

GAHC010011322015



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

Case No. : WP(C)/1933/2015

SMTI SHEFALI DAS
S/O- LT. MUKUL DAS, R/O- MAA SARANI PATH, UTTAR LUMDING, P.O.-
LUMDING, DIST.- NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER and SPL. SECY. TO THE GOVT. OF ASSAM,
PUBLIC WORKS DEPTT. ROADS, DISPUR, GHY- 6.

2:THE CHIEF ENGINEER
PUBLIC WORKS DEPTT. ROADS
CHANDMARI
GHY- 3.

3:THE EXECUTIVE ENGINEER
P.W.D. R and B
MAIBANG DIVISION
MAIBANG
DIMA HASAO
ASSAM.

4:THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
PENSION and PUBLIC GRIEVANCES DEPTT.
DISPUR
GHY- 6.

5:THE ACCOUNTANT GENERAL A and E
ASSAM
MAIDAMGAON
BELTOLA
GHY- 29

Advocate for the Petitioner : MS.J DEKA

Advocate for the Respondent : SC, PENSION and PUBLIC GRIEVANCESR4

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 07-03-2024

1. Heard Mr. P Nayak learned standing counsel, PWD, Mr. R Borpujari learned counsel for the Finance Department and Mr. SK Medhi learned counsel appearing for Accountant General, (A&E).
2. The petitioner's husband late Mukul Das was engaged as casual M.R. labour on 08.03.1981 under the respondent No.3 and his service was regularized with effect from 22.07.2005 through office order No.53 of 2005-2006 dated 20.10.2005.
3. The aforesaid regularization order reflects that post created by the Government for regularization was personal to the husband of the petitioner and will become abolished as soon as the concerned incumbent relinquish the post in any manner, including death and retirement. The husband of the petitioner died in harness on 01.07.2013 and thereafter the petitioner was granted family pension.
4. The grievance of the petitioner is that though family pension is granted, the death cum retirement dues has not been granted and paid.
5. The Accountant General (A&E) has filed an affidavit that

though the husband of the petitioner had qualifying service for grant of family pension, however, he is not entitled for payment of Death cum Retirement Gratuity (DCRG) in terms of sub rule (2) of Rule 136 of the Assam Service Pension Rules, 1969 (in short, Rule 1969) and for want of confirmation of service. It was the further contention that the petitioner is also not entitled for DCRG in terms of rule 152(1) of the Assam Service Pension Rules, 1969 and therefore, such DCRG was rejected.

6. Rule 136(2) of the Pension Rules, 1969 prescribes that an officer shall be entitled for nomination of conferring on one of more persons to release any gratuity after confirmation or completion of five year of service. Under Rule 152, a temporary government employee is made eligible for payment of DCRG on completion of more than 5 years of continuous service at the time of retirement etc.

7. In view of the above, even the service of the husband of the petitioner is treated to be temporary for want of confirmation being regularized against a personal vacancy, he had already completed 7 years 11 months 8 days of service with effect from 22.07.2005 i.e. date of regularization, till his death on 01.07.2013.

8. That being the position, in the considered opinion of this court in the given facts of the present case, there is nothing in these two rules to disentitle the petitioner from the DCRG as held by the Accountant General (A&E).

9. Mr. S.K Medhi, learned counsel representing the Accountant General A&E has also not been able to enlighten this court under what circumstances, the aforesaid provisions i.e., Rule 152(2)

and rule 136(2) has been treated as a bar, in the given facts of the present case to disentitle the present petitioner from getting DCRG.

10. Accordingly the Accountant General (A&E) shall do the needful in this regard for payment of DCRG to the petitioner within a period of 4 (four) weeks from the date of receipt of a certified copy of this order and in terms of the determination made in this case.

11. While parting with the record, this court places its note of appreciation to Mr. P Nayak learned standing counsel PWD, who has tremendously assisted this court.

JUDGE

Comparing Assistant