GAHC010252772023

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

Case No. : WP(C)/6495/2023

MANJU KALITA THAKURIA
W/O LATE BISWANATH THAKURIA, R/O VILL- NO-2 JIYAKUR, P.O.-
KUKURMARA VIA CHHAYGAON, P.S.-CHHAYGAON, DIST- KAMRUP
(RURAL), ASSAM, PIN-781124

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 SECRERTARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

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

5:THE DIRECTOR OF PENSION AND PUBLIC GRIEVANCE DEPARTMENT
ASSAM
HOUSEFED COMPLEX
GUWAHATI-6

6:THE CHIEF EXECUTIVE OFFICER
KAMRUP ZILLA PARISHAD
AMINGAON
DIST-KAMRUP (RURAL)
ASSAM
PIN-781031

7:THE TREASURY OFFICER
AMINGAON TREASURY
DIST-KAMRUP (R)
ASSAM
PIN-78103

Advocate for the Petitioner : MR. K R PATGIRI

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

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 08/12/2023

Heard Mr. K.R. Patgiri, learned counsel for the petitioner. Also heard learned Standing Counsel, P&RD Department.

2. The petitioner before this Court is the widow of late Biswanath Thakuria. The husband of the petitioner was serving as a Gaon Panchayat Secretary. He joined his service on 12.09.1995 and his service was regularized with effect from 11.06.2003. Pursuant to his regularization of service, he served in various places and had also received regular pay scale. His last place of posting was under the administrative control of the Chief Executive Officer, Kamrup Zilla Parishad, Amingaon, Guwahati. During the course of his service there, the husband of the petitioner expired on 14.04.2012 leaving behind the petitioner as well as their minor son and daughter. Pursuant to the demise of the husband

of the petitioner, she had been approaching the respondent's authorities for release of the family pension benefits.

3. It is submitted by the learned counsel for the petitioner that the family pension papers were duly submitted to the respondent no.6 namely, the Chief Executive Officer, Kamrup Zilla Parishad, Amingaon, Guwahati, for being forwarded to the office of the respondent no.4, namely, The Commissioner, Panchayat & Rural Development Department. Pursuant to the application made by the petitioner, no action was taken in favour of the petitioner and the family pension benefits have not yet been released in spite of approaching the respondent authorities on several times.

4. Learned counsel for the parties have been heard. The counsels in the Bar are in agreement that the entitlement of pensionary benefits to Gaon Panchayat Secretaries have been upheld by a Division Bench of this Court in WA 145/2009 (the State of Assam vs. Syed Md. Fazlay Rabbi) by the judgment and order dated 24.03.2010. That apart, the order issued by the Panchayat and Rural Development in respect of entitlement of pensionary benefits to the Gaon Panchayat Secretaries by order dated 28.03.2018 have been interfered with by another Division Bench of this Court rendered in WA No. 133/2023 by judgment and order dated 05.08.2023. The Division Bench upheld the impugned judgment and order dated 05.08.2022 passed by another co-ordinate Bench in WP(C) No.4397/22. The Division Bench in its judgment held that in view of the communication dated 30.05.2003 issued by the Government that employees of the Panchayat Raj Institute will be treated as regular employees of the Panchayat Raj Institution, the subsequent communications or orders passed by the Government holding that the benefit of regularisation will be with prospective effect from the date they have joined in the post created ex-post-

facto for giving them the benefit of regular service. Consequently, the Division Bench held that those employees who were given regular benefits by creation of ex-post-facto cannot be treated as "new entrants" joining the State Government services subsequently after introduction of new pension scheme. They have to be treated as employees who had joined as Government employees under the old pension scheme. It was held by the division bench that such employees could not be brought under the new pension scheme.

5. The judgment and order dated 24.03.2010 passed in W.A. No.145/2009; the judgment dated 05.08.2022 passed in WP(C) No. 4397/2022 and the judgment and order dated 05.08.2023 passed in W.A. No.133/2023 have been carefully perused. Having perused those judgments, it is found that the issue involved in the present writ petition stands squarely covered by the said judgments rendered in W.A. No 145/2009 on 24.03.2010 and WA No.133/2023 on 05.08.2023.

6. In that view of the matter the writ petition stands allowed. The respondents are directed to immediately process the pension papers of the late husband of the petitioner and take necessary steps so that the pensionary benefits can be granted to the petitioner as expeditiously as possible within the outer limit of 90 (ninety) days from the receipt of a certified copy of this order. The petitioner will furnish a certified copy of this order before the respondent no.1 who in turn will issue necessary directions to the concerned respondents/officials to prepare the pension papers of the late husband of the petitioner and forward the same to the Director of Pension, Assam within a period of 30 (thirty) days from the date of receipt of the certified copy of this order. The Pension Department will thereafter take necessary steps for release of the pension of the petitioner's husband within outer limit of 60 (sixty) days thereafter. The petitioner shall

furnish all the necessary particulars to the respondents required for processing the family pension of the petitioner.

7. Writ petition stands allowed and disposed of in terms of the above.

8. Interim order, if any, stands vacated.

9. Pending Interlocutory Applications, if any, are closed.

JUDGE

Comparing Assistant