

GAHC010205812023



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

Case No. : WP(C)/5321/2023

BIKASH SAIKIA AND ANR.
S/O LATE DEBA SAIKIA, R/O WARD NO. 1, SANTIPARA, P.O. AND P.S.-
MANGALDAI, DIST- DARRANG, ASSAM, PIN-784125

2: ALISON SAIKIA
S/O LATE DEBA SAIKIA
R/O WARD NO. 1
SANTIPARA
P.O. AND P.S.-MANGALDAI
DIST- DARRANG
ASSAM
PIN-78412

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI-781006

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
JURIPAR GUWAHATI-781037

3:THE CHIEF EXECUTIVE OFFICER
DARRANG ZILLA PARISHAD
MANGALDAI
P.O.-MANGALDAI
DIST- DARRANG
ASSAM
PIN-784125

4:THE SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI-781006

5:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-781029

6:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-781006

7:THE TREASURY OFFICER
DARRANG
P.O.-MANGALDAI
DIST-DARRANG
ASSAM PIN-784125

8:SMTI PARUL MONI SAIKIA
W/O LATE DEBA SAIKIA
P/R/O WARD NO. 1
SANTIPARA
P.O. AND P.S.-MANGALDAI
DIST-DARRANG
ASSAM
PIN-784125
P/ADD- C/O SRI KAMAL HAZARIKA
VILL AND P.O.-DHEKIPARA
P.S.-SIPAJHAR
DIST-DARRANG
ASSAM PIN-784145

9:NENCY SAIKIA
D/O LATE DEBA SAIKIA
P/R/O WARD NO. 1
SANTIPARA
P.O. AND P.S.-MANGALDAI
DIST- DARRANG
ASSAM
PIN-784125
P/ADD- C/O SRI KAMAL HAZARIKA
VILL AND P.O.-DHEKIPARA

P.S.-SIPAJHAR
DIST- DARRANG
ASSAM
PIN-784145 (BEING MINOR
REPRESENTED BY RESPONDENT NO. 8
MOTHER/NATURAL GUARDIAN

Advocate for the Petitioner : MR. D A KAIYUM

Advocate for the Respondent : SC, P AND R.D.

B E F O R E

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

Date of Order: 15.09.2023

ORDER (ORAL)

Heard Mr. D A Kayum, learned counsel for the petitioners and Ms. N Bora, learned Standing counsel, P&RD Department for the respondent Nos. 1, 2 & 3. Also heard Mr. A Chaliha, learned Standing counsel, Finance Department for the respondent Nos. 4 & 7; Mr. B Chakraborty, learned Standing counsel, Accountant General (A&E), Assam for the respondent No. 5 and Mr. A Chakraborty, learned Government Advocate, Assam for the respondent No. 6.

2. Father of the petitioners, Deba Saikia, Secretary of Ramhari Gaon Panchayat under Pachim Mangaldai Anchalik Panchayat in the District of Darrang died-in-harness on 27.05.2021 leaving behind his widow, Parul Moni Saikia respondent No. 8, two sons, i.e., the petitioners, who are major and one minor daughter, Nancy Saikia respondent No. 9.

3. It is stated by the petitioners that their mother, Sandika Saikia expired on 25.08.2021 and thereafter, their father married the respondent No. 8 and out of their wedlock respondent No. 9 was born to them.

4. The petitioners have placed the Next of Kin Certificate of said Deba Saikia issued by the office of the Deputy Commissioner, Darrang on 04.08.2021 (Annexure-3 to this petition).

5. Petitioners stated that the respondent authorities in the P&RD Department sanctioned an amount of Rs.5,26,620/- towards cash in lieu of unutilized Earned Leave to the credit of their father

late Deba Saikia for 300 days at the time of his death as well as an amount of Rs.32,362/- towards GIS Savings Fund with interest and an amount of Rs.2,00,000/- towards GIS Insurance Fund in respect of their father, late Deba Saikia, who expired on 27.05.2021. Thereafter, the respondent authorities in the P&RD Department paid 50% share of those amount of Rs.5,26,620/- + Rs.32,362/- + Rs.2,00,000/- to the petitioners and the remaining 50% share of the said amount to the respondent Nos. 8 & 9.

6. The State Government in the Finance (Establishment-A) Department vide Notification No. FEG.28/2017/26 dated 14.09.2017 published in the Assam Gazette Extraordinary on 11.10.2017 brought into force the "Scheme for Compassionate Family Pension (CFP)" in lieu of "Compassionate Appointment" that came into force w.e.f. 01.04.2017 with regard to the Government employee, who died/die-in-harness on after 01.04.2017.

7. The petitioners are now claiming for payment of 50% share of Compassionate Family Pension that has been paid to the respondent No. 8 in terms of Clause 5.3 of the said Notification dated 14.09.2017 of the State Government in the Finance (Establishment-A) Department pertaining to the Scheme for Compassionate Family Pension (CPF), 2017, noted above.

8. It is to be noted herein that the said Scheme for Compassionate Family Pension in lieu of Compassionate Appointment was further amended by the State Government in the Finance (Establishment-A) Department vide Notification No. FEG.28/2017/46 dated 05.07.2018 published in the Assam Gazette Extraordinary on 20.07.2018.

