

GAHC010168972022



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

Case No. : WP(C)/5795/2022

ON THE DEATH OF DRONA KANTA DAS HIS LEGAL HEIR RUNU DAS
W/O- LATE DRONA KANTA DAS
R/O-MORNOI BAKULGURI
PO-HOWAJAN, P.S. HOWAJAN, DIST.- LAKHIMPUR, ASSAM, PIN- 784169

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY ITS COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPTT., GHY-06

2:COMM. AND SECY. TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPTT.
DISPUR
GHY-06

3:THE ACCOUNTANT GENERAL
MAIDAM GAON
BELTOLA
GHY-29

4:THE DIRECTOR OF PENSION
ASSAM HOUSEFED COMPLEX
DISPUR
GHY-06

5:THE DIRECTOR OF SECONDARY EDUCATION
KAHILIPARA
GHY-19

6:INSPECTOR OF SCHOOLS
MORIGAON DISTRICT CIRCLE
MORIGAON
ASSAM

PIN- 782105

7:THE PRINCIPAL
MORIGAON H.S./M.P. SCHOOL
P.O. MORIGAON
DIST.- MORIGAON
ASSAM
PIN- 782105

8:HUDCO (HOUSING AND URBAN DEVELOPMENT CORPORATION LTD.)
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR
HUDCO BHAWAN
INDIA HABITAT CENTRE
LODHI ROAD
NEW DELHI- 110003

9:THE ZONAL OFFICER
ZONAL OFFICE
NORTH EAST ZONE HUDCO OPP. PNB
ZOO ROAD BRANCH GANESHGURI
GHY- 781005

10:THE REGIONAL CHIEF
REGIONAL OFFICE
HUDCO
HOUSE FED COMPLEX
RUKMINI GAON
GHY-2

Advocate for the Petitioner : MR D K MEDHI, MR. S BORTHAKUR,MR H P NEPAL,MR D GOGOI,P BORUAH

Advocate for the Respondent : SC, SEC. EDU., MR. S I TALUKDAR(R-7),MR. A R SIKDAR(R-7),G BAISHYA,MR. B D CHOWDHURY,SC, AG,GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

06.09.2024

Heard Mr. D. Gogoi, learned counsel for the petitioner. Also heard Mr. B. Choudhury,

learned counsel for the respondent Nos.8—10, Mr. A.R. Sikdar, learned counsel for the respondent No.7, Mr. T. Thakuria, learned standing counsel, Secondary Education Department, appearing for respondent Nos. 1, 5 and 6, Mr. G. Pegu, learned standing counsel, appearing for respondent Nos.2 and 4 and Mr. B. Chakraborty, learned standing counsel, Accountant General, appearing for respondent No.3.

2. In this petition under Article 226 of the Constitution of India, on the death of the petitioner, namely, Drona Kanta Das for issuing directions to the respondent authorities to release the service benefits and pensionary benefit with arrears. It is to be noted here that during the pendency of this Writ Petition, the petitioner suffered demise on 12.07.2023, and thereafter, on substitution of legal heir, his wife, Smti. Runu Das, has been pursuing this petition.

3. The grievance of the petitioner, being sought to be addresses, in this writ petition is that the petitioner, since deceased, had joined as a Subject Teacher in Morigaon H.S./M.P. School in the year 1985. On account of his illness, he took voluntary retirement with effect from 01.02.2018. After retirement, the petitioner applied for the pensionary benefits, but his pension and other service benefits are being withheld by the respondent authorities on the ground that he had an outstanding loan with HUDCO, the respondent Nos.8-10, and the respondent No.7 had intimated him, vide letter dated 03.05.2019, that until a loan clearance certificate is submitted by him, his pensionary benefits will not be released. The petitioner had communicated that once he received the benefits, he will adjust the same against the loan and he had no other means to repay the loan and despite such assurance, the pensionary benefits, including pension, of the petitioner, are being withheld in an arbitrary manner.

4. Mr. Gogoi, learned counsel for the petitioner submits that after retirement, the petitioner has submitted his pension papers with the respondent No.7. But the respondent No.7 vide his letter dated 03.05.2019 informed the petitioner that the authority has directed him to held up the pension benefits until and unless the payment of the dues of HUDCO authority is cleared. Mr. Gogoi further submits that for recovery of the loan

amount, the respondent Nos.8—10 had already instituted one suit before the learned Civil Judge (Senior Division) No.2, Kamrup(M), Guwahati, being Title Suit No.429/2019 and that in view of non-payment of the loan amount, the respondent authorities cannot held up the pensionary benefits of the petitioner and in support of his submission, Mr. Gogoi has referred to a decision of the High Court of Madras at Madurai in the case of **A. Muthuiruvakkal v. State Bank of India & Ors.** reported in **2015 SCC OnLine Mad 13308**. Under the given facts and circumstances, Mr. Gogoi submits that the respondent authorities may be directed to release the pensionary benefits.

