

GAHC010062612022



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

Case No. : WP(C)/2303/2022

DIPTIMONI SONOWAL
W/O- LATE BODIN SONOWAL, R/O- MEGELA GAON, P.O. MEGELA, DIST.
TINSUKIA, PIN- 786154.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE COMMISSIONER AN SECRETARY, GOVT. OF
ASSAM, ELEMENTARY EDUCATION DEPARTMENT, DISPUR, PIN- 781006.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
PIN- 781006.

3:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
ASSAM
PIN- 781006.

4:THE DIRECTOR OF ELEMENTARY EDUCATION DEPARTMENT
ASSAM
KAHILIPARA
GUWAHATI
PIN- 781019.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
TINSUKIA
DIST. TINSUKIA
ASSAM

PIN- 786125.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
KAKOPATHAR
DIST. TINSUKIA
ASSAM
PIN- 786152.

7:THE TREASURY OFFICER
TINSUKIA
DIST. TINSUKIA
ASSAM-786152.

8:THE PENSION AND PUBLIC GRIEVANCE DEPARTMENT
GOVT. OF ASSAM
REP. BY ITS SECRETARY
DISPUR SECRETARIAT
GUWAHATI-781006
DIST.- KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. B BARUAH, MR S HUSSAIN

Advocate for the Respondent : GA, ASSAM, SC, ELEM. EDU,SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 19-08-2024

1. Heard Mr. B. Baruah, learned counsel for the petitioner. Also heard Ms. S. Chutia, learned Standing Counsel, Elementary Education Department for the respondent No. 1, 4, 5 & 6, Mr. A. Chaliha, learned Standing Counsel, Finance Department for the respondent Nos. 2 & 7. Mr. B. Deori, learned Government Advocate for the respondent Nos. 3 & 8.

2. The petitioner before this Court is the wife of Late Bodin Sonowal who died on 18.03.2013 while serving as Assistant Teacher of No. 2 Saru Salaguri L.P. School of Tinsukia District.

3. The petitioner's Late husband was appointed as Assistant Teacher for a fixed period upto 31.03.2002 at a fixed pay of Rs. 1,800/- per month and posted at Megela L.P. School. The service of the petitioner's Late husband was regularised on fixed pay against the vacant post of No. 2 Saru Salak Gupi L.P. School by an order dated 26.07.2010 and posted at No. 2 Saru Salaguri Gupi L.P. School. In the meantime, the husband of the petitioner died on 18.03.2013.

4. It is the case of the petitioner that her Late husband has rendered more than 10 years of service till he died on 18.03.2013 and under such circumstances the petitioner is entitled to family pension. The petitioner therefore made representation before the Director of Pension, Assam on 03.12.2021 requesting to count the stipendiary period of service of Late husband towards pensionary benefit. However, as no step was taken, the petitioner is before his Court with the following prayers:-

“It is therefore prayed that your Lordships would be pleased to admit this petition, call for the records and issue Rule calling upon the Respondents to show cause as to why the pensionary benefits including family pension due to the petitioner on death of her husband (Assistant Teacher of No.2 Saru Salakguri L.P. School shall not be directed to release and pay the pensionary benefits to the petitioner and further any such order (if issued) by the respondent authorities without the knowledge of the petitioner deprived the petitioner from the pensionary benefits shall not be quashed and after such cause or causes that may be shown after perusing the record and hearing the parties further be pleased to make the rule absolute, and / or pass such order/orders as your lordship may deem fit and proper.”

5. The respondent No. 2 has filed counter affidavit wherein it is stated that before the regularisation of petitioner's Late husband he was serving under the OBB scheme. In the meantime the new pension scheme was introduced by Government of Assam for the employees of the State Government appointed on or after 01.02.2005. However, as the service of the petitioner's husband was

regularised after the introduction of the new pension scheme his case would be covered under the said NPS. It is also further stated that the husband of the petitioner has completed regular service only for 9 months and 12 days from the date of receiving regularised scale of pay w.e.f. 06.06.2012 upto the date of his expiry i.e. 18.03.2013.

Under such circumstances, learned Standing Counsel, Elementary Education Department submits that the pensionary benefits cannot be given to the petitioner.

6. From the consideration of the materials available on record it appears that the petitioner has made her representation before the Director of Pensions on 03.12.2021. However, in the considered opinion of this Court, the petitioner should have made her representation before the respondent No. 4/ the Director of Elementary Education Department, Assam.

7. Under such circumstances, this writ petition is disposed of directing the petitioner to file a fresh representation before the respondent No. 4 within a period of 2 (two) weeks from today.

Thereafter the respondent No. 4 on receipt of such representation, shall consider the case of the petitioner by verifying all necessary documents and dispose of the same by a Speaking Order within period of 2 (two) months from the date of receipt of the said representation. The outcome of such consideration shall be communicated to the petitioner forthwith.

8. With the above observations, the writ petition is disposed of.

JUDGE

Comparing Assistant