9. Clause 5.3 of the Scheme for Compassionate Family Pension (CPF), 2017 provides that — *"Where the employee dies before superannuation, the family pension equal to 100% of the last pay drawn by the deceased employee be paid for a period up to the date of 'deemed superannuation' of the deceased employee, i.e., the date on which the employee would have superannuated had he been alive. This would compensate the loss of family income to a large extent and fulfill the requirement of compassionate conditions arising out of the death of the serving employee."*

However, the Government servant must complete minimum 1 (one) year of continuous service without break before death while in service."

10. Clause 5.10 of the said Scheme for Compassionate Family Pension (CPF), 2017 as amended stipulates that — *"It is also provided that if the parents or other eligible family members are not looked after by the Compassionate Family Pensioner, on receipt of such complaint from them, the*

competent authority will issue orders apportioning the Compassionate Family Pension appropriately among the other eligible family members.”

11. The Scheme of Compassionate Family Pension, 2017 noted above, is not a scheme for pension towards retiring person granting benefit of pension to a Government employee but it is a scheme for giving financial benefit to the family of the “Government employee who dies-in-harness”, where death may be natural or unnatural; but the benefit of the said scheme is not applicable for a Government employee in case of his/her voluntary retirement/resignation or any other cases.

12. As per the provisions of Clause 5.1 of the said CFP Scheme, the definition of ‘Family’ of the employee dies-in-harness is that of the definition of ‘Family’ specified in the Assam Services (Pension) Rules, 1969, amended from time to time.

13. Chapter-VIII of said 1969 Pension Rules relates to Liberalised Pension Rules. Section-II of said Chapter-VIII relates to death-cum-retirement gratuity. Rule 136 of Section-II of Chapter-VIII relates to nomination and Rule 136(i)(a) provides that ‘Family’ for the purpose of the said Rule (Rule 136) includes relatives of the concerned officer, i.e., the concerned Government employee for the purpose of nomination of pension, which are (i) Wife in the case of male officer; (ii) Husband in the case of a female officer; (iii) Sons; (iv) Unmarried and widow daughters; (v) Brothers below the age of 18 years and unmarried or widow sisters; (vi) Father and (vii) Mother; where (iii) Sons and (iv) Unmarried and widow daughters, noted above, include step children and adopted children.

14. Section-IV of said Chapter-VIII of said 1969 Rules relates to Family Pension Scheme, 1964. Rule 143 (i) of said 1969 Pension Rules, under Section-IV of said Chapter-VIII defines ‘Family’ of the relatives of the concerned officer, i.e., the concerned deceased Government employee, for the purpose of family pension that includes (a) Wife, in case of a male officer; (b) Husband, in the case of a female officer; (c) Minor sons and (d) Unmarried minor daughters, where (c) Minor sons and (d) Unmarried minor daughters, noted above, include children adopted legally before retirement.

15. Further, Rule 143 (ii) of the said 1969 Rules provides that family pension of the deceased Government employee will be admissible – (a) in the case of a widow/widower up to the date of her/his death or re-marriage whichever is earlier; (b) in the case of a minor son, until he attains the age of 18 years and (c) in the case of an unmarried daughter, until she attains the age of 21 years or marriage whichever is earlier.

16. The petitioners, who were 23 years and 19 years on 04.08.2021 respectively, on the date of

issuance of the Next of Kin Certificate of late Deba Saikia, issued by the Deputy Commissioner, Darrang; who are presently of 25 and 21 years of age, respectively, being the major sons of said Deba Saikia, failed to establish as to how they are entitled for any such share and/or part of Compassionate Family Pension on the death of their said father on 27.05.2021.

17. Even if it is assumed that the petitioners being major being above the age of 18 years, are entitled to a share and/or part of Compassionate Family Pension on the death of their father on 27.05.2021, but in exercise of the power under Article 226 of the Constitution of India, a writ Court is not the appropriate Court and/or is the competent authority to decide the share of Compassionate Family Pension payable to the members of the family as defined under said 1969 Rules, noted above, under the Scheme for Compassionate Family Pension (CFP) issued by the State Government in the Finance Department vide Notification No. FEG.28/2017/26 dated 14.09.2017 amended in the year 2018, since the share of compassionate family pension to be apportioned among the other eligible family members can be considered by the competent authority only after evaluating the evidence to be adduced by the eligible family members where family is defined under Rule 143 of said 1969 Rules and the writ Court in exercise of its power under Article 226 of the Constitution cannot evaluate the evidence to be adduced by the parties.

18. The prayers made by the petitioners in this writ petition, for the reasons above, cannot be considered by the writ Court in exercise of its power as prescribed and accordingly, this writ petition is dismissed.

19. However, the petitioners may approach the appropriate forum, if so advised, subject to fulfillment of the clause 'Family' as defined under Rule 143 of the Assam Services (Pension) Rules, 1969; for their share of Compassionate Family Pension, under the said Scheme for Compassionate Family Pension (CPF), 2017 issued by the State Government in the Finance Department vide Notification No. FEG.28/2017/26 dated 14.09.2017.

JUDGE

Comparing Assistant