

GAHC010254412022



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

Case No. : WP(C)/8138/2022

KUNJOLATA BORA
WIFE OF LATE MOHENDRA NATH BORA @ MAHANDRA BORA,
RESIDENT OF VILLAGE KOLAKHOWA GAON,
P.O.- KALAKHOWA, P.S.- JORHAT,
DIST- JORHAT, ASSAM, PIN- 785107.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
IRRIGATION DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT

DISPUR
GUWAHATI-6.

3:THE CHIEF ENGINEER
IRRIGATION DEPARTMENT
2ND
BLOCK-B
KRISHNA NAGAR

CHANDMARI
GUWAHATI-03.

4:THE ACCOUNTANT GENERAL (A AND E)

MAIDAMGAON

BELTOLA
GUWAHATI-29.

5:THE EXECUTIVE ENGINEER
JORHAT DIVISION (IRRIGATION) DEPARTMENT
JORHAT
ASSAM PIN-

6:THE TREASURY OFFICER
JORHAT TREASURY
DIST.- JORHAT
ASSAM PIN

Advocate for the Petitioner : MR. K R PATGIRI

Advocate for the Respondent : SC, IRRIGATION

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

25.01.2023

Heard Mr. K. R. Patgiri, the learned counsel for the petitioner and Mr. N. Upadhyaya, the learned counsel appearing on behalf of the respondent Nos.1 & 3. Also heard Mr. R. A. Choudhury, the learned counsel for the respondent No.2; Mr. R. Dhar, the learned counsel appearing on behalf of the respondent No.4 as well as Mr. R. K. Muchahary, the learned counsel for the respondent No.5 & 6.

The instant writ petition has been filed by the petitioner claiming a writ of certiorari declaring that the Office Memorandum dated 20.05.2009 issued by the Office of the respondent No.2 is null and void as well as for a writ of mandamus directing the respondents to finalise the arrear monthly superannuation pension left by her husband as well as the arrear and current monthly family pension considering the total length of service of the deceased husband of the petitioner without any deduction from the length

of his service from the date following the date of his retirement.

The brief fact of the instant case is that the husband of the petitioner one Mohendra Bora (since deceased) was initially appointed as Muster Roll worker under the Office of the Executive Engineer, Jorhat Division, Irrigation, Jorhat, Assam and his date of joining was 01.04.1989. Subsequent thereto, on 22.07.2005, the post of the husband of the petitioner was regularized. The husband of the petitioner continued to perform his duty without any break to the satisfaction of all concerned without any blemish and retired from service on attaining the age of superannuation on 31.10.2012. Pursuant to his retirement, the respondent No.5 had prepared the pension proposal papers and other benefits like leave encashment salary etc. of the petitioner's husband and the same was forwarded to the Office of the respondent No.3 in furtherance of release of the same in favour of the petitioner's husband. Thereupon, examining the pension paper, the respondent No.3 returned the pension proposal papers in respect of the petitioners' husband vide the communication dated 08.09.2015 to the respondent No.5 by mentioning the reason that the date of joining of the petitioner's husband is entered in the pension proposal papers as 01.09.1992 instead of 01.04.1989 as well as his name was appeared as Mohendra Bora instead of Mohendra Nath Bora but his name appeared in the School Certificate as Mahendra Nath Bora. It further appears that the respondent No.5 upon receipt of the aforesaid letter, re-submitted the Service Book and pension proposal papers of the deceased husband of the petitioner along with the clarification vide letter dated 29.10.2015 supported with the Court Affidavit for needful action. The Office of the respondent No.1 thereafter examined the said pension proposal

papers and forwarded the same to the Office of the respondent No.4 with a request to provide monthly superannuation pension as well as the other retirement benefits in favour of the petitioner's husband at an early date. The Office of the respondent No.4, after scrutiny of the aforesaid pension proposal of the petitioner's husband, granted only terminal gratuity amounting to Rs.1,09,064/- in favour of the petitioner's husband vide authority letter dated 08.07.2016 to the Treasury Officer, Jorhat to release the terminal gratuity in favour of the petitioner's husband. Unfortunately, on 31.05.2021, the husband of the petitioner expired. Upon the death of the husband of the petitioner, the petitioner came to know from the Office of the respondents that though the husband of the petitioner rendered 23 years 7 months qualifying service but 6 years of the initial engagement have been deducted on the basis of the impugned Office Memorandum dated 20.05.2009 for which net qualifying service of the petitioner is counted as 16 years 7 months. In that view of the matter, the Office of the Accountant General (A & E) Department, Assam had only sanctioned terminal gratuity but refused to sanction the monthly superannuation pension of the petitioner's husband on the reason of treating the services of the petitioner's husband as temporary Government servant and 6 years of initial engagement was deducted on the basis of the impugned Office Memorandum dated 20.05.2009. It is under such circumstances, the instant writ petition has been filed.

The instant matter has come up before this Court at the stage of motion. The learned counsel for the petitioner submitted that the said Office Memorandum dated 20.05.2009, which has been assailed in the instant writ petition, has already been struck down and declared to be ultra

vires by the judgment and order passed by a Coordinate Bench of this Court on 04.12.2018 in the case of ***Sanjita Roy vs. State of Assam and Others*** which have been reported in **2019 (2) GLT 805**. He further submitted that the said Office Memorandum dated 20.05.2009 was also an issue before the Division Bench in WA No.18/2021 wherein the Division Bench vide an order dated 26.02.2021 observed that benefit of the order passed in the case of ***Sanjita Roy (supra)*** would have retrospective effect and it would include all similarly situated Muster Roll workers irrespective of their dates of retirement, provided that they are covered by the benefits given to them earlier, and were already availing pension.

The learned counsel for the petitioner, therefore, submitted that the respondent authorities in the garb of the Office Memorandum dated 20.05.2009, which have been held to be bad by the Coordinate Bench of this Court, cannot deduct the period of 6 years while computing the qualifying service of the husband of the petitioner.

Mr. N. Upadhyaya, the learned counsel appearing on behalf of the respondent Irrigation Department submitted that the judgment passed by the Coordinate Bench holding the Office Memorandum dated 20.05.2009 as null and void has attained finality. However, the question as to whether the husband of the petitioner had actually completed 23 years 7 months without deducting 6 years is subject to necessary verification.

This Court having heard the learned counsel for the parties and upon perusal of the materials on record and the admitted stand to the fact that the Office Memorandum dated 20.05.2009 is no longer survives and accordingly the respondent authorities, in the garb of the Office Memorandum dated 20.05.2009, cannot deduct 6 years of service, disposes

of the writ petition with a direction to the respondent Nos.3 & 5 to make necessary verification as to whether the husband of the petitioner had put in 23 years 7 months of service with effect from the date of his appointment.

It is made clear that while making such verification, the Office Memorandum dated 20.05.2009, shall not be taken into account. It is further directed that if upon making the said verification, it is found that the husband of the petitioner has the required number of service for the purpose of granting pensionary benefit, the said respondent No.3/respondent No.5 shall issue consequential directions/orders as regards the petitioner's entitlement. The said exercise be completed within a period of 45 (forty five) days from the date a certified copy of the instant order is served upon.

It is further directed that pursuant to the said verification and the consequential direction issued, the matter be placed before the respondent No.1 as well as the respondent No.4. The said respondent No.1 as well as the respondent No.4 shall within 45 (forty five) days thereafter take necessary steps so that the petitioner is granted her family pension as well as the arrear amount within the time as mentioned herein above by deducting such amount as has already been paid as terminal benefit to the husband of the petitioner.

With the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant