

GAHC010291442023



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

Case No. : WP(C)/218/2024

BISWAMITRA BASUMATARY
SON OF LATE SAMICHARAN BORO, VILLAGE- KHANDIKAR,
P.O.- DHEPARGAON, P.S.- TAMULPUR, DISTRICT- BAKSA, BTAD (ASSAM).

VERSUS

1: THE STATE OF ASSAM AND 6 ORS TO BE REPRESENTED BY THE
COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM,
EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6.

2:BODOLAND TERRITORIAL AUTONOMOUS DISTRICTS TO BE
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE BTC KOKRAJHAR.

3:THE DIRECTOR OF SECONDARY EDUCATION
B.T.C. KOKRAJHAR ASSAM.

4:THE INSPECTOR OF SCHOOLS
BAKSA DISTRICT CIRCLE MUSHALPUR BAKSA ASSAM.

5:THE DEPUTY SECRETARY
B.T.C. KOKRAJHAR ASSAM.

6:THE DEPUTY COMMISSIONER
BAKSA BTAD ASSAM.

7:THE PRESIDENT/ SECRETARY
S.M.D.C. OF KHANDIKAR HIGH SCHOOL

Advocate for the Petitioner : MS G DEKA

Advocate for the Respondent : SC, SEC. EDU.

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

ORDER

Date : 19-01-2024

Heard Ms. G. Deka, learned counsel for the petitioner. Also heard Mr. U. Sharma, learned standing counsel, Education (Secondary) Department and Ms. P. Das, learned standing counsel, BTC, representing the respective respondents.

The petitioner has raised a grievance in the present proceeding pertaining to denial to him the benefits under the "Compassionate Family Pension Scheme" of the Government of Assam, which was brought into force vide a Notification dated 14.09.2017.

The father of the petitioner Late Samicharan Boro, while working as a Grade-IV employee at Khandikar High School, died in harness on 09.12.2020. After the death of his father, the petitioner submitted an application for appointment on compassionate ground. The said application of the petitioner not being considered, he approached this Court by way of instituting WP(C) No.1617/2022.

This Court, vide order dated 07.03.2022, disposed of the said writ petition by requiring the BTC authorities to place the application of the petitioner before the next available District Level Committee under the BTC authorities.

The Deputy Secretary, BTC, Kokrajhar, vide his communication dated 27.05.2022, informed the petitioner that the Scheme for appointment on compassionate ground was not in operation w.e.f. 31.03.2017 and in lieu thereof, the Government had launched "Compassionate Family Pension Scheme" w.e.f. 01.04.2017. By the said communication, it was also intimated to

the petitioner that as his father died on 09.12.2020, therefore, placement of his case before the District Level Scrutiny Committee for appointment on compassionate ground does not arise.

The father of the petitioner had died in harness on 09.12.2020. On the date of death of the father of the petitioner, the Compassionate Appointment Scheme was not in operation and in lieu thereof, a Scheme by the name "Compassionate Family Pension Scheme" was introduced vide Notification dated 14.09.2017.

In terms of Clause 5.11 of the said Scheme, it is provided that the Scheme would be applicable to those employees who died/die in harness on or after 01.04.2017. Accordingly, the case of the petitioner is required to be considered under the provisions of the "Compassionate Family Pension Scheme". Clause 5.1 of the said Scheme mandates the definition of "family" under the Scheme to be same to that provided under the provisions of the Assam Services (Pension) Rules, 1969 (for short, "the 1969 Rules"). The provisions of Rule 143 of the 1969 Rules defines "family" and therein although a son is entitled to receive pension but a son is entitled to receive such pension only till he reaches the age of 18 years. Thereafter, a son is not entitled to receive the pension. The definition of "family", both in the 1969 Rules and in the "Compassionate Family Pension Scheme" being the same, it has to be held that a son, who has crossed the age of 18 years, will not be entitled to either family pension or the compassionate family pension.

From the records of the writ petition, it is revealed that the petitioner, who is the son of Late Samicharan Boro, is presently aged about 34 years and as such, he would not be eligible to receive the family pension under the provisions of Rule 143 of the 1969 Rules. Accordingly, the petitioner is also not

covered by the provisions of the "Compassionate Family Pension Scheme" and he also would not be eligible to receive compassionate family pension on account of crossing the age bar mandated for eligibility to receive such pension.

In such view of the matter, while the case of the petitioner cannot be directed to be considered for appointment on compassionate grounds nor can such direction be issued to extend to the petitioner compassionate family pension under the "Compassionate Family Pension Scheme" brought into operation vide Notification dated 14.09.2017.

At this stage, it is to be noted that both the Compassionate Appointment Scheme and the "Compassionate Family Pension Scheme" are family centric and not individual centric. Schemes have been brought into operation to support the family income of the employees who die in harness. Keeping the said objective in mind, it is seen that the family of the petitioner has a widow, i.e. the sister of the petitioner, namely, Basanti Boro, who is included in the Next of Kin Certificate issued by the Sub-Divisional Officer (Civil), Tamulpur. However, it is not clear from the materials on record as to whether the said daughter of Late Samicharan Boro had become a widow prior to his death or thereafter. In this connection, it is to be noted that the provisions of Rule 143 was amended vide the Assam Services (Pension) Amendment Rules, 2018 and the words "unmarried minor daughters" were substituted by the words "unmarried dependent daughters".

This Court in the case of ***Hasiba Begum -Vs- State of Assam & Ors.***, reported in **2022 (1) GLT 353** had examined the issue whether a divorced daughter would also come within the meaning of "unmarried dependent daughter" as finding place in Rule 143 of the 1969 Rules to be eligible to receive family pension of the deceased Government servant. On

consideration of the matter in details, this Court had come to the conclusion that the words “unmarried dependent daughter” would also include within its fold a dependent divorced daughter. However, this Court required that whether the divorced daughter was still dependent upon the Government servant during his/her lifetime is essential question of fact, which would be required to be examined by the departmental authorities.

In view of the said legal position, while not accepting the writ presented by the petitioner, it is provided that the “Compassionate Family Pension Scheme” being family centric, it would be open to the sister of the petitioner, namely, Basanti Boro, to approach the competent authorities with an appropriate application praying for being extended with the benefits flowing in terms of the “Compassionate Family Pension Scheme” notified vide Notification dated 14.09.2017. In the event the said Basanti Boro is eligible for such benefit, the respondent authorities shall consider her application strictly in terms of the parameters set out in the case of *Hasiba Begum* (supra).

With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant