

GAHC010176692020



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

Case No. : WP(C)/5374/2020

JORNA DAS @ JORNA RANI DAS
W/O LATE NIKHIL CHANDRA DAS
R/O VILLAGE BAKRIHAWAR PART XII, PO KALIBARI BAZAR, PS
ALGAPUR, DIST HAILAKANDI, ASSAM

VERSUS

COMMISSIONER OF EXCISE AND CUSTOMS AND 5 ORS
(PREVENTION) HOUSE NORTHEASTERN REGION, MEGHALAYA,
SHILLONG, 793001

2:THE DEPUTY COMMISSIONER OF CUSTOM
KARIMGANJ

KARIMGANJ ASSAM

3:ASSISTANT COMMISSIONER OF CUSTOM PREVENTION DIVISION
KARIMGANJ ASSAM

4:THE ADMINISTRATIVE OFFICER

O/O THE DEPUTY COMMISSIONER OF CUSTOM
KARIMGANJ ASSAM 788710

5:ARPAN DAS
S/O LATE NIKHIL CHANDRA DAS R/O VILLAGE BAKRIHAWAR PT-I
P.O. KALIBARI BAZAR
P.S. ALGAPUR
DISTRICT HAILAKANDI
ASSAM

6:ANUP DAS

S/O LATE NIKHIL CHANDRA DAS R/O VILLAGE BAKRIHAWAR PT-I P.O.
KALIBARI BAZAR P.S. ALGAPUR DISTRICT HAILAKANDI
ASSA

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : SC, CENTRAL EXCISE CUSTOMS, MR. S C KEYAL

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

25.08.2023

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel, Central Excise and Custom for the respondents.

2. This writ petition is filed by the petitioner praying for direction to release the family pension and other pensionary benefits to the petitioner on account of death of her husband who died-in-harness while working in the Office of the Deputy Commissioner of Customs, Karimganj. The late husband of the petitioner was working as a Sepoy. The petitioner claims that inspite of her application to the concerned Department seeking release of family pension, the same has not been released. By communication dated 01.01.2019, the petitioner was asked to reply certain queries put by the Department on the basis of application filed by the father-in-law of the petitioner as well as the sons of the petitioner. The father-in-law alleged that the petitioner had been missing for about five years prior to the death of the petitioner's husband and therefore, she was not entitled to get any pension. Similar allegations are raised by the sons of the petitioner, who further stated that the petitioner had re-married in the meantime and has been living separately with her new family and therefore, she is not

entitled to get family pension. Denying all such allegations, the petitioner had filed a response to the communication dated 01.01.2019. This reply is stated to have been submitted on 03.04.2019, replying all the allegations made against her. In her reply, she denied that she had re-married rather she stated that she has driven out of the matrimonial house by the family members after the death of her late husband and she had been working in a factory in Mumbai in the meantime.

3. The learned counsel for the petitioner submits that inspite of this response filed by the petitioner, no order has been passed nor any pension has been released in favour of the petitioner. The authorities have neglected to consider the claim of the petitioner for release of pension on account of the death of her husband.

4. Mr. S.C. Keyal, learned counsel for the Department submits that as the Department had already issued a letter as far back as 01.01.2019 requesting the petitioner to respond to the allegations made but no response has been received. Mr. Keyal submits that there is no record of the reply being submitted before the authorities concerned.

5. Having heard the learned counsels for the parties, it is seen that the petitioner is praying for release of pension on account of the death of the late husband of the petitioner which is not being processed on account of objections received by the son and father-in-law of the petitioner. The matter, therefore, needs to be resolved expeditiously.

6. Considering the submissions advanced and the pleadings available on record, this Court is of the considered opinion that the matter should be relegated to the Department to conduct a proper hearing in respect of the

allegations and counter allegations made and thereafter, take a decision and pass a speaking order in respect of the claim made by the petitioner for pension of the deceased, namely Nikhil Ch. Das.

7. The petitioner will appear before the respondent authorities and the respondent authorities will issue notices to the father-in-law as well as the son(s) or any other claimant who may have staked their the claims for family pension of Nikhil Ch. Das and thereupon conduct a proper hearing and pass appropriate orders.

8. Since the petitioner is represented by the learned counsel, no further notice is necessary to be issued by the Department.

9. The son(s) of the petitioner are also arrayed as parties in the present writ petition as respondents No. 5 & 6. The respondents No. 5 & 6 are shown to be represented by a counsel as is evident from the office Note stating that Vakalatnama in respect of respondents No 5 & 6 has been filed.

10. As this order is passed in the absence of the learned counsel for the respondents No. 5 & 6, the respondent authorities will also issue notice to the respondents No. 5 & 6 and the father-in-law of the petitioner. The petitioner, the respondents No. 5 & 6 and all stakeholders will appear before the competent authority within 30 days from the date of receipt of the certified copy of this Order and thereafter, the department will conduct necessary hearing of the matter and pass further order within a period of 60 days therefrom.

11. Any such order that is passed, copies thereof will be served on all the parties who appeared before the department.

12. If the department upon conducting the hearing passes an order for release of pension, the same should be done expeditiously without any further delay.

13. The writ petition stands closed in terms of the above.

JUDGE

Comparing Assistant