

GAHC010266472023



2026:GAU-AS:1211

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

Case No. : WP(C)/312/2024

PURNIMA NANDI
W/O LT. SHYAMAL NANDI R/O ASHARAM ROAD HAILAKANDI WARD NO.
3 P.O. P.S. AND DIST. HAILAKANDI ASSAM PIN 788151

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT DISPUR GUWAHATI
ASSAM PIN 781006

2:THE PRINCIPAL SECRETARY
TO THE GOVT OF ASSAM PANCHAYAT AND RURAL DEVELOPMENT
DEPTT DISPUR GUWAHATI ASSAM PIN 781006

3:THE COMMISSIONER
TPANCHAYAT AND RURAL DEVELOPMENT DEPTT PANJABARI JURIPAR
GUWAHATI ASSAM PIN 781037

4:THE DISTRICT COMMISSIONER
HAILAKANCI
DIST. HAILAKANDI PIN 788151

5:THE DISTRICT COMMISSIONER CUM CHAIRMAN
DISTRICT LEVEL COMMITTEE DLC KARIMGANJ P.O. AND DIST.
KARIMGANJ ASSAM PIN 788710

6:THE CHIEF EXECUTIVE OFFICER
HAILAKANCI ZILLA PARISHAD P.O. AND DIST HAILAKANDI PIN 788151

7:THE ACCOUNTANT GENERAL (A AND E)
BELTOLA MAIDAMGAON GUWAHATI 2

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the petitioner (s) : Mr. R. Sarma, Advocate

For the respondent (s) : Mr. D. Borah, Govt. Advocate
Mr. S. Dutta, SC, P&RD
Mr. B. Chakraborty, SC, AG

Date on which judgment is reserved : NA

Date of pronouncement of judgment : 29.01.2026

Whether the pronouncement is of the
Operative part of the judgment? : NA

Whether the full judgment has been
Pronounced? : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. R. Sarma, the learned counsel appearing on behalf of the petitioner. Mr. D. Borah, the learned counsel appears on behalf of the District Administration; Mr. S. Dutta, the learned counsel appears on behalf of the P&RD Department and Mr. B. Chakraborty, the learned counsel appears on behalf of the Accountant General (A&E).

2. The present writ petition has been filed by the wife of Late Shyamal Nandi being aggrieved by the inaction on the part of the

Respondent Authorities to release all the pecuniary benefits of the post of Head Assistant from the date of merger of the DRDA to the Zilla Parishad including arrears and grant all service benefits to the petitioner and also for directing the respondents to grant compassionate family pension to the petitioner from the date of death of her husband till the date of his superannuation.

3. The materials on records show that the husband of the petitioner was initially appointed as an LD Assistant in DRDA, Hailakandi and thereafter he was promoted to the post of UD Assistant. While the petitioner's husband was serving as the UD Assistant, one Shanti Ranjan Paul, the then Head Assistant DRDA Hailakandi resigned from his post for which the post of Head Assistant in DRDA, Hailakandi fell vacant. Resultantly, the Project Director, DRDA with the approval of the Deputy Commissioner, Hailakandi vide the order dated 21.02.2017 promoted the petitioner's husband to the post of Head Assistant as per seniority amongst the officials working there, and accordingly, the husband of the petitioner on 22.02.2017 joined as the Head Assistant in DRDA, Hailakandi.

4. It is very pertinent at this stage to take note of that prior to the promotion of the petitioner's husband, the Government of Assam, P&RD Department vide notification dated 12.09.2016 decided to wind up the DRDA and merge the same with the Zilla

Parishad w.e.f. 01.10.2016 absorbing all DRDA born employees in the Zilla Parishad, Anchalik Panchayat etc. The effect of the said merger was given on the basis of a notification dated 29.07.2017. The petitioner's husband, though in the meantime, was promoted on 21.02.2017 as the Head Assistant, but at the time of absorption, he was brought within the services of the Zilla Parishad as a Senior Assistant (UD Assistant) on the ground that the petitioner's husband was promoted to the post of Head Assistant while the merger process was already initiated though the same was stalled for the time being. The husband of the petitioner thereupon challenged reduction in rank from the post of Head Assistant to the Upper Division Assistant by filing a writ petition which was registered and numbered as WP(C) No.5725/2017. The said writ petition was disposed of vide the order dated 15.11.2018.

5. At this stage, this Court finds it pertinent to take note of paragraph Nos.40, 41 & 42 of the order dated 15.11.2018 and the same are reproduced herein below:-

“40) For the reasons discussed above, this Court is of the view that the objection raised by the State Govt. is without merit and also unreasonable and they are to blame themselves for the situation which has been brought into existence. Hence, the State Govt. cannot deny the promotion of the petitioner to the post of Head

Assistant.

