GAHC020003922024 2024:GAU-NL:605

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

Case No. : WP(C)/139/2024

MR. R. PHYOBENTHUNG NGULLIE
SON OF LATE RHUZAMO NGULLIE,
PERMANENT RESIDENT OF SHAKI VILLAGE, DISTRICT-WOKHA,
NAGALAND, MOBILE NO.-8730986921

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND, NAGALAND, KOHIMA

2:THE DIRECTOR GENERAL OF POLICE
NAGALAND
KOHIMA

3:THE COMMAMDANT

8TH NAP BATTALLION
NALTOQA
ZUNHEBOTO
NAGALAND

4:MRS. ZUBENO LOTHA
H.NO. 341 LONGSA VILLAGE
DISTRICT-MOKOKCHUNG
NAGALAN

Advocate for the Petitioner : L LIKHASE SANGTAM, ATILA PONGEN,BENISON V SHOHE,CHENOSINLO SEB

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 21-11-2024

Heard Mr. L. Likhase Sangtam, learned counsel for the petitioner. I have also heard Mr. Moa Imchen, learned Senior Government Advocate appearing on behalf of respondent nos. 1, 2 and 3.

2. The instant writ petition has been taken up for disposal at the order stage.

3. The petitioner filed this instant petition on behalf of Master Benruthung Ngullie as he is a minor. The petitioner is the cousin brother and guardian of the minor Master Benruthung Ngullie and nephew of minor's father late Monglumo Lotha. The minor Master Benruthung Ngullie is the biological son of late Monglumo Lotha and the respondent no. 4 Smti. Zubeno Lotha is his mother.

4. By filing this application under Article 226 of the Constitution of India, the petitioner is seeking for a direction to the respondent authority more particularly the respondent No.3 to initiate the process for grant of all the pensionary benefits and other service benefits to Master Benruthung Ngullie, minor son of late Monglumo Lotha, as directed by this Hon'ble Court on dated 29.11.2022 passed in WP(C)/221/2019, in place of the respondent no. 4.

5. The fact leading to the filing of this petition is that the father of the minor late Monglumo Lotha was serving as Constable under the Establishment Commandant, 8th NAP Battalion, Naltoqa, Zunheboto. By an order dated 20.03.2008 his service was dismissed by the respondent No. 3. The respondent no. 4 who then was the wife of Late Monglumo Lotha approached this Court by filing WP(C)/221/2019 challenging the said dismissal order and sought for a direction to the respondent authorities to pay pensionary benefits and other service benefits. Accordingly, this Court by an order dated 29.11.2022 has disposed of the said writ petition with a direction to the respondent authority to grant pensionary benefits and other service benefits entitled to the petitioner (respondent no. 4) from the date of the death of her husband late Monglumo Lotha that is w.e.f. 28.01.2008.

6. The further case of the petitioner is that after the death of late Monglumo Lotha, his wife (respondent no.4) remarried to another person leaving behind her 3 (three) children including Shri.Benruthung Ngullie. It is the further case of the petitioner that after the respondent no. 4 remarried to another person, she has relinquished her share and interest in the claim of pensionary benefits and other service benefits of late Monglumo Lotha and executed an affidavit in this regard in favour of her son Shri. Benruthung Ngullie. Thus, after the remarriage of the respondent no. 4 and relinquishment of her claim over the pensionary benefits and other service benefits of late Monglumo Lotha, Shri. Benruthung Ngullie is the legal heir and a successor holder of late Monglumo Lotha.

7. Thereafter, the petitioner on behalf of the minor Shri. Benruthung Ngullie had submitted a representation before the respondent no. 3 and requested to initiate for pensionary benefits and other service benefits of late Monglumo Lotha, as directed by this Court in order dated 29.11.2022 passed in WP(C)/221/2019. While making such request, the petitioner had also informed the authority that the respondent no. 4 had given up her claim over the pensionary benefits and other service benefits of her ex-husband late Monglumo Lotha as she has remarried to another person after the death of her late husband Monglumo Lotha. However, the said application was not considered by the respondent on the ground that the earlier writ petition was filed in the name of the respondent no. 4. While rejecting the application, respondent authority has also asked the petitioner to come along with the Court's order in the name of Master Benruthung Ngullie. It is in view of the above requirement expressed by the respondent authority that the petitioner is before this Court seeking a direction to the respondent authorities to initiate the process for grant of pensionary benefits and other service benefits in favour of Master Benruthung Ngullie, who is the biological son of late Monglumo Lotha.

