

GAHC010164572023



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

Case No. : WP(C)/4340/2023

SONMAI DUTTA SAIKIA @ SARUMAI DUTTA SAIKIA
W/O- LATE PRODIP SAIKIA, R/O- TEOK UTTOR DULIA, BOGORIGURI, P.O.
UTTAR DULIA, P.S. TEOK, DIST. JORHAT, ASSAM, PIN- 785112.

VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH THE COMMISSIONER AND SECRETARY, DEPARTMENT OF
PUBLIC HEALTH ENGINEERING, GOVERNMENT OF ASSAM, DISPUR,
GUWAHATI-781006.

2:THE EXECUTIVE ENGINEER (PHE)
SIVASAGAR DIVISION
SIVASAGAR
ASSAM

3:ACCOUNTS OFFICE (PHE)
SIVASAGAR
ASSAM

4:THE ACCOUNT GENERAL

MAIDAMGAON
BELTOLA
GUWAHATI
PIN- 781021.

5:SMTI. NIRU RAJKONWAR
C/O- KAMAL SAIKIA
R/O- JHANJI
MORANCHIGA
BHARALUA GAON

P.O. MORANCHIGA
P.S. GOURISAGAR
DIST. SIVASAGAR
PIN- 785683

Advocate for the Petitioner : MR. A GANGULY

Advocate for the Respondent : MR. A S ALI

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 15.05.2024

Heard Mr. A. Dutta, learned counsel for the petitioner. Also heard Mr. I. Borthakur, learned Standing Counsel, PHE; Mr.S.A.B. Khabir, learned counsel for the private respondent No.5 and Ms. D. Mahanta, learned counsel for Accountant General.

2. This writ petition is filed by the petitioner claiming pensionary benefits in respect of the services rendered by her late husband, namely, late Pradip Saikia. The late husband of the petitioner was serving as Khalasi in the Office of the Executive Engineer (PHE), Sivasagar Division. During his service, the husband of the petitioner expired on 06.04.2023. The learned counsel for the petitioner has enclosed the copy of the Death Certificate dated 12.04.2023 issued by the competent authority showing that late Pradip Saikia expired on 06.04.2023 and the name of the petitioner was shown as the spouse of late Pradip Saikia. Pursuant to the expiry of her husband, the petitioner also approached the competent authority and has been issued *next of kin* certificate by the Office of the Deputy Commissioner, Sivasagar. The further claim of the petitioner is that during the life time of late Pradip Saikia there was some matrimonial differences

between the petitioner and her late husband and that led to filing of a maintenance case before the competent Court and by order dated 10.10.2018 passed in Misc (Case) No.17/2018 under Section 125 Cr.P.C by the Court of learned JMFC, Jorhat, the second party namely, the husband was directed to pay Rs.3,500/- (Rupees three thousand five hundred) only into the savings account maintained by the petitioner as the applicant. Further the DDO/Executive Engineer, PHE, Sivsagar Division, Sivsagar was directed to deduct Rs.3,500/- (Rupees three thousand five hundred) only from the salary of the employee Sri Pradip Saikia and deposit the same to the bank account of the petitioner Smt. Sonmai Dutta Saikia on monthly basis within a fortnight of every month. This order was passed on the compromise arrived at by and between the parties before the Court.

3. The learned counsel for the petitioner, therefore, submits that the petitioner is the only widow of late Pradip Saikia, therefore her claims for grant of pensionary benefits ought to have been considered by the respondent authorities. The same not having been done, the writ petition has been filed for appropriate orders.

4. Mr. I. Borthakur, learned Standing Counsel, PHE Department submits that the department records does not reflect the nominee in the service book maintained on behalf of the writ petitioner. He, however submits that the next of certificate read with the order dated 10.10.2018 passed in Misc (Case) No.17/2018 under Section 125 Cr.P.C. *prima facie* reveals that the petitioner is the widow of late Pradip Saikia.

5. Mr.S.A.B. Khabir, learned counsel for the private respondent No.5 submits that he has opposed the claim of the writ petitioner by filing affidavit-in-opposition as well as an additional affidavit-in-opposition. It is submitted on the

basis of the averments made in the affidavits that according to the information given by late Pradip Saikia during his lifetime he never married the writ petitioner although he had some relationship with the lady. The learned counsel for the respondent No.5 submits that the respondent No.5 had a lawful marriage as per custom with the petitioner as per Hindu Rights and Rituals. He, therefore, submits that she is the only widow of late Pradip Saikia and therefore it is her lawful claim, and not that claim of the writ petitioner that ought to be entertained in respect of pensionary benefits.

6. Having heard the learned counsels for the parties and upon perusal of the pleadings on record this court is of the considered view that the writ petitioner having relied upon the *next of kin* certificate along with the order dated 10.10.2018 passed in Misc (Case) No.17/2018 under Section 125 Cr.P.C. *prima facie* has been able to satisfy the Court that she is the legally married wife of late Pradip Saikia. Although the order dated 10.10.2018 passed in Misc (Case) No.17/2018 was an order passed in the context of paying maintenance to the writ petitioner, the same being a judicial order, it is a strong evidence to the fact that the petitioner has been considered to be a wife of late Pradip Saikia and maintenance amount of Rs.3,500/-(Rupees three thousand five hundred) only has been directed to be deducted from the account of late Pradip Saikia to be deposited in the bank account of the writ petitioner. The *next of kin* certificate dated 18.05.2023 issued by the Office of the Deputy Commissioner, Sivsagar although disputed by the respondent No.5 has not yet been withdrawn and cancelled by the Deputy Commissioner, Sivasagar.

7. Under such circumstances, *prima facie* has appeared that the writ petitioner has stronger evidence in her favour in respect of her claim that she is the widow of late Pradip Saikia and therefore entitled to the pensionary

benefits. Until the competent Court of civil jurisdiction passes such order negating the claim of the writ petitioner to be the widow of late Pradip Saikia, the department is required to process the claim of the writ petitioner for grant of pensionary and other retiral benefits. The department is therefore, directed to verify and examine the claims of the writ petitioner as well as the respondent No.5 and if no contrary evidence or claim is noticed by the competent authority and the department, the department will proceed to release the claim of the writ petitioner towards pensionary and other retiree benefits as the widow of late Pradip Saikia.

8. The respondent No.5 is at liberty to approach competent Court of Civil jurisdiction to challenge to the claims made by the petitioner.

9. Once the pensionary papers are processed, the same shall be forwarded to the office of the Accountant General, who in turn will forthwith process the claims of the pensionary benefits as forwarded by the department.

10. In terms of the above, the writ petition stands allowed and disposed of.

JUDGE

Comparing Assistant