

GAHC010117472021



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

Case No. : WP(C)/3898/2021

BOBI GOWALA
W/O- LT. RAJESH GOWALA, VILL- PADYA PUKHURI, P.O. AND P.S.
GOSAIGAON, DIST.- KOKRAJHAR, BTR (ASSAM), PIN- 783360

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, PENSION AND
PUBLIC GRIEVANCE DEPTT., GHY-6

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
PUBLIC WORKS DEPTT.
GHY-6

3:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPTT.
KOKRAJHAR RURAL ROAD DIVISION
KOKRAJHAR
ASSAM

4:THE ASSTT. EXECUTIVE ENGINEER
PWD (R)
KOCHUGAON SUB DIVISION
KOCHUGAON
DIST.- KOKRAJHAR
ASSAM

5:THE DIRECTOR OF PENSION
ASSAM
DISPUR
GHY-6

6:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GHY-29

7:PRINCIPAL SECRETARY
BODOLAND TERRITORIAL COUNCIL REGION
KOKRAJHAR

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : SC, PWD

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

17-07-2023

Heard Mr. M. U. Mahmud, learned counsel for the petitioner and Mr. S. S. Roy, learned Government Advocate, Assam for the respondent Nos. 1 and 5. Also heard Mr. B. Choudhury, learned Standing Counsel, PWD for the respondent No.2; Mr. P. Nayak, learned Standing Counsel, BTC for the respondent Nos. 3, 4 and 7 as well as Mr. R. K. Talukdar, learned Standing Counsel, A G (A & E) for the respondent No.6.

Petitioner herein has prayed for a direction to pay her pension and other service benefits like Gratuity, Group Insurance etc. being the legally married wife of Rajesh Goala being her late husband, who served as Handyman in the establishment of the Executive Engineer, PWD (Roads and Building) Mechanical Division, Abhayapuri, District-Kokrajhar under BTC.

Mr. Choudhury, learned Standing Counsel, PWD as well as Mr. P. Nayak, learned Standing Counsel, BTC from the appointment order of the late husband of the petitioner annexed to this petition as Annexure-1, placed before the Court that husband of the petitioner Rajesh Goala was appointed as Road Roller Handyman temporarily for a period of three months in the Pay Scale of Rs.915/- to Rs.1595/- per month but his temporary service was not regularized and as such, the petitioner is not entitled for any such pensionary benefits on the death of her husband said Rajesh Goala, Road Roller Handyman in the establishment of the Executive Engineer, PWD (Roads

and Building) Mechanical Division, Abhayapuri, District Kokrajhar.

In that regard, Mr. P. Nayak, learned Standing Counsel, BTC placed a decision of the Hon'ble Apex Court in the case of *Uttar Haryana Bijli Vitran Nigam Ltd. -Vs- Surji Devi* reported in (2008) 2 SCC 310 matter pertaining to family pension claimed by Smti. Surji Devi wherein the Hon'ble Apex Court have held that as the service of the late husband of said Surji Devi was not regularized, who expired in August, 1985 and the scheme for regularization came into force in 1986, is not entitled for any such pensionary benefits.

Mr. Nayak also placed a copy of the order dated 13.03.2023, passed by a Division Bench of this Court in Writ Appeal No.1/2022 (Ujala Narzary Vs. State of Assam and 4 others) arising out of WP(C) No.6193/2021 (Ujala Narzary Vs. State of Assam and 4 others) decided on 24.11.2021 whereby the Hon'ble Division Bench upheld the decision of the learned Single Judge dated 24.11.2021, passed in said WP(C) No. 6193/2021 in which the learned counsel for the petitioner Mr. M. U. Mahmud represented said Ujala Narzary came to the finding that the Assam Service Pension Rules, 1969 specified that the service of an officer does not qualified for pension unless it conforms to the three conditions, namely, the service must be under Government; the employment must be substantive and permanent and the servant must be paid by Government and further the law laid down in the case of *State of Karnataka Vs. M. L. Kesari* reported in (2010) 9 SCC 247, the appellant there was not entitled for any such benefit.

Since the service of the late husband of the petitioner was not against any substantive post and his service was not permanent, the claim of the petitioner for payment of pensionary benefit of her late husband Rajesh Goala cannot be considered in exercise of the powers under Article 226 of the Constitution of India in the present proceeding.

For the reasons above, this writ petition being without any merit stands dismissed.

JUDGE

Comparing Assistant