

GAHC010158592020



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

Case No. : I.A.(Civil)/1873/2020
in
WP(C) No. 3471/2020

HASNA BEGUM
W/O- LT. MD. IDRIS ALI, R/O- VILL AND P.O. GULCHARA, DIST.-
KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE SECY. TO THE GOVT. OF ASSAM, EDUCATION (SECONDARY)
DEPTT., DISPUR, GHY-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-06

4:THE TREASURY OFFICER
KARIMGANJ TREASURY
P.O. KARIMGANJ
DIST.- KARIMGANJ
ASSAM
PIN- 788710

5:THE INSPECTOR OF SCHOOLS
HDC
HAILAKANDI
P.O. HAILAKANDI

DIST.- HAILAKANDI
ASSAM
PIN- 78871

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
ORDER

24-03-2023

Heard Mr. M. Khan, learned counsel for the applicant and Mr. SMT Chistie, learned Standing counsel for Secondary Education Department for the respondent Nos. 1, 2 and 5, Mr. A. Cherty, learned Standing counsel for the Directorate of Pension, respondent No.3 and Mr. P Nayak, SC Finance for the respondent No.4.

Husband of the applicant, Md. Idris Ali was an Office Assistant/Lower Division Assistant of Ghulchara Muhammadia Senior Madrassa in the District of Karimganj wherein he joined in service on 01.11.1977. The said Madrassa received ad-hoc grants w.e.f., 01.03.1984. W.e.f., 01.10.1992 the said Madrassa became a grants-in-aid Madrassa. By an order dated 06.12.1997 the said Madrassa was provincialised w.e.f., 15.08.1994 under the provisions of *the Assam Madrassa Education (Provincialisation) Act, 1995* pursuant to which, the service of the husband of the petitioner was also provincialised. Petitioner's husband retired from service on 30.09.2011.

The Director of Madrassa by order dated 14.12.2011 released the provisional pension of the husband of the petitioner @ Rs. 5290/- per month

w.e.f., 01.10.2011 until finalization of his pension by the Directorate of Pension, Assam with DCRG amount of Rs. 2,29,639/- and her husband received provisional pension upto October, 2018.

As the petitioner's husband passed his Class-X HSLC Examination in the year 1979 and his appointment as LDA was shown in the said Madrassa w.e.f., 01.11.1977, the Finance and Account Officer of the Director of Pension on 07.10.2014 sought for relevant clarification from the Superintendent of said Madrassa as well as the petitioner.

After receipt of relevant information/documents the Director of Pension on 04.06.2016 sanctioning the final Pension Pay Order in favour of the husband of petitioner @ Rs.3920/- per month and by another letter dated 04.06.2016, the Director of Pension fixed the DCRG at Rs.1,54,485/- with a further request to the concerned Treasury Officer to obtain certificate from the concerned Drawing and Disbursing Officer of the husband of the petitioner to the effect of drawal, non-drawal of the provisional/family pension/DCRG to be countersigned by the said Treasury Officer observing that the amount shown, if any excess, may be recovered from the first payment.

Husband of the petitioner expired on 02.01.2019 and the petitioner on 30.10.2019 submitted an application before the Director of Pension, Assam to transfer the PPO of her deceased husband in her favour by sanctioning family pension that was forwarded by the Treasury Officer, Karimganj on 30.01.2020.

Though the respondent Director of Pension on 03.06.2020 issued a letter transferring the PPO in her favour, but it was without considering the prayer of re-assessment regarding the correct amount of pension that was payable to her husband and as family pension to her.

As such, the applicant as petitioner filed the connected writ petition being WP(C) No. 3471/2020 praying amongst others to make a fresh assessment towards correct fixation of pension/family pension as well as the quantum of DCRG of the petitioner as per the relevant provisions of law by taking into account of her husband's service period from 01.03.1984 i.e., the date of receiving grants in aid by the said Madrassa and to release the arrear pension credited in favour of her deceased husband from November, 2018 to 02.01.2019 as well as the family pension payable to her w.e.f., 03.01.2019 forthwith.

In the said writ petition, the petitioner has also prayed to set aside and quash letters dated 04.06.2016 of the Director of Pension regarding payment of Rs.1,54,485/- as DCRG towards her late husband and 06.03.2020 of the Director of Pension asking for the certificate from the pensioners DDO to the effect of drawal, non-drawal of the provisional/family pension/DCRG to be countersigned by the said Treasury Officer observing that the amount shown, if any excess, may be recovered from the first payment and also the communication dated 06.03.2020 of the Director of Pension.

Petitioner has also prayed for determination of quantum of monthly pension and DCRG payable to her with an interim prayer not to make any recovery and to release monthly pension of the petitioner either in terms of the order 04.06.2016 or 06.03.2020 pursuant to the letters of the Director of Pension.

The Court on 19.10.2020 while considering said WP(C) No. 3471/2020, issued notice to the respondents and in the interim observed that pendency of the said writ petition shall not be a bar for the respondents to consider the prayer of the petitioner for assessment/fixation of the correct pension/family pension as well as the DCRG payable to her late husband and the amount of

family pension payable to her with the further direction that the respondents in the Directorate of Pension, Assam in the meanwhile, may also release such family pension to her which has not yet been partly paid to her for few months as there is no impediment in releasing the same.

The petitioner of said WP(C) No. 3471/2020 on 05.11.2020 filed an Interlocutory Application under Section 152 of the CPC for correction of typographical error in the said order dated 19.10.2020 stating that there is a typographical error with regard to receiving of family pension and the operative part of interim direction in the said order.

The applicant/writ petitioner in this application stated that in the last line of paragraph 2 of the order it is reflected that the petitioner is presently receiving family pension on the death of her husband Idris Ali, however, the said observation is apparently erroneous, as the petitioner has not been receiving the family pension presently and in fact pension/family pension of the petitioner has been stopped since November, 2018.

The applicant stated that the aforesaid provision has culminated the erroneous interim direction in the last para of the order dated 19.10.2020 where the respondents in the Directorate of Pension was directed that in the meantime, it may release such family pension to her which has not yet been partly paid for few months as there is no impediment in releasing the same.

Applicant stated that as she is not receiving any family pension, the matter of part payment does not arise.

By the said application, the applicant at para 5 submitted to rectify/modify the said order dated 19.10.2020, passed in WP(C) No. 3471/2020 and in the prayer prayed to make some correction in the order dated 19.10.2020 passed

by the Court in said WP(C) No. 3471/2020 so that the applicant may get her family pension.

Though the matter was taken up for consideration earlier but order could not be passed.

From the contention of the applicant made in this application, as noted above, it is found that the applicant itself contains statements that order dated 19.10.2020, passed in said WP(C) No. 3471/2020 is erroneous. The applicant in this application also submitted that the said order dated 19.10.2020 have mistakes of facts which needs to be reconsidered and she has prayed for making some correction in the said order dated 19.10.2020 passed in said WP(C) No. 3471/2020.

It is settled by the Hon'ble Apex Court that the principle behind Section 152 CPC regarding amendments of judgments, decrees or orders that power under the Section to rectify clerical error or accidental slip and does not empower the Court to have second thought over the matter and to find that a better order or decree could or should be passed.

The Hon'ble Supreme Court with regard to Section 152 CPC have also held that only with regard to Clerical, arithmetical mistake or accidental slip or omission in the judgment or decree can be corrected without an appeal or review.

From the above, the Court is of the view that on the basis of submission made in this application filed under Section 152 CPC for correction of typographical error occurred in the order dated 19.10.2020, passed in said WP(C) No. 3471/2020, the prayer made by the applicant cannot be considered.

As such, for the interest of justice, the applicant is allowed to file an

appropriate application regarding correction of any such finding/observation made in the order dated 19.10.2020, passed in said WP(C) No. 3471/2020, if so advised.

With the above observation, this interlocutory application stands disposed of.

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JUDGE

Comparing Assistant