

GAHC010224302023



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

Case No. : WP(C)/6056/2023

MRS JAYA UPADHYAYA
W/O LATE SITARAM UPADHYAYA, R/O VILL- BORGOLAI GOPAL DHAM,
P.O.-BORGOLAI, DIST- TINSUKIA, ASSAM, PIN-786181

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCE DEPARTMENT
DISPUR
GUWAHATI-6

3:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

4:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM
PANJABARI
JURIPAR
GUWAHATI-37

5:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
GUWAHATI-6

6:THE CHIEF EXECUTIVE OFFICER
TINSUKIA ZILLA PARISHAD
TINSUKIA
DIST-TINSUKIA
ASSAM
PIN-786125

7:THE TREASURY OFFICER
TINSUKIA TREASURY
DIST-TINSUKIA
ASSAM
PIN-78612

Advocate for the Petitioner : MR. K R PATGIRI

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

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

13-10-2023

Heard Mr. K.R. Patgiri, learned counsel for the petitioner. Also heard Mr. P. Handique, learned counsel, appearing on behalf of Mr. K. Konwar, learned senior standing counsel, P&RD Department, for the respondent Nos. 1, 4 and 6; Mr. C.K.S. Baruah, learned Additional Senior Government Advocate for the respondent Nos. 2 and 5 and Ms. S. Chutia, learned standing counsel, Finance Department, for the respondent Nos. 3 and 7.

The petitioner is the wife of late Sitaram Upadhyaya, who was initially appointed as Gaon Panchayat Secretary of Na Bormura Gaon Panchayat in the district of Tinsukia to which post he joined on 11-11-1993. The service of the petitioner's late husband was regularized in the year 2003 by an order dated 10-06-2003, issued by the Chief Executive Officer, Tinsukia Zilla Parishad, Tinsukia.

Thereafter, the late husband of the petitioner received his regular scale of pay. The petitioner's late husband died-in-harness, on 02-01-016 leaving behind the petitioner and his aged father.

After the death of her husband, the petitioner submitted application seeking family pension, however, the said application was rejected by order dated 09-05-2018, issued by the Finance and Accounts Officer, Directorate of Pension, on the ground that the petitioner's deceased husband had not completed 20 years' regular service so as to enable him to receive pension.

Being aggrieved with the order dated 09-05-2018, the petitioner approached this Court by way of WP(C) No. 4557/2020, which was disposed of by order dated 10-02-2022, directing the respondents to examine the case of the petitioner in the light of Rule 140 of the Assam Services (Pension) Rules, 1969 (in short, 'the Rules of 1969') and pass appropriate order as expeditiously as possible, but not later than 60 days from the date of receipt of a copy of the said order. Thereafter, the Commissioner, Panchayat and Rural Development Department, Assam, passed a speaking order dated 11-10-2022, stating that the late husband of the petitioner is entitled for New Pension Scheme (NPS).

Being aggrieved with the speaking order dated 11-10-2022, the petitioner is before this Court by way of present writ petition. It is the case of the petitioner that similar matters have been considered by the Hon'ble Division Bench of this Court in WA No. 133/2023, which was disposed of by judgment and order dated 05-08-2023. The relevant portion of the order reads as under:

“VII. Conclusion:

A. In view of the aforesaid discussions and reasons, this court cannot but held that the offending portion of the order dated 28.03.2018 issued by the Secretary to the

Govt. of Assam, P&RD i.e. "the ex-post-facto creation of posts shall not be treated for the purpose of enabling the person concerned to receive pension and other retiral benefits," is perverse and not legally sustainable and therefore, liable to be struck down, which is accordingly done.

B. In view of the aforesaid decision, discussion and reason, this court dismisses the present writ appeal being devoid of any merit and resultantly uphold the impugned decision dated 05.08.2022 rendered by the learned Single Judge in WP(C) No. 4397/2022. Parties to bear their own costs."

A perusal of the speaking order dated 11-10-2022 would indicate that the same was passed prior to the judgment and order dated 05-08-2023 rendered in WA No. 133/2023.

Accordingly, the matter is remanded to the Commissioner, Panchayat and Rural Development, Assam, to reconsider and verify the claim of the petitioner in terms of the judgment and order, dated 05-08-2023, passed by the Hon'ble Division Bench of this Court in WA No. 133/2023, taking into consideration Rule 140 of the Rules of 1969.

Let such exercise be taken and completed within a period of two months from the date of receipt of a copy of this order.

The petitioner is also permitted to furnish a certified copy of the judgment and order dated 05-08-2023, passed by the Hon'ble Division Bench of this Court in WA No. 133/2023 to the Commissioner, Panchayat and Rural Development, Assam.

Accordingly, this writ petition is disposed of.

JUDGE

Comparing Assistant