

GAHC010265262017



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

Case No. : WP(C)/5226/2017

PRAMILA ROY
W/O. SRI PRADEEP KUMAR ROY, VILL. SANTABARI, P.O. SORBHOG, DIST.
BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMM. and SECY., HOME DEPTT., GOVT. OF ASSAM, DISPUR,
GUWAHATI-6.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM

ULUBARI
GUWAHATI-7.

3:THE INSPECTOR GENERAL OF POLICE OSD

ULUBARI
GUWAHATI-7.

4:THE SUPERINTENDENT OF POLICE

KOKRAJHAR
ASSAM-783370.

5:THE ACCOUNTANT GENERAL A/E
ASSAM

MAIDAMGAON
BELTOLA
GUWAHATI-38

Advocate for the Petitioner : MR.S HOQUE

Advocate for the Respondent : SC, AG

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 30.07.2024

Heard Mr. S. Hoque, learned counsel for the petitioner. Also heard Mr. CKS Baruah, learned Government Advocate appearing for the State respondents.

The petitioner by way of instituting the present proceeding has presented a challenge to an order dated 31.05.1997 issued by the Superintendent of Police, Kokrajhar whereby, the husband of the petitioner was discharged from his service. The petitioner has also prayed for sanction of invalid family pension to the petitioner w.e.f. 14.02.1994 in respect of the services rendered by the husband of the petitioner.

Before proceeding to consider the issues arising in the present proceeding, it is to be noted that the present petitioner had earlier approached this Court by way of instituting WP(C) 1652/2013, on the same issue as arising in the present proceeding. This Court vide order dated 15.02.2016, on considering the grievances so raised by the petitioner, including the issue pertaining to the medical treatments received by the husband of the petitioner herein, had concluded that the question of whether the petitioner's husband was having mental disorder and whether the medical certificates brought by way of affidavits, are true or not cannot be decided by way of this writ petition as they are disputed questions of fact. The conclusion so drawn being relevant are extracted herein below :-

"I have heard the learned counsel for the parties and also perused the materials on record. I find that the medical certificate dated 17.09.1993 is not a part of the main writ petition and has, however, been brought on record by way of an affidavit-in-reply. The question of whether the petitioner's husband was having mental disorder and whether the medical certificates brought by way of affidavits, are true or not cannot be decided by way of this writ petition as they are disputed questions of fact. The facts in the writ petition do not show that the petitioner took any treatment for his illness prior to 1995. This was reflected in the affidavit-in-opposition filed by the respondents. However, the petitioner, in his affidavit-in-reply, has improved upon the fact situation by producing additional document prior to 1995 in this affidavit-in-reply. As stated earlier, there are disputed question of facts, which cannot be decided by way of this writ petition."

Basing on the said conclusion and also on the fact that in the earlier round of proceeding, the discharge order dated 31.05.1997 was not under challenge, this Court proceeded to dismiss the said writ petition.

On perusal of the materials brought on record in the present proceeding it is revealed that the

only difference between the earlier proceeding and the present proceeding is that in the present proceeding, a challenge has been presented to the order dated 31.05.1997. However, the same is so based on the medical documents, which were examined by this Court in the proceeding of WP(C)1652/2013 and therein, the conclusion as noted hereinabove had been so arrived at. The conclusion as drawn by this Court vide the order dated 15.02.2016 in WP(C) 1652/2013 having not been so questioned in an appeal, the same has attained its finality.

In that view of the matter, the present petition is hit by the principle of constructive *res judicata* and the same would not be called upon to be taken up for consideration on merit.

In view of the conclusion as drawn by this Court in the earlier round of litigation, as noticed hereinabove, the present writ petition is held to be devoid of any merit and the same is accordingly dismissed.

JUDGE

Comparing Assistant