

GAHC010093402023



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

Case No. : WP(C)/2445/2023

BHAGYAWATI DUTTA @ BHAGYAWATI DUTTA BHUYAN
W/O- LATE MOHAN LAL BHUYAN,
R/O- JONAKI NAGAR,
P.O AND P.S- SILAPATHAR, DIST- DHEMAJI , ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, LABOUR AND EMPLOYMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE JOINT SECRETARY
TO THE GOVERNMENT OF ASSAM
SKILL DEVELOPMENT AND ENTREPRENEURSHIP DEPARTMENT
DISPUR
GUWAHATI-6. ASSAM

3:THE DIRECTOR OF EMPLOYMENT AND CRAFTSMAN TRAINING

ASSAM
REHABARI
GUWAHATI
DIST- KAMRUP METRO
ASSAM
PIN-781008

4:THE ASSTT. DIRECTOR OF EMPLOYMENT
DISTRICT EMPLOYMENT EXCHANGE
SONITPUR
TEZPUR
ASSAM

5:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
MAIDAMGAON
BELTOLA
GUWAHATI
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, AG

BEFORE

HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

19.06.2023

1. Heard Mr. D Gogoi, learned counsel for the petitioner. Also heard Mr. Hasan, learned counsel for the respondent No. 5 and Mr. D Borah, learned counsel for the respondent No. 1 and 2.
2. The case of the petitioner is that the husband of the petitioner was appointed as Lower Division Assistant (LDA) on 18.12.1996. Thereafter on 03.08.2009, the husband of the petitioner was suspended pending drawl of departmental proceeding. On attaining the age of superannuation, he superannuated on 28.02.2011 and therefore without having any pension and pensionary benefits, he expired on 23.09.2014.
3. Subsequently, provisional pension was paid to the petitioner up to 24.09.2017 and thereafter the petitioner has not received any family pension.

4. Pursuant to the order of this court dated 10.05.2023, the learned standing counsel for the respondent No. 1 has submitted that the provisional family pension though was granted was stopped as the departmental was not aware of the status of the pending proceeding against the husband of the petitioner.
5. Rule 22 (1) of the Assam Pension Rule, 1969 mandates that where any judicial or departmental proceeding is instituted under Rule 21 or where a departmental proceeding is continued under Clause (A) of the proviso to Rule 21 against an officer and he has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which upon, conclusion of such proceeding, the final order is passed. Thus, a person on retirement is entitlement for provisional pension, even if any judicial or departmental proceeding is initiated and continued and till such proceeding attains finality.
6. Therefore, the ground that status of judicial proceeding was not known cannot be a reason for discontinuation of provisional pension. The fact also remains that without conclusion of any proceeding, the husband of the petitioner has in the meantime expired.
7. In the aforesaid factual backdrop, on the death of the retired employee, his family member shall be entitled for family pension in term of the Pension Rule, 1969. The fact also remains that though a criminal proceeding continued against the husband of the petitioner, however, no departmental proceeding was initiated though he was put under suspension.

8. In view of the aforesaid, it is held that the deceased Government employee cannot be denied pension in the aforesaid backdrop inasmuch as after the death of the Government employee, the criminal proceeding pending against him shall abet and therefore, a final order needs to be passed by the competent authority regarding payment of pension.
9. Accordingly, the respondent authorities are directed to initiate necessary action for payment for family pension to the petitioner as well as arrear of pension, if any, from the date of the retirement of the husband of the petitioner till his death. Aforesaid exercise shall be completed within a period of eight weeks from the date of furnishing of a copy of this order passed today.
10. No action has been taken against the husband of the petitioner by initiating any departmental proceeding during his service period. No action can also be taken in criminal proceeding as in the meantime he has expired, therefore, the husband of the petitioner shall also be entitled for arrears of salary, if any during the period of suspension. Accordingly, the department shall take steps for regularization of the said period of suspension in terms of the extant norms and calculate the arrear of salary, if any and pay the same within the said period of eight weeks.
11. With the aforesaid decision and direction, the writ petition stands disposed of.

JUDGE