

GAHC010191002022



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

Case No. : WP(C)/6140/2022

INDRAKALA DEVI
W/O. LT. LOKNATH SARMA, R/O. JAIL ROAD, NAGAON, P.S. SADAR, DIST.
NAGAON, ASSAM, PIN-782001.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR

ELEMENTARY EDUCATION DEPTT.
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)

ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI
PI-781029.

4:THE SECRETARY
TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPTT.
DISPUR
GUWAHATI-06.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER

NAGAON
ASSAM
PIN-782001.

6:THE INSPECTOR OF SCHOOLS

NAGAON DISTRICT CIRCLE
NAGAON
ASSAM
PIN-782001.

7:THE DEPUTY INSPECTOR OF SCHOOLS

NAGAON
ASSAM
PIN-782001.

8:THE OFFICER IN CHARGE

NAGAON POLICE STATION
NAGAON
ASSAM
PIN-782001

Advocate for the Petitioner : MRS. P BARMAN (BORKAKOTI)

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

29.01.2024

Heard Ms. P. Barman, learned counsel for the petitioner. Also heard Mr. N.J. Khataniar, learned Standing Counsel, Elementary Education Department, Mr. G. Pegu, learned Additional Senior Government Advocate, Assam and Mr. R.K. Talukdar, learned Standing Counsel, Accountant General, Assam.

2] This writ petition is filed by the petitioner on very peculiar attending facts and circumstances. The petitioner was working as a Grade-IV employee (Night Chowkidar) in the Office of the Inspector of Schools, Nagaon but from the afternoon of 12.04.1993, the petitioner went missing and remained untraced till date. The office of the Deputy Inspector schools lodged an FIR on 13.04.1993 at Nagaon Police Station and a GD entry being Nagaon P.S. G.D.E. No.535 was registered on 17.04.1993. The petitioner had also lodged another FIR in respect to the said incident on 16.04.1993. The petitioner also published the news of her missing husband in two regular local dailies. In spite of efforts being made, the petitioner's husband could not be traced out. Police report, however, was received on 16.02.2009 and the pension was granted to the petitioner by with effect from 12.04.2000 to 15.02.2010. According to the petitioner under Rule 143 of the Assam Services (Pension) Rules 1969 in the event the government servant goes missing and an FIR has been filed as per Sub-rule 2, after the lapse of a period of 1 (one) year as provided under Sub-rule 5 (five) from the date of issue of the report by the concerned police station that the employee had not been traced out, the family of the employee shall be granted benefits like death-cum-retirement gratuity, G.P.F. amount, family pension etc.

3] Learned counsel for the petitioner submits that the FIRs were lodged immediately when the petitioner's husband went missing on 12.04.1993 and

therefore, the State is duty bound to issue a police report. The police report was issued on 16.02.2009 which was after 16 (sixteen) years of lodging the FIRs regarding the petitioner's husband. It is submitted that the claim of the petitioner was not considered in terms of Provisions 143 A of the Assam Pension Rules, 1969 and due to which she has approached to this Court praying for appropriate direction or order.

4] This writ petition was considered by a Coordinate Bench of this Court and was disposed of by judgment and order dated 08.04.2021 passed in WP(C) no.1681/2018 and the directions were issued to the respondents to take note of all the facts and circumstances of the case and pass an appropriate order whether the petitioner would be entitled to any further benefit under Rule 143 of the Assam Pension Rules, 1969. The Coordinate bench observed that the police report regarding the case of the petitioner's missing husband was furnished belatedly and that having been done, dereliction of duty by one authority can never be a reason for another authority to act against the entitlement of the legal rights of a person. A reference was also made to the judgment of the Court rendered in *Min Bahadur Thapa vs. State of Assam & Ors.* reported in 1999 (1) GLT 124.

5] In terms of the directions passed by the Coordinate Bench by order dated

08.04.2021 passed in WP(C) no.1681/2018 the respondent no.2 passed impugned order dated 09.05.2022, whereby the claims for petitioner were rejected. It is also pointed out to the Court that although the impugned order dated 09.05.2022 issued by the Director of Elementary Education by communication dated 24.06.2022, the Deputy Inspector of Schools, Nagaon forwarded a proposal for residual family pension payable to the petitioner with effect from 13.04.1993 to 15.02.2010 amounting to Rs.3,02,137/- (Rupees Three lakhs Two thousand One hundred Thirty Seven). It is submitted that but for the impugned order dated 09.05.2022 issued by the Director of Elementary Education, the Department has acknowledged the claims of the petitioner.

6] It is under these circumstances, learned counsel for the petitioner submits that in terms of the directions issued by the Court in judgment and order dated 08.04.2021 in WP(C) no.1681/2018, the prayer of the petitioner was not considered. That apart, where the Deputy Inspector of Schools had already prepared the proposal for residual family pension with effect from one 13.04.1993 to 15.02.2010, the amount ought to have been released by the respondent authorities instead of rejecting her claims.

7] Mr. N.J. Khataniar, learned Standing Counsel, Elementary Education Department submits that he does not have any instructions at this stage as to

why the prayer of the pension as calimed by the petitioner was rejected by the impugned order dated 09.05.2022. He however, submits that there's no infirmity in the impugned order as it is a speaking order and the reasons mentioned in the order disclose as to why the claim of the petitioner has been rejected.

8] Both Mr. G. Pegu, learned Additional Senior Government Advocate appears for the Pension Department i.e. the respondent nos. 4 & 8 and Mr. R.K. Talukdar, learned Standing Counsel, Accountant General, for the respondent no.3 submit that if the Administrative Department passes appropriate orders for release of pension, then the same can be processed upon receipt of such proposals.

9] Having heard learned counsel for the parties and upon perusal of the pleadings on record, this Court is of the view that the judgment and order dated 08.04.2021 passed in WP(C) no.1681/2018 contains a very specific direction to the respondents which is to consider the claim of the petitioner as to whether the petitioner would be entitled for any further benefit under Rule 143, Assam Pension Rules, 1969 considering the delay in publishing the police report regarding the missing of the husband of the petitioner from 12.04.1993. The Coordinate Bench has also observed that dereliction of duty of one authority cannot be a reason for another authority to act against the entitlement of the

legal rights of a person. It appears from a plain reading of the order that Coordinate Bench had arrived at a finding that the petitioner will be entitled to her rights under Rule 143 A of the Assam Pension Rules, 1969. It is also not in dispute that no appeal has been preferred by the respondent authorities against the judgment and order dated 08.04.2021 passed in WP(C) no.1681/2018. A perusal of the impugned order dated 09.05.2022, reveals that the claim of the petitioner has been rejected, holding that the petitioner is not entitled to any further benefit under Rule 143 A of the Assam Pension Rules, 1969. However, the order does not disclose the reasons and the attending circumstances, which were taken into consideration by the respondent authorities while rejecting claim of petitioner.

10] Under such circumstances, this Court is of the considered view that the matter must be relegated back to the concerned Department for redeciding the issue afresh and to pass a reasoned order in respect of the claims made by the petitioner for grant of family pension in terms of Rule 143 A of the Assam Pension Rules, 1969. Accordingly, the impugned order dated 09.05.2022 is set aside. Matter now stands remanded back to the respondent no.2, Director of Elementary Education Department to decide the claims of the petitioner afresh in terms of the directions contained in the judgment and order dated 08.04.2021 passed in WP(C) no.1681/2018.

11] The matter be decided by the concerned authority by passing a reasoned speaking order and a copy thereof shall be served on petitioner within a period of 30 (thirty) days from the date of receipt of a certified copy of this order.

12] The writ petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant