

GAHC010259132023



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

Case No. : WP(C)/6663/2023

REENA PEGU DOLEY
W/O- LATE ARUN KUMAR DOLEY,
VILLAGE- NAHAR GAZERA,
P.O.- JONKARENG, DISTRICT- DHEMAJI,
ASSAM, PIN- 787061.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY ITS PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
ASSAM
DISPUR
GUWAHATI-6.

3:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
JURIPAR
PUNJABARI
GUWAHATI- 37.

5:THE DIRECTOR OF PENSION

ASSAM
HOUSEFED COMPLEX
GUWAHATI-6.

6:THE CHIEF EXECUTIVE OFFICER
DHEMAJI ZILLA PARISHAD
P.O. AND DISTRICT- DHEMAJI
ASSAM

PIN- 787057.

7:THE TREASURY OFFICER
DHEMAJI TREASURY
PO AND DISTRICT- DHEMAJI
ASSAM

PIN- 787057

Advocate for the Petitioner : MR. M ISLAM

Advocate for the Respondent : SC, P AND R.D.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

12.01.2024

Heard Mr. M. Islam, learned counsel for the petitioner. Also heard Mr. S. Dutta, learned Standing Counsel, P & RD Department, Assam appearing for the respondent Nos.1, 4 and 6. Mr. R. Borpujari, learned Standing Counsel, Finance Department, Assam appearing for the respondent Nos.3 and 7.

2. The husband of the petitioner, who was serving as Secretary under the Golaghat Zilla Parishad, died in harness on 04.12.2012. According to the petitioner, the date of initial appointment of her deceased husband was 18.04.1994 and therefore, as on the date of his death, the husband of the petitioner had completed more than 18 years of continuous service. As such, he

was entitled to receive pension. Consequently, upon the death of her husband, she is also entitled to receive family pension. However, in view of the Circular dated 28.03.2018 issued by the Secretary to the Government of Assam, Panchayat & Rural Development Department, Assam, pension has been denied to the petitioner's husband on the ground that as provided in the circular, the *ex post facto* creation of 1272 post of GP Secretaries for the period from 30.05.2003 to 03.02.2006 would not be treated for the purpose of enabling the persons to receive pension. In other words, the stand of the department is that for period from 30.05.2003 to 03.02.2006 the *ex-post facto* approval/creation of the post of GP Secretaries would not carry any pension and thereafter, since the NPS Scheme has been implemented in the year 2005, the employees such as the petitioner's husband would not be entitled to receive pension.

3. Mr. Islam, learned counsel for the petitioner, submits that the aforesaid issue has been settled by the judgment and order dated 05.08.2023 passed by the Hon'ble Division Bench in Writ Appeal No.133/2023 affirming the judgment and order dated 05.08.2022 passed by the learned Single Judge in WP(C) No.4397/2022 granted relief to similarly situated aggrieved person.

4. I have perused the judgment dated 05.08.2023 and find that the issue raised before the Division Bench was also one and the same as involved in the present proceeding. The writ appeal was eventually disposed of by the Division Bench with the following conclusions and observations :-

“VII. Conclusion:

A. In view of the aforesaid discussions and reasons, this court cannot but held that the offending portion of the order dated 28.03.2018 issued by the Secretary to the Govt. of Assam, P&RD i.e. “the ex-post-facto

creation of posts shall not be treated for the purpose of enabling the person concerned to receive pension and other retiral benefits," is perverse and not legally sustainable and therefore, liable to be struck down, which is accordingly done.

B. In view of the aforesaid decision, discussion and reason, this court dismisses the present writ appeal being devoid of any merit and resultantly uphold the impugned decision dated 05.08.2022 rendered by the learned Single Judge in WP(C) No. 4397/2022. Parties to bear their own costs."

5. Mr. Dutta, learned departmental counsel submits that the State is contemplating to file a Special Leave Petition (SLP) against the judgment dated 05.08.2023 before the Supreme Court. The learned departmental counsel has, however, admitted in his usual fairness that no such Special Leave Petition has yet been instituted.

6. If that be so and considering the fact that the core issue involved in the present writ petition is self-same as that raised in the aforesaid Writ Appeal, this Writ Petition stands disposed of in terms of the judgment and order dated 05.08.2023 passed in Writ Appeal No.133/2023. The respondents shall initiated consequential actions accordingly within a period of three months from the date of receipt of a certified copy of this order.

JUDGE

Comparing Assistant