5. Mr. Choudhury, learned counsel for the respondent Nos.8—10, submits that they have already initiated legal recourse and instituted one civil suit for recovery of the loan amount, being Title Suit No.429/2019, pending in the Court of learned Civil Judge (Senior Division) No.2, Kamrup(M), Guwahati.

6. Mr. Thakuria, learned counsel for the respondent Nos.1, 5 and 6 submits that they have not received the proposal/pension papers of the petitioner and as such, the process could not be started and as soon as they receive the proposal they will process the same.

7. On the other hand, Mr. Sikdar, learned counsel for the respondent No.7 submits that if this Court is pleased to issue direction to the respondent No.7, then the pension papers of the petitioner will be processed.

8. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the case law referred by Mr. Gogoi, learned counsel for the petitioner.

9. It is not in dispute that the petitioner was serving as a Subject Teacher in Morigaon H.S./M.P. School and he took voluntary retirement, with effect from 01.02.2018, on health ground. It is also not in dispute that the pension and other service benefits of the petitioner has not yet been released and it was communicated vide letter dated

03.05.2019 by the respondent No.7 that he was directed by the authority to held up the pensionary benefits till the loan amount, due to the HUDCO authority, is cleared.

10. It is to be noted here that a Constitution Bench of Hon'ble Supreme Court in **Deokinandan Prasad v. State of Bihar** reported in **[(1971) 2 SCC 330]**; has authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government, but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in **State of Punjab v. Iqbal Singh**, reported in **(1976) 2 SCC 1**.

11. It is also to be noted here that relied upon a decision of Hon'ble Supreme Court in the case of **Radhey Shyam Gupta v. Punjab National Bank**, reported in **(2009) 1 SCC 376** Madras High Court in **A. Muthuiruvakkal** (supra), so referred by Mr. Gogoi, has held that putting on hold of pensionary benefits on account of non-payment of loan amount, is not permissible.

12. A Division Bench of Bombay High Court, in the case of **Shri Naini Gopal vs. The Union of India and three others, LD-VC-CW-665 OF 2020**, in paragraph No.16, has held that pension payable to the employee is a property, under Article 300-A of the Constitution of India, and it constitute a fundamental right to livelihood under Article 21 of the Constitution of India and the deprivation, even a part of this amount, cannot be accepted, except in accordance with and authority of law.

13. Further, it appears from the record as well as from the submission of Mr. B. Choudhury, learned counsel for the respondent Nos.8 -10, that a title suit, being Title Suit

No.429/2019, is also instituted for recovering the dues, the aforesaid respondents entitled to recover from the petitioner and the said suit pending in the Court of learned Civil Judge (Senior Division) No.2, Kamrup(M), Guwahati.

14. Having considered the submission of the learned Advocates of both sides and as agreed upon and further taking note of the ratios laid down in the aforesaid decisions, and also considering the given facts and circumstances on the record, as well as, this Court is inclined to allow this petition with following directions:-

- (a) The respondent No.7 shall process the pension papers of the petitioner within a week from the date of receipt of the certified copy of this order, and thereafter, shall forward the same to the respondent No. 6. Simultaneously, he shall also process the papers relating to other entitlements/service benefits of the petitioner and ensure that the amounts are credited in the bank account of the petitioner/legal heir, within a period of one month;
- (b) The respondent No.6 shall, within a period of one week of receipt of the pension papers, shall forward the same to the respondent No. 5. Besides, he shall also ensure clearance of other service benefits by the respondent No.7, to the petitioner/legal heirs within the aforesaid timeline;
- (c) The respondent No.5 shall, within two weeks of receipt of the relevant papers, forward the same, to the respondent No.4;
- (d) The respondent No.4 shall complete the entire process within one month from the date of receipt of the papers and shall thereafter forward the same to the respondent No. 3;
- (e) The respondent No.3 shall complete the entire process within one month from the date of receipt of the papers from respondent No. 4;
- (f) Respondents No. 1 and 2 shall ensure completion of the process of granting pension to the petitioner within the timeline fixed above;
- (g) Failing to complete the process within the aforesaid time lines, the erring respondent(s) shall have to pay interest @ 9% per annum, from the date of

the amounts becomes due, to the petitioner/legal heir, till realization;

(h) The respondent No. 8, 9 and 10 shall pursue the legal recourse, as already initiated by them for recovery of the amount they are entitled to, but they shall not stand in the way of getting the above noted benefits by the petitioner/legal heir;

15. The parties have to bear their own costs.

JUDGE

Comparing Assistant