

GAHC010169292021



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

Case No. : WP(C)/5547/2021

DEVI MAYA LAMA
W/O SRI BAHADUR SINGH LAMA, R/O NO. 1 DOLBARI NEPALI GAON, P.O.-
TEZPUR, DIST- SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH THE SECRETARY TO THE GOVERNMENT OF ASSAM, FOREST
AND ENVIRONMENT DEPARTMENT, DISPUR, GUWAHATI-6

2:THE PRINCIPAL CHEIF CONSERVATOR OF FORESTS
ASSAM
REHABARI
GUWAHATI-781008

3:THE DIVISIONAL FOREST OFFICER
SONITPUR WEST DIVISION
TEZPUR DIST-SONITPUR
ASSAM

4:THE DIRECTOR OF PENSION
ASSAM
BANPHOOL NAGAR
DISPUR BASISTHAPUR
GUWAHATI-781006

5:THE ACCOUNTANT GENERAL
ASSAM
MAIDAM GAON
BELTOLA TINIALI
GUWAHATI-78102

Advocate for the Petitioner : MS A DAS

Advocate for the Respondent : SC, FOREST

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

17.11.2023

Heard Mr. S.C. Biswas, learned counsel for the petitioner. Also heard Mr. I. Borthakur, learned Standing Counsel, Forest Department, representing the respondent Nos.1, 2 and 3, Mr. D. Bora, learned counsel representing the respondent No.4 and Ms. P. Swargiary, learned counsel representing the respondent No.5.

2. The petitioner's case is that her son Late Gore Bahadur Lama, who was working as a casual worker in the office of the Divisional Forest Officer, Sonitpur, died in a bomb blast, which was caused by extremists in the office campus of the said office on 15.08.1986. The petitioner, who is now an old lady of 80 years, was wholly dependent on her deceased son and as she is unable to support herself due to poverty, the petitioner has now filed the present writ petition praying for family pension and other retirement benefits.

3. Mr. I. Borthakur, learned counsel representing the Forest Department, on the other hand, submits that the petitioner's son was not a regular government servant and was only a casual worker. As such, the petitioner's son was not entitled to grant of any pension. Consequently, the petitioner is not entitled to any family pension.

4. I have heard the learned counsels appearing for the parties. As can be seen from the facts of this Case, the petitioner's son, who was a casual worker

in the office of the Divisional Forest Officer, Sonitpur, died in a bomb blast on 15.08.1986. The petitioner had initially approached this Court by way of WP(C) 3284/2012, praying for a direction to the respondents to pay an ex-gratia amount of Rs.3 lakhs, which she claimed was her entitlement as compensation, on account of the death of her son, who was killed in a bomb blast on 15.08.1986. The said claim was made by the petitioner in terms of Clause-V of the Office Memorandum dated 29.07.2013, wherein it was held that in case of persons killed by extremist violence prior to 2004, but whose relatives did not apply for any appointment prior to 22nd June, 2004 and had applied after 22nd June 2004 and may or may not have received ex gratia grant under 2004 notification i.e. Rs.3.00 lakhs, (a) they shall now be given appropriate ex gratia payment as per No.ABP 121/92/Pt-V/136 dated 22-6-2004 adjusting the amount already received if any and (b) they shall also be entitled to be considered under the scheme envisaged in the Government Circular above i.e. No.ABP 121/92/Pt-V/136 dated 22-6-2004.

5. This Court, vide order dated 31.08.2016, disposed of WP(C) 3284/2012 by directing the Deputy Commissioner, Sonitpur, to make necessary enquiry with regard to the claim of the petitioner for receiving ex-gratia grant of Rs.3 lakhs and submit the report to the Secretary to the Government of Assam, Relief and Rehabilitation Department (respondent No.2 therein). Thereafter, ex-gratia grant of Rs.3 lakhs was given to the petitioner, pursuant to the report made by the Deputy Commissioner, Sonitpur in terms of the direction given by this Court in the order dated 31.08.2016.

6. The petitioner has never made a claim for grant of family pension in any court proceeding, including WP(C) 3284/2012. It is only after 36 years from the date of incident that the petitioner has now filed the present case for grant of

family pension. Rule 31 of the Assam (Services) Pension Rules, 1969 (hereinafter referred to as "1969 Rules") provides conditions of qualifying service for payment of pension and the same reads as follows:

"31. Conditions to qualifying service.- The service of an officer does not qualify for pension unless it conforms to the following three conditions:

Firstly, the service must be under Government;

Secondly, the employment must be substantive and permanent;

Thirdly, the servant must be paid by Government.

Provided that the Governor may, even though either or both of conditions (1) and (2) above are fulfilled, -

(i) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension, and

(ii) in individual cases and subject to such conditions as he may think fit to impose in each case allow service rendered by an officer to count for pension."

The said Rule 31 of 1969 Rules clearly provides that the service of the employee must be under the Government, the employment must be substantive and permanent and the employee must be paid by the Government. In the present case, the petitioner's son being a casual worker, it is clear that his employment under the government was not in a substantive capacity and neither was it permanent. As all the conditions required for being considered as a regular government servant were not present in the case of the petitioner's son, the petitioner's son cannot be considered to be a regular government servant. This is also in tune with Rule 36 of the 1969 Rules.

7. In view of the reasons stated above, the petitioner's son is not eligible for grant/payment of any pension and consequently, there is no question of grant

of family pension to the petitioner.

The writ petition is, accordingly, dismissed.

JUDGE

Comparing Assistant