8. The record reveals that this Court by an order dated 25.07.2024 issued notice. Thereupon a joint affidavit-in-opposition was filed by the respondent Nos. 1, 2 & 3 through respondent No.3 the Commandant, 8th NAP Battalion on 23.10.2024.This Court finds it pertinent to take note of paragraphs 4, 5 & 6 of the said affidavit and for the sake of convenience the same is reproduced herein below:

"4. That with regard to the statements made in paragraph 9 of the Writ

petition, the answering deponent begs to state that the respondent no. 3 has received a copy of the Succession Certificate and representation dated 25.09.2023 on behalf of Shri Benruthung Ngullie, son of late Monglumo Lotha, from his lawful guardian Shri. R. Phyobenthung Ngullie (petitioner) for claim and initiation of pensionary benefits and other service benefits. However, this Court by its in WP(C) No.221/2019 has granted all pensionary benefits and other service benefits in favour of Smti. Zubeno Lotha, the then wife of late Monglumo Lotha, and as such, the Succession Certificate and the representation dated 25.09.2023 was not forwarded by the respondent No.3 to the authority concerned.

5. that with regard to the statement made at paragraph 10 of the Writ Petition, the answering deponent begs to state that Shri R.Phyopenthung Ngullie, lawful guardian on behalf of Shri. Benruthung Ngullie and respondent No.4 wife of late Monglumo Lotha was verbally summoned by the respondent No.3 to ascertain their respective stand on the matter and to confirm the claim on pensionary benefits and other service benefits by her son Shri. Benruthung Ngullie. It is respectfully stated that the respondent No.4 in the present petition has already remarried and as such she is not entitled for pensionary and other service benefits. It is quoted that as per CCS (Pension) 2021, Chapter VII Rule No. 50 (8) Sub Rule (2) family pension "shall be payable to such widow or widower upto the death or remarriage, whichever is earlier" It is respectfully submitted by answering respondent since Smti. Zubeno Lotha has already re-married she is barred by the standing OM as quoted above to claim for pensionary and other service benefit of her late husband.

6. It is therefore in the backdrop of the above statements in the proceeding paragraphs the answering deponent has no issue whatsoever in regard to the claim of the petitioner to grant pensionary and other service benefits of late Shri Monglumo Lotha to his minor son Shri Benruthung Ngullie now represented by the petitioner."

9. Mr. Moa Imchen, learned Senior Government Advocate appearing on behalf of all the respondents in his submission while referring to the affidavit filed by the respondents has read out the above paragraphs 4, 5 and 6 at the bar and further fairly submits that in view of the above, the respondent will have has no objection if the claim of the petitioner to grant pensionary benefits and other service benefits of late Monglumo Lotha to his minor son, Shri. Benruthung Ngullie now represented by the petitioner.

10. In view of the above submission made by the learned counsel for the parties and having regards to the provision provided under CCS (Pension) 2021 Chapter VII Rule No.50 (8) Sub-rule (2) Family pension and also considering the claim made by the petitioner Shri. R. Phyobenthung Ngullie for Shri. Benruthung Ngullie, son of late Monglumo Lotha, fully supported by the state respondents, this Court dispose of the instant writ petition with a direction to the respondents, more particularly to the respondent no. 3 to initiate the process for grant of all pensionary benefits and other service benefits in favour of Shri. Benruthung Ngullie, son of late Monglumo Lotha as directed by this Court on 29.11.2022 in WP(C)/221/2019, in place of Smti. Zubeno Lotha (respondent no. 4).

11. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant