GAHC010236422018

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

Case No. : WP(C)/7371/2018

SANMATI CHAUHAN AND 3 ORS.
W/O LATE AYODHYA CHAUHAN, VILL- ITAKHOLA, P.O. AND P.S. HOJAI, DIST. HOJAI, ASSAM.

2: SMTI. SUMITRA CHAUHAN
D/O LATE AYODHYA CHAUHAN
VILL- ITAKHOLA
P.O. AND P.S. HOJAI
DIST. HOJAI
ASSAM.

3: SMTI. SANGITA CHAUHAN
D/O LATE AYODHYA CHAUHAN
VILL- ITAKHOLA
P.O. AND P.S. HOJAI
DIST. HOJAI
ASSAM.

4: SMTI. SUNITA CHAUHAN
D/O LATE AYODHYA CHAUHAN
VILL- ITAKHOLA
P.O. AND P.S. HOJAI
DIST. HOJAI
ASSAM.

5: SARBADINDU CHAUHAN
S/O LATE AYODHYA CHAUHAN
VILL- ITAKHOLA
P.O. AND P.S. HOJAI
DIST. HOJAI
ASSAM

VERSUS

THE STATE OF ASSAM AND 11 ORS.
REP. BY COMMISSIONER AND SECRETARY, SOCIAL WELFARE DEPTT.,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF SOCIAL WELFARE
ASSAM
UZANBAZAR
GUWAHATI- 781001.

3:THE DEPUTY DIRECTOR
SOCIAL WELFARE DEPTT.
AT HAFLONG
DIST. DIMA HASAO
HAFLONG
PIN- 788819.

4:THE COMMISSIONER AND SECRETARY

FINANCE DEPTT.
DISPUR
GHY-6.

5:THE TREASURY OFFICER

HAFLONG
DIST. DIMA HASAO
HAFLONG
PIN- 788819.

6:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 781029.

7:THE SENIOR ACCOUNTANT GENERAL (A AND E)
ASSAM
BELTOLA
MAIDAMGAON
BELTOLA- 781029.

8:SMTI KESHI CHOUHAN
SECOND WIFE OF LATE AYODHYA CHOUHAN
R/O. VILLAGE ITAKHOLA
P.O. AND P.S. HOJAI
DIST. HOJAI
ASSAM
PIN- 782435.

9:SNEHASISH CHOUHAN
R/O. VILLAGE ITAKHOLA
P.O. AND P.S. HOJAI
DIST. HOJAI
ASSAM
PIN- 782435.

10:SMTI. SUSHMITA CHOUHAN
R/O. VILLAGE ITAKHOLA
P.O. AND P.S. HOJAI
DIST. HOJAI
ASSAM
PIN- 782435.

11:SUSHMA CHOUHAN
R/O. VILLAGE ITAKHOLA
P.O. AND P.S. HOJAI
DIST. HOJAI
ASSAM
PIN- 782435.

12:BIJOYA LAKSHMI CHOUHAN
R/O. VILLAGE ITAKHOLA
P.O. AND P.S. HOJAI
DIST. HOJAI
ASSAM
PIN- 782435

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 01-12-2020

Heard Mr. P. Mahanta, learned counsel for the petitioner. Also heard Ms. M.D. Borah, learned Standing Counsel appearing for the respondents No. 1, 2 and 3; Mr. R. Borpujari, learned Standing Counsel for the respondents No. 4 and 5 as well as Mr. R. Boro, learned Standing Counsel for the respondents No. 6 and 7.

2. None appears for the respondents No. 8 to 12 on call.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner No. 1, the 1st wife of the deceased employee Ajodhya Chauhan, has prayed for a direction to the respondents No. 1 to 7 to pay the retirement benefits, G.I.S., D.C.R.G., P.F., Leave Encashment Benefit etc. (minus the amount already paid) to her on account of death of her husband on 28.06.2015 after a massive heart attack.

4. The grievance of the petitioners may be stated thus-

The deceased husband of the petitioner No. 1 was appointed as Field Investigator by the respondent No. 2/the Director, Department of Social Welfare, Assam, by an order, dated 07.01.1988, and he was posted in the office of the District Social Welfare, the then N.C. Hills, Haflong, Assam. Late Ajodhya Chauhan married the petitioner No. 1 in February, 1985 and she was the nominee in service records and out of their wedlock, the petitioners No. 2 to 5 were born, who are now major. After 4 (four) years of their marriage, in the year 1989, Late Ajodhya Chauhan brought the respondent No. 8, without performing marriage and kept her as wife. Out of their relationship, the respondent No. 8 gave birth to 4 (four) children, who are now major. Late Ajodhya Chauhan suddenly died on 28.06.2015 following a massive heart attack, after rendering 27 years 5 months 10 days of qualifying service. Thereafter, all the legal heirs of Late Ajodhya Chauhan sworn an affidavit on 18.11.2015 declaring their no objection if his retirement benefits were released to the petitioner No. 1, who was the nominee of her said deceased husband in the official records. Accordingly, the respondent No. 2, by three separate orders, dated 27.01.2016, sanctioned Rs.3,76,370/- as leave encashment benefit; Rs. 28,067/- as G.I.S. and by order, dated 05.03.2016, Rs.34,104/- being the interest amount on G.I.S. to the petitioner No. 1.

5. The petitioners have contended that the respondent No. 2 forwarded the service book and other relevant documents for grant of family pension, by a letter, dated 05.08.2016, to the respondent No. 3 as received from the respondent No. 7 for re-submission after necessary corrections in terms of A.G.'s instructions. Thereafter, the respondent No. 3 computed the D.C.R.G. at Rs.5,08,680/- and monthly family pension at Rs.8845/-. However, the respondent No. 6, by a letter, dated 16.06.2016, sent back the pension papers with

request to re-submit the same as some discrepancies were found therein and accordingly, the respondent No. 2 resubmitted the Family Pension papers as instructed and as received from the respondent No. 3 to the respondent No. 6 for necessary action to release the Family Pension etc. of Late Ajodhya Chauhan. After due consideration, on 10.03.2017, the respondent No. 7, forwarded the FPPO to the respondent No. 5 to release the Normal Family Pension of Rs.5330/-, per month and the enhanced Family Pension being Rs.8880/-, per month. Further, the respondent No. 7 issued another letter, dated 10.03.2017, to the respondent No. 5 directing him to pay Rs.5,10,408/- in equal share including the second wife (the respondent No. 8), her 3 (three) daughters and the son and the petitioner No. 1 (First wife) and her son leaving behind the petitioners No. 2, 3 and 4.

6. It has been contended that thereafter, the respondent No. 5, by a letter, dated 15.05.2017, addressed to the respondent No. 6 sought for certain clarifications as discrepancies had arisen that the Enhanced Rate & Normal Rate of Family Pension of Page No. 3 did not tally with the Page No. 7 of the P.P.O. Pursuant thereto, the respondent No. 7, by a letter dated 12.07.2016 requested to return the FPPO, dated 28.03.2017 with non-payment certificate to issue a fresh FPPO correcting the errors and accordingly, by a letter, dated 05.08.2017, the respondent No. 5 returned the required documents to the respondent No. 6. The office of the respondent No. 6 considered the resubmitted pension papers and the respondent No. 7 issued the letter/order, dated 11.10.2017, addressed to the respondent No. 5 directing the latter to pay Rs.5,10,408/- to the petitioner No. 1 and others, who are, in fact, not entitled in law for equal share and the aforesaid amount is still pending not paid to the petitioner No. 1. Hence, the instant petition praying for the reliefs as indicated above.

7. In course of hearing Mr. R. Borpujari, learned Standing Counsel appearing for the respondent Nos. 4 and 5, producing copy of two relevant orders submits that the office of the respondent No. 6 has issued FPPO, dated 12.11.2018, in favour of the petitioner No. 1 for Rs.8,880/- and Rs.13,220/- and also for payment of DCRG of Rs.5,10,408/- respectively to her and others in equal share as indicated therein. At this stage, the learned counsel for the petitioners submits that he has no objection if the respondent No. 5 acts on the aforesaid two orders, dated 12.11.2018. The learned counsel for the respondents No. 1, 2, 3, 6 and 7 also submits no objection in agreement to the aforesaid submission made by the learned counsel

for the petitioners.

8. Copy of the orders, dated 12.11.2018 are taken on record.

9. As there is no rival contentions in regard to the above referred 2 (two) payment orders, dated 12.11.2018, issued by the respondent No. 7 in favour of the petitioner No. 1 and the matter being related to long pending issue of non-payment of family pension to the legal heirs of the deceased government employee, who died on 28.06.2015, this Court considers it urgent to pass appropriate order in view of absence of any objection by the respondents' side.

10. **Accordingly, the respondent No. 5/the Treasury Officer, Haflong, District Dima Hasao, Assam is directed to act on the orders/letters issued to him by the respondent No. 7 vide No. PR-2/SOW/17/028761/2017, dated 12.11.2018, within a period of 4 (four) weeks from the date of receipt of a certified copy of this order, which will be furnished by the petitioner No. 1.**

11. It may pertinently be mentioned here that it is a well settled proposition of law that gratuity and pension are not the bounties, which an employee earns by dint of long and continuous unblemished service and as such, such benefits are in the nature of property. This right to property cannot be taken away without the due process of law as per the provisions of Article 300A and it is an indefeasible inherent right guaranteed under Articles 19(1)(f) and 31(1) of the Constitution of India. The State being committed to the welfare of the citizens, it is also its solemn duty to protect the right to pension and incidental benefits of its employees on time. However, it is commonly observed that in many cases the pensioners have been facing lot of troubles in getting their regular pensions and other pensionary benefits due to want of proper and speedy co-ordination among the departments and officers/staff concerned although it is the prerogative of the pensioners to get their regular pension and other pensionary benefits on the date of retirement. It is the duty of the government/concerned department to clear all financial liabilities or other anomalies in service matters of an employee before his retirement. Government departments cannot hold up pensionary benefits like gratuity, leave encashment and GPF etc. of a retired employee in the pretext of various anomalies in his service or financial liabilities. Keeping pension of a

retired employee or Family Pension in hold up for years deprives him and his legal heirs of right to life with dignity. So, the Government is requested to ensure settlement of pensions and pensionary benefits due to an employee in appropriate case removing all anomalies in his service career, while in service so as to ensure delivery of FPPO on the date of his retirement itself as after retirement, an employee attains the category of senior citizen and resultantly, suffers from various disadvantages, which he does not face while in service. So, it is the duty of the Government to evolve a suitable and effective measure for monitoring of submission of pension proposals and processing thereof in advance before the Government employees retire from service so that no delay is caused unnecessarily in payment of pension and pensionary benefits to them on their last day in government service, i.e., retirement.

12. Let a copy of this order be furnished to the learned Advocate General, Assam, with request to look into the plight of the pensioners and their legal heirs for non-receiving of their due pension and other benefits on time giving rise in the number of litigations.

With the above direction and observation, the writ petition stands disposed off.

JUDGE

Comparing Assistant