

GAHC010124742017



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

Case No. : WP(C)/1672/2017

RINA PHUKAN DUTTA
W/O LT. BUDHINDRA DUTTA R/O KALITAGAON, BORDOLONI P.S.
BORDOLONI DIST. DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM and 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT, SACHIVALAYA, DISPUR,
GUWAHATI - 781006, ASSAM

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
SACHIVALAYA
DISPUR
GUWAHATI - 781006
ASSAM

3:THE ACCOUNTANT GENERAL
A and E
MAIDAMGOAN
BELTOLA
GUWAHATI -19
ASSAM

4:THE DIRECTOR OF ELEMENTARY EDUCATION

KAHILIPARA
GUWAHATI- 19
ASSAM

5:THE DIRECTOR OF PENSION

HOUSEFED COMPLEX
DISPUR
GUWAHATI
ASSAM

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DHEMAJI
PIN - 787057
ASSAM

7:THE DEPUTY INSPECTOR OF SCHOOLS

DHEMAJI
DIST. DHEMAJI
ASSAM

8:THE TREASURY OFFICER

DHEMAJI
DIST. DHEMAJI
ASSA

Advocate for the Petitioner : MR.U J SAIKIA, MR.A GOHAIN

Advocate for the Respondent : SC, ELEMENTARY EDUCATION, SC, FINANCE,MR.B GOGOI,SC, AG,MR.C BARUAH,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 30.10.2024

Heard Mr. A. Gohain, learned counsel for the petitioner. Also heard Mr. P.N. Sarma, learned standing counsel for the Elementary Education Department, respondent nos.1, 4, 6 and 7; Mr. D. Bhattacharyya, learned standing counsel for the respondent no.3; and Mr. A. Chaliha, learned standing counsel for the respondent nos.2 and 8.

2. At the outset, it may be mentioned that the learned standing counsel for the Elementary Education Department has prayed for an adjournment so as

to file their affidavit-in-opposition by the Director of Elementary Education, by producing a draft copy of the affidavit-in-opposition, it is submitted that the draft is available with him, but it could not be filed in appropriate time.

3. In this case, the husband of the petitioner had died on 28.08.2013 and claiming release of arrear salary and other pensionary benefits, this writ petition was filed on 17.03.2017 and rule was issued by order dated 22.03.2017. By order dated 15.11.2017, 2 (two) weeks was granted as a last opportunity to file affidavit. Thereafter, at the instance of the standing counsel of the Elementary Education Department, the matter was adjourned on 18.04.2018, 14.05.2018, 08.06.2018, 18.07.2018, 14.06.2024, 17.07.2024, 05.08.2024, on which date, it was made clear that no further time shall be given, by further providing that the writ petition shall be disposed of on the basis of material available on record, if no affidavit is filed. Notwithstanding the said order, the matter was again adjourned at the instance of the learned standing of the Elementary Education Department on 27.08.2024, 05.09.2024 and 19.09.2024. It may be mentioned that even by order dated 05.09.2024, the prayer for adjournment was allowed as a last chance.

4. Therefore, on a prayer for adjournment made, the Court had asked the learned standing counsel for the Elementary Education Department to obtain instructions as to whether the Elementary Education Department is prepared to pay an adjournment cost of Rs.50,000/- (Rupees fifty thousand only). To the said Court query, the learned standing counsel for the Elementary Education Department had obtained instructions from the competent authority and on expressing disinclination to pay such proposed cost, the Court is inclined to hear the matter on the basis of materials available on record by refusing any further adjournment.

5. In brief, the case of the petitioner is that her husband, namely, Budhindra Dutta was appointed as Assistant Teacher in Bordoloni Barua Pathar Lower Primary School, Dhemaji in the year 1989, under the Deputy Inspector of Schools, Dhemaji. It is projected that though his service was regularised and confirmed, the salary of her husband was stopped from August 2007. Accordingly, the husband of the petitioner, along with others, approached this Court by filing WP(C) 5635/2007 and this Court by an order dated 24.07.2012, disposed of the writ petition by directing the Director of Elementary Education, Assam to examine the cases of the petitioners. The said authority, by an order dated 05.05.2015, rejected the claim of the petitioners. It is submitted by the learned counsel for the petitioner that one of such Assistant Teacher, namely, Dulu Devi had approached this Court by filing WP(C) 2560/2017, which was dismissed, and thereafter, the dismissal order dated 06.04.2010, passed by this Court was assailed by the said Dulu Devi, by filing Special Leave Petition before the Supreme Court of India, which was registered SLP(C) No. 19947/2010, which was allowed by judgment and order dated 09.10.2015, by holding that the said applicant is entitled to continuing service and was further entitled to all arrears of salary in accordance with law.

6. In the meanwhile, the husband of the petitioner had died-in-harness on 28.08.2013, and therefore, the petitioner has filed the present a petition under Article 226 of the Constitution of India to assailed impugned order dated 05.05.2015, passed by the Director of Elementary Education, Assam, and further seeking all arrear salary and other pensionary benefits.

7. As indicated above, as no affidavit-in-opposition has been filed for about 7½ years, there is no material on record to show that the service of the petitioner's husband was terminated as indicated in the impugned order dated 05.05.2015 passed by the Director of Elementary Education, Assam. Not only it

is incumbent for the competent authority to pass an order of termination of service, but it is equally incumbent on their part to serve such termination order to the person whose service is terminated. In the absence of any document being brought on record, the Court is unable to presume that the service of the husband of the petitioner was terminated.

8. Be that as it may, from the submissions made by the learned standing counsel for the Elementary Education Department, the case sought to be projected by him is that there were large scale illegal appointments of teachers by several officers in the Elementary Education Department. Several such appointments were also made in the district of Dhemaji. More than 9000 of such illegal appointments were in the State of Assam and in Dhemaji district alone, 752 such illegal appointments were made.

9. The learned standing counsel for the Accountant General has also made his submission and has referred to the affidavit-in-opposition filed by the respondent no.3.

10. On perusal of the impugned order dated 05.05.2013, it is noted that there is nothing in the said order to indicate that any action was taken against the husband of the petitioner, namely, Budhindra Dutta and the manner in which the proceedings was initiated. The said order also does not contain any statement that due notices were served on the petitioner and the proper procedure as prescribed under the provisions of the Assam (Discipline and Appeal) Rules, 1964 was followed. There is also no statement made therein that the termination order was served on the husband of the petitioner.

11. There were 44 writ petitioners in WP(C) 5635/2007 and in the order dated 27.04.2012 passed in the said writ petition, it has been recorded that the petitioners therein claimed that they were never served with any termination

order and accordingly, after discussion of the matter, the Court had remitted the matter back to the authorities by directing the authorities to examine case of each and every petitioner as to whether they had been served with show cause notice for termination or the termination orders and if it is found that no show cause notice or termination orders have been served to them, they will be entitled to get salary for services rendered by them as given to them for the period from December 1989 to May 1992. Despite such specific directions contained in the aforesaid order dated 27.04.2012, the impugned order under Memo No. EHA.410/2007/631 dated 05.05.2015 lacks the required determination with regard to the present petitioner.

12. Therefore, in the absence of any finding recorded in the said impugned order dated 05.05.2015 as to whether the husband of the petitioner was served with the show cause notice or a termination order, by the vague contents of the said order dated 05.05.2015, it cannot be presumed that the husband of the petitioner was served with either show cause notice or his termination order.

13. Accordingly, the Court is of the considered opinion that as the State respondents have not filed their affidavit-in-opposition for more than 7½ years, this is a fit and proper case to invoke the *doctrine of non-traverse* and to hold that the respondent nos.1, 2 and 4 to 8 have admitted the claim of the petitioner.

14. Resultantly, this writ petition stands allowed on admission and the said impugned order under Memo No. EHA.410/2007/631 dated 05.05.2015, issued by the Director of Elementary Education, Assam is set aside in so far as the husband of the petitioner, namely, Late Budhindra Dutta is concerned. This order should be read only *qua* the deceased husband of the petitioner.

15. Resultantly, the Director of Elementary Education Department, under

the administrative control of the School Education Department is now directed to take steps as may be required for releasing (a) the pensionary benefits, including death-cum-retirement gratuity, group insurance savings, provident fund, leave encashment benefit etc.; (b) arrear salary of the petitioner's husband from August, 2007 to 28.08.2013, if payment for the said period is not already released, as would have been entitled to Late Budhindra Dutta, thereafter, to the petitioner, namely, Smt. Rina Phukan Dutta on the death of her husband.

16. The said financial benefit should be made available to the petitioner within the outer period of 6 (six) months from the date of service of a certified copy of this order on the Director of Elementary Education, Assam together with petitioner's bank account particulars with IFSC Code etc. to enable online transaction of money to such account.

17. On failure to make payment within the time allowed, the petitioner shall also be entitled to a proper interest @ 4.5% p.a. from the expiry of 6 (six) months from the date of this order till recovery.

18. Writ petition stands allowed to the extent as indicated above.

19. Under the circumstances, we leave the parties to bear their own cost.

JUDGE

Comparing Assistant