

GAHC010039562023



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

Case No. : WP(C)/1207/2023

RASHMI DAS
W/O- LATE LOHIT DAS,
R/O- VILL. BARBANG,
P.S.- PATACHARKUCHI,
DIST.- BARPETA, PIN- 781325,
ASSAM.

VERSUS

THE UNION OF INDIA AND 2 ORS
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
NEW DELHI, PIN- 110001.

2:THE COMMANDANT
44 BN SASASTRA SEEMA BAL
NARKATIGANJ
DIST.- WEST CHAMPARAN
BIHAR
PIN- 845455.

3:MRINALINI DAS
W/O- TAPAN DAS

VILL.- KAUREHAGI

P.O.- JALKHANA (TIHU)

DIST.- NALBARI (ASSAM)

PIN- 781378

Advocate for the Petitioner : MRS DIPANJALI BORPUJARI, MRS. M BARMAN

Advocate for the Respondent : DY.S.G.I., MR A N AHMED (R-3)

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 22-10-2024

Heard Mrs. D. Borpujari, learned counsel for the writ petitioner. Also heard Mr. D. Chakraborty, learned CGC appearing for the respondent Nos. 1 and 2. Mr. A.N. Ahmed, learned counsel is present on behalf of respondent No. 3.

The writ petitioner herein is the mother of Govt. servant Tapan Das who was serving in the Sashastra Seema Bal (SSB). While on duty, he went missing in the month of January, 2020 and since then, he is traceless. The respondent No. 3 is the wife (widow) of Tapan Das. Out of their wed-lock, two children were born to Tapan Das and the respondent No. 3, who are minors. Since the where-about of Tapan Das could not be ascertained, hence, by following the provisions of relevant Rules, the authorities had granted DCRG and leave salary, along with the family pension, to his wife, i.e. the respondent No. 3. The writ petitioner herein is the mother of Tapan Das, who has approached this Court by filing the instant writ petition, claiming a share in the retirement benefits received by the respondent No. 3 on account of her son by contending that she was wholly dependent on Tapan Das and therefore, is entitled to a share in the family pension for her survival.

The respondent No. 3 has opposed the prayer by relying upon SR 10-A(a) of Rule 54 of the CCS (Pension) Rules, 1972 whereby and where-under, parents of a Govt.

servant would be entitled to family pension only if they were wholly dependent on the deceased Govt. servant and the Govt. servant is not survived by a widow or an eligible child. In the present case, as noted above, Tapan Das is survived by wife (widow) and two minor children and therefore, as per SR 10-A(a) of Rule 54 of the Rules of 1972, the petitioner cannot have any legitimate claim to the family pension received by the respondent No. 3.

Be that as it may, it is also not in dispute that the petitioner is at present suffering from some critical ailments for which she is in need of financial support. Therefore, although she is not entitled to any share in the family pension under the Rules, yet, it cannot be denied that she would be entitled to some care and support from her sons including Tapan Das, during her difficult days. As such, taking note of the overall facts and circumstances of the case, more particularly, the fact that the respondent No. 3 has admittedly received an amount of Rs. 10,00,000/- (approx) as DCRG and leave salary, by balancing the equities, this writ petition stands disposed of by providing that out of the retirement benefits received by the respondent No. 3, a sum of Rs. 50,000/- (Rupees Fifty Thousand) shall be paid to the writ petitioner by the respondent No. 3, as one time relief to her. It is further provided that if the respondent No. 3 fails to pay the aforesaid amount of Rs. 50,000/- to the petitioner within 06 weeks from the date of receipt of a certified copy of this order, then it will be open for the respondent Nos. 1 and 2 to deduct the said amount from the family pension receivable by the respondent No. 3 and pay the same to the writ petitioner, through her authorised representative, on instalment basis.

It is made clear that this order has been passed purely on equitable considerations

and by taking note of the peculiar facts and circumstances of the case including the fact that had Tapan Das been present today, then in all probability, he would have taken care and extended adequate support to his ailing mother from which she has been deprived of due to the unfortunate turn of events.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant