treated fairly and the situation, therefore, has to be remedied. The Court is informed

by Mrs. N. Saikia, learned counsel for the petitioner, that even though the petitioner has been released by the order dated 4.12.2003 he is working on a fortuitous/casual basis against fixed pay. The Court has also been informed that, in the meantime, the respondent No 4 has retired from service on 5.12.2006. The aforesaid circumstances, if correct, would indicate that the petitioner has put in over ten years of continuous service, as on date. The Court is, therefore, inclined to take the view that the present would be one of the rare cases where the Court should direct for suitable appointment of the petitioner in any Grace-IV post in any of the establishments under the Deputy Commissioner, Darrang subject to the condition that persons below the petitioner in the merit list had been given regular appointments. It is further made clear that in the event persons below the petitioner in the merit list had not been given regular appointments the petitioner should be /allowed to continue in his present capacity and his case should be dealt with for regularization in accordance with such policy as may be in force or as may come into force in future. Necessary action in this regard will be taken by the respondents forthwith and in any case within a period of three months from the date of receipt of this order or a certified copy thereof. The petitioner be suitably informed of the decision as may be taken by the respondents in this regard."

10] Pursuant to the directions of this Court necessary steps were taken and reports were called for from the Deputy Commissioner, Darrang and by order dated 20.06.2010. The Principal Secretary for Panchayat and Rural Development had clearly directed the Deputy Commissioner, Darrang to appoint the petitioner's husband in his establishment in terms of the Judgment dated 26.02.2009 passed in WP(C) No.7480/2003 as in the report called forth from the Deputy Commissioner, Darrang with the list of selected persons, it was seen that eight selected persons were given appointment whose names appeared below the petitioner in the select list.

11] Under such circumstances, there is no other option left for this Court but to issue a specific direction to the respondent authorities, more particularly, the

respondent no.3 the Deputy Commissioner, Darrang, to forthwith put up a proposal to the Government, for creation of a supernumerary post for regularizing the services of the late husband of the petitioner and also to release the pensionary benefits and other consequential reliefs payable to the petitioner. In the affidavit-in-opposition filed by the respondents there is no averment which disputes the findings of the P&RD Department's. In the said affidavit-in-opposition there is no averment related to the report dated 20.06.2010 whereby it was found that the 8 (eight) selected persons below the petitioner in the select list were appointed. In the affidavit-in-opposition, the respondents has stated that the petitioner's husband was released from service by order dated 04.12.2003 as per the direction from the Director of Panchayat & Rural Development, Assam.

12] Under such circumstances, the legitimate claim as decided by this Court by the judgment and order dated 26.02.2009 passed in WP(C) No.7480/2003 could not be allowed to be whittled down because of in action and apathy on the part of the respondent authorities. Once an order is passed by a Writ Court against the respondents, they are duty bound to carry out that order as expeditiously as possible and non compliance of which exposes them to contemptuous proceedings which may be drawn up by the Court.

13] Under such circumstances and in view of the directions given above, the respondents will forthwith put up a proposal, as per the procedure prescribed, before the Government for creation of a supernumerary post for regularization of the services of the petitioner's husband during his lifetime and thereafter ensure that all pensionary benefits, arrear salary and other consequential benefits of the petitioner's husband are released to the petitioner.

14] The directions shall be carried out as expeditiously as possible, but not later than 60 (sixty) days from the date of receipt of a certified copy of this order furnished by the petitioner before the respondent authority.

15] In terms of the amount the petition stands allowed and disposed of.

JUDGE

Comparing Assistant