

GAHC010092792021



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

Case No. : WP(C)/3786/2021

SABITA SUTRADHAR
W/O LATE DINESH SUTRADHAR, R/O VILL. GHARIALDUBI, P.O. AND P.S.
BOKAJAN, DIST. KARBI ANGLONG, ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, EDUCATION ELEMENTARY DEPTT., DISPUR, GUWAHATI 6, DIST.
KAMRUP (M), ASSAM.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 19
DIST. KAMRUP (M)
ASSAM.

3:KARBI ANGLONG AUTONOMOUS COUNCIL

DIPHU REPRESENTED BY ITS PRINCIPAL SECY.

4:ACCOUNTANT GENERAL

MAIDAMGAON
BELTOLA
GUWAHATI 29

5:DIST. ELEMENTARY EDUCATION OFFICER

DIPHU

KARBI ANGLONG

6:THE TREASURY OFFICER

DIPHU
HAMREN
BOKAJAN
DIST. KARBI ANGLONG
ASSAM.

7:THE INSPECTOR OF SCHOOLS

KADC
DIPHU
KARBI ANGLONG
ASSAM.

8:HEAD MASTER

BISHNU RABHA M.E. SCHOOL (PVN)
BOKAJAN
DIST. KARBI ANGLONG
P.O. BOKAJAN
PIN 78248

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

03.05.2024

Heard Mr. H. Das, learned counsel for the petitioner. Also heard Mr. J. Chutiya, learned Standing Counsel, KAAC; Mr. P.N. Sharma, learned Standing Counsel, Elementary Education; Mr. B. Chakravarty, learned Standing Counsel, Accountant General and Mr. R. Borpujari, learned Standing Counsel, Treasury Officer.

2. The petitioner's late husband was employed as an Assistant Teacher and who came to be appointed as a Head Master of Bishnu Rabha M.E. School, Bokajan,

Karbi Anglong. The School came to be Provincialised on 16.05.2013 with effect from 01.01.2013. Pursuant to the Provincialisation of the School, the late husband of the petitioner died-in-harness on 24.02.2013. It is the case of the writ petitioner that the petitioner's late husband upon being appointed as a Head Master rendered his services with effect from 25.01.1993 till his death i.e. on 24.02.2013.

3. On facts there is no dispute that pursuant to the Provincialisation of the School on 16.05.2013 with effect from 01.01.2013, the late husband of the petitioner rendered his services till his death which is on 24.02.2013. So effectively, the petitioner's husband rendered his services for almost 2 months after his services were Provincialised. The salary including the arrear salary which was payable to the petitioner came to be released by the authority. The present disputes before this Court by way of the writ petition is the denial of the pensionary benefits claimed by the present petitioner as a widow of late Dinesh Sutradhar.

4. It is the submission of the learned counsel for the petitioner that notwithstanding the fact that the late husband of the petitioner had rendered services for more than 20 years till his demise, the authorities did not take into account the services rendered to consider the late husband of the petitioner to have qualified for grant of pensionary benefits under the Assam Services (Pension) Rules, 1969.

5. The respondents have contested the case by filing their respective affidavits. It is submitted by the learned counsel appearing for the respondents that the petitioner is not entitled to be granted the pensionary benefits in view of the provisions of Rule 140 of the Pension Rules. It is submitted that under Rule 140, it is provided that a Government Servant is entitled to pension after rendering one year of continuous service. It is submitted by the learned counsel for the

respondents that notwithstanding that the petitioner satisfies the criteria prescribed under Rule 31 of the Pension Rule namely that the husband of the petitioner was a Government Servant and that the post he was appointed in a substantive post and he was paid salary by the Government, the petitioner's entitlement for pensionary benefits in respect of the services rendered by her late husband will still be governed by the provision of Rules 140. He therefore submits that the claim of the petitioner cannot be entertained and therefore the writ petition be rejected.

6. Having heard the learned counsel for the parties, it is necessary to refer to the provision of the various Rules governing the pension of the petitioner. For the purposes of deciding this issue, Rule 31 and 140 are required to be referred to.

Rule 31 of the Rule provides as under:

*“**31.** The service of an officer does not qualify for pension unless it conforms to the following three conditions:-*

***Firstly,** the service must be under Government;*

***Secondly,** the employment must be substantive and permanent;*

***Thirdly,** the service must be paid by the government;*

Provided that the Governor may, even though either or both of conditions (1) and (2) above are not fulfilled,-

(i) Declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension, and

(ii) In individual cases and subject to such conditions as he may think fit to impose in each case allow service rendered by an officer to count for pension.”

The mandatory period required for being eligible for pensionary benefits is prescribed as Rule 140. Rule 140 is extracted below:

“140. Except as otherwise provided in rule 142, a family pension not exceeding the rate mentioned in rule 141 will be admissible in case of death of an officer

while in service or after retirement on or after 1st January, 1964, if at the time of death the retired officer was in receipt of a compensation, invalid, retiring or superannuation. In case of death while in service, the Government servant should have completed a minimum period of one year of service."

7. As there is no dispute on the facts before this Court, it is clear that the petitioner's late husband rendered more than 20 years of service. However, notwithstanding the long services rendered by the late husband perhaps the criteria prescribed under Rule 31 may not be considered to have been fulfilled prior to his provincialisation as the services rendered by the petitioner's late husband in his capacity as the Head Master prior to Provincialisation of the school cannot be considered to be substantive appointment of the school or any salary nor can it be said that prior to his provincialisation was paid by the Government. However, with effect from the date of Provincialisation dated 16.05.2013 and which was given effect to from 01.01.2013, the late husband of the petitioner is deemed to have satisfied the criteria prescribed under Rule 31. However, unfortunately, after rendering almost two months of service, the late husband of the petitioner died in harness.

8. Under such circumstances, the provision of Rule 140 has been pressed into service by the respondents to submit that because of the requirement of continuous service of one year not having been fulfilled by the late husband of the petitioner, the petitioner's claim cannot be entertained.

9. At this stage, the learned counsel for the petitioner has referred to Rule 67 of the pension Rules. Rule 67 gives the power to the Governor to condone any deficiency not exceeding 12 months in respect of qualifying service of an Officer. Under such circumstances, the learned counsel for the petitioner submits that he may be permitted to file fresh application before the respondent No. 2 for being placed before the Governor of the State for due consideration by the Governor for

application of Rule 67 in respect of the writ petitioner.

10. This submission of the learned counsel for the petitioner is not disputed or objected to by the respondent counsel.

11. Under such circumstances and upon careful consideration and the rival submission and upon consideration of the provisions of the Rules more particularly Rule 67, this Court disposes of the writ petition permitting the petitioner to approach the Director of Elementary Education and to file a fresh representation addressed to the Governor of the State for invocation of the powers under Rule 67 and to condone the deficiency of qualifying service in respect of the late husband of the writ petitioner. Upon such an application being filed, the Director of Elementary Education without further delay will ensure that the application is forwarded to the Office of the Governor of the State as per procedure and thereupon the matter be placed before the Secretariat of the Governor of the State for necessary orders of the Governor. Let this application be filed within two weeks from today. Upon such an application being filed and place before the Governor's Secretariat, the Governor of the State may consider the application for passing necessary orders if deemed proper under Rule 67 of the Rules of 1969.

12. In the event such an order is passed under Rule 67 by the Governor of the State, all consequential benefits including pensionary benefits be released to the petitioner without further delay.

13. The writ petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant