

GAHC010184102023



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

Case No. : I.A.(Civil)/2674/2023

THANESWARI ROY
W/O LT. BANAHU ROY,
R/O KUNDIL NAGAR, P.O. AND P.S.- BASISTHA, DIST.- KAMRUP (M),
ASSAM, PIN- 781029.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY
IMPLEMENTATION OF ASSAM ACCORD DEPTT.
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY SECRETARY
IMPLEMENTATION OF ASSAM ACCORD DEPTT.
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

4:SATYENDRA NATH DEKA
S/O SRI ANANTA DEKA

C/O COMMISSIONER AND SECRETARY
IMPLEMENTATION OF ASSAM ACCORD DEPTT.
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006

Advocate for the Petitioner : MR. S CHAUHAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

20.09.2023

1. Heard Mr. S. Chauhan, learned counsel for the applicant, who submits that there is a delay of 5374 days in filing the review petition against the judgment and order dated 21.07.2006 passed in Civil Rule No.2828/1994. He submits that Civil Rule No.2828/1994 had been filed by the applicant's husband, on the ground that applicant's husband's dismissal from service was arbitrary. However, during pendency of Civil Rule No.2828/1994, the order dated 31.05.1994 dismissing the applicant's husband from service was withdrawn, vide order dated 02.08.1994 issued by the State respondents. Though the applicant's husband had informed his counsel to withdraw Civil Rule No.2828/1994, the counsel had not withdrawn the same. Civil Rule No.2828/1994 was thereafter dismissed as being devoid of any merit, vide judgment and order dated 21.07.2006.

2. The applicant's counsel submits that the applicant's husband had been in service for approximately 14 years 3 months and as such, he was entitled to receive proportionate pension in terms of the Assam Services (Pension) Rules 1969. He submits that unless a review of the judgment and order dated 21.07.2006 passed Civil Rule No.2828/1994 is allowed, the applicant would be losing proportionate family pension, which is a right that has accrued to the

applicant.

3. The counsel for the applicant also submits that the applicant's husband expired on 16.10.2021 and the present petition for review has been filed on 08.09.2023. He submits that in view of the reasons stated above, the delay in filing the review should be condoned.

4. Ms. M. Bhattacharjee, learned Government Advocate appearing for the State respondents submits that there being a delay of approximately 17 years in filing the review petition, that also after the death of the applicant's husband, the condonation of delay application should be rejected.

5. I have heard the learned counsels for the parties.

6. The judgment and order dated 21.07.2006 passed in Civil Rule No.2828/1994 states that the applicant's husband was temporarily appointed as a Driver, vide order dated 06.01.1993 and he was dismissed from service, vide order dated 31.05.1994. The challenge made to the dismissal order dated 31.05.1994 ended in failure, as the writ petition was dismissed on the ground that it was devoid of any merit. The documents annexed to the writ petition (C.R. 2828/1994) show that the order dismissing the applicant's husband as a Driver was withdrawn, vide Office Order dated 02.08.1994. However, the Government of Assam, Implementation of the Assam Accord Department, in its Office Order No. IAA 34/93/43 dated 24.09.2007 released the applicant's husband from service in compliance with the order dated 21.07.2006 passed in

Civil Rule No.2828/1994. The said Office Order also categorically states that the applicant's husband had been appointed on a temporary basis, vide Order No. IAA 44/92/48 dated 06.01.1993.

7. The judgment and order sought to be reviewed had been passed on 21.07.2006 in Civil Rule No.2828/1994. Subsequent to Civil Rule No.2828/1994, the applicant's husband also filed WP(C) No.259/2008, which had been disposed of, vide order dated 22.02.2008. In the order dated 22.02.2008 passed in WP(C) No.259/2008, this Court had also given the liberty to the applicant's husband to seek review/recall of the order dated 21.07.2006 passed in Civil Rule No.2828/1994 and thereafter to approach the departmental authority in accordance with law, if so advised.

8. The above orders show that the applicant's husband had been appointed on a temporary basis and was not appointed on a regular basis. As such, there was no question of payment of pension in terms of the Assam Services (Pension) Rules 1969, as pension is to be paid to regular Government employees only.

9. The above being said, there is no reason given by the applicant, as to why there has been an inordinate delay of 17 years in filing a review against the judgment and order dated 21.07.2006 passed in Civil Rule No.2828/1994. Further, the applicant's husband having been given the liberty to challenge the impugned judgment and order, vide order dated 22.02.2008 passed in WP(C) No.259/2008, there is no reason given by the applicant for coming to this Court

at this late hour. Accordingly, there being no sufficient cause made out for the delay in filing the application for review of the impugned order passed in Civil Rule No.2828/1994, besides there being no merit in the petition, as the applicant's husband was a temporary Driver, the application for condonation of delay is dismissed.

10. The I.A. is accordingly disposed of.

JUDGE

Comparing Assistant