41) Accordingly, the State Govt. is directed to create a personal post of Head Assistant, if needed, to accommodate the petitioner as Head Assistant in the Panchayat & Rural Development Department, Govt. of Assam/ Hailakandi Zila Parishads. It may be noted that the post of Head Assistant was very much in existence in the DRDA which was earlier occupied by Santi Ranjan Paul but became vacant after he resigned from his service.

42) As the absorption of the petitioner to the post of Head Assistant in the Zila Parishad had remained under cloud which has been dispelled now, let the State Govt. take appropriate steps for accommodating the petitioner as Head Assistant in Hailakandi Zila Parishad and release all the pecuniary benefits including arrears and grant other service benefits attached to the post of Head Assistant, which exercise shall be undertaken within a period of four months from the date of receipt of a certified copy of the order."

6. It is seen that pursuant to the order passed by the learned Coordinate Bench of this Court, the same was forwarded to the respective Respondent Authorities for doing the needful in compliance to the directions passed in the order dated 15.11.2018 in WP(C) No.5725/2017. Taking into account that there was a direction for creation of a supernumerary post, steps were also taken by the Panchayat and Rural Development Department for creation of a supernumerary post and proposals

were therefore made. Unfortunately, while the said process was going on, the husband of the petitioner expired on 17.01.2021.

7. The record further reveals that a supernumerary post of Head Assistant under the Panchayat and Rural Development Department at Hailakandi Zilla Parishad was created only on 24.08.2022 on the basis of the order dated 15.11.2018 passed in WP(C) NO.5725/2017 to accommodate the husband of the petitioner. Be that as it may, as the husband of the petitioner had in the meanwhile expired, the benefits of the order dated 15.11.2018 passed in WP(C) No.5725/2017 was not passed on to the petitioner.

8. It is the further case of the petitioner that in view of the directions passed by the learned Coordinate Bench dated 15.11.2018 in WP(C) No.5725/2017, the petitioner is entitled to the arrears with effect from the date of merger of the DRDA with the Hailakandi Zilla Parishad and taking into account that the husband of the petitioner had died in harness, the petitioner is also entitled to the compassionate family pension as per the notification of the government dated 14.09.2017. It is under such circumstances, the petitioner has approached this Court.

9. The respondent No.3 had filed an affidavit-in-opposition wherein it is stated that in view of the death of the husband of

the petitioner on 17.01.2021 and the creation of the supernumerary post only on 24.08.2022, the petitioner is not entitled to the relief as has been sought for. It is also mentioned that it was only on account of information being not provided to the Panchayat and Rural Development Department, the supernumerary post was created on 24.08.2022 and had the death of the husband of the petitioner dated 17.01.2021 was brought to the notice of the P&RD Department, such creation of the supernumerary post would not have been done.

10. This Court has heard the learned counsels appearing on behalf of the parties and has perused the materials on record. The materials on record categorically show that the husband of the petitioner was granted promotion to the post of Head Assistant on 21.02.2017. However, upon the merger of the DRDA with the Hailakandi Zilla Parishad, the husband of the petitioner was absorbed as a Senior Assistant(UD Assistant) without taking note of the fact that the husband of the petitioner was already promoted to the post of Head Assistant. This led to a litigation before this Court which was registered and numbered as WP(C) No. 5725/2017.

11. The materials on record further show that vide an order dated 15.11.2018, this Court categorically held that the State Government cannot deny the promotion of the petitioner as the

Head Assistant. It was also held that the very objection raised by the State Government was without any merit and unreasonable and they are to be blamed for the situation. It was further directed that the State Government should create a personal post of Head Assistant immediately to accommodate the husband of the petitioner as Head Assistant in the Panchayat and Rural Development Department, Government of Assam/Hailakandi Zilla Parishad. In addition to that, it was also directed that appropriate steps for accommodating the husband of the petitioner as a Head Assistant in the Hailakandi Zilla Parishad and to release all pecuniary benefits including arrears and other service benefits attached to the post of Head Assistant, be undertaken within a period of four months from the date of receipt of the certified copy of the order.

12. The record reveals that the certified copy of the order dated 15.11.2018 was duly served on 28.12.2018 and the Respondent Authorities did not seek any extension of time from this Court at any point in time. On account of the delay in creation of the post, the present situation has arisen in as much as the creation of the post was required to be carried out within a period of four months from 28.12.2018. Presently, as the facts stand, the post was created after the death of the petitioner's husband. It is further noteworthy to mention that at the time of death of the

petitioner's husband, he was 56 years, and therefore, the husband of the petitioner expired while he was serving in the Hailakandi Zilla Parishad.

13. The Court further takes note of the notification dated 31.10.2017 which mandates that if an employee of the State Government dies in harness, the compassionate family pension would be paid to the family members equal to that of the salary of the deceased till he attains the age of superannuation and subsequent thereto, the regular family pension. The observations made by the learned Coordinate Bench of this Court in the judgment and order dated 15.11.2018 in WP(C) No. 5725/2017 is clear that the promotion of the husband of the petitioner to the post of Head Assistant in the DRDA under no circumstances can be denied by the State Government. In that view of the matter, as on 21.02.2017, the husband of the petitioner was promoted to the post of Head Assistant. It is seen that on 29.07.2017, the DRDA was merged and the employees working in the DRDA were absorbed to the Zilla Parishad. Likewise, the husband of the petitioner who was working as the Head Assistant of the DRDA was also absorbed upon the abolishment of the DRDA. But in doing so, he was absorbed as a Senior Assistant (UD Assistant). This aspect was duly taken note of by the learned Coordinate Bench in the order dated 15.11.2018,

holding *inter alia* that the State Government cannot deny the promotion of the husband of the petitioner to the post of Head Assistant.

14. This Court further takes note of that the learned Coordinate Bench had directed the completion of the entire process within a period of four months from the date of submission of the certified copy of the order. The steps which were required to be taken by the State Government for creation of the supernumerary post was not completed within the said period of four months. Neither there was any extension sought for. Under such circumstances, it was incumbent upon the Respondent Authorities to comply with the order in as much as the judgment and order dated 15.11.2018 did not create a right, but it declared the right that the husband of the petitioner was entitled to be absorbed as a Head Assistant in the Hailakandi Zilla Parishad and the same ought to have been completed within the period of four months and thereby paying the other pecuniary benefits. The inaction or the delay on the part of the Respondent Authorities in creation of the supernumerary post only on 28.04.2022 cannot be a ground to deny the benefits which flows to the petitioner on the basis of the judgment dated 15.11.2018 passed in WP(C) No.5725/2017.

15. Accordingly, this Court therefore disposes of the instant writ

petition with the following observations and directions:-

(i) The petitioner herein would be entitled to the arrears of pay to which her husband would have been entitled to, had he been alive by calculating the amount as a Head Assistant w.e.f. 28.4.2019 till the date of the expiry of the husband of the petitioner on 17.01.2021

(ii) It is submitted by Mr. R. Sarma, the learned counsel for the petitioner that upon merger of the DRDA with the Zilla Parishad, there was no payment of any amount to the husband of the petitioner or to the petitioner. Considering the above, the respondents shall make necessary verification and if it is found that the husband of the petitioner had not received any amount from the date of abolishing of the DRDA and absorption of the petitioner's husband to the Hailakandi Zilla Parishad on 29.07.2017, the said arrears be paid.

(iii) The creation of the supernumerary post of Head Assistant vide the communication dated 24.08.2022 shall be deemed to have been created on 28.04.2019.

(iv) The petitioner further be paid the compassionate family pension for the period the husband of the petitioner would have been in service.

(v) All other benefits such as DCRG/leave encashment/gratuity etc. shall also be worked out taking into account that the husband of the petitioner was promoted to the post of Head Assistant w.e.f. 28.04.2019.

(vi) Taking into consideration that DRDA was abolished and the employees were brought vide a notification dated 12th September, 2016 which was given effect to by the Notification dated 29.07.2017, it relevant to take note of Clause (viii) of the Notification dated 12th September, 2016. The said Clause (viii) is reproduced herein below:-

“(viii) Out of the 558 employees, 467 DRDA borne employees shall be absorbed against the existing vacant posts of identical pay-scale in the Zilla Parishads, Development Blocks, Anchalik Panchayats and Gaon Panchayats as per list at Annexure-II. 91 DRDA borne employees shall be absorbed against newly created personal posts. The normal pay and allowances of the employees, which they have been drawing before absorption shall be allowed to be drawn under appropriate Head of Account.”

A perusal of the above Clause would show that out of 588 employees, 467 DRDA borne employees were absorbed against newly created personal posts. The Petitioner's husband was one of such employees who was absorbed.

This Court further finds it relevant to take note of Clause (xi) of the Notification dated 12.09.2016 which mandates that the employees absorbed would be covered by the new pension scheme.

It is pertinent to note that as the employees were absorbed, the period of service the employees rendered while working in DRDA cannot be brushed aside for the purpose of calculating the pensionable period of service. It is therefore the opinion of this Court that the Petitioner's husband would have been entitled to pension as per the new pension scheme. However unfortunately, the husband of the Petitioner died in harness and therefore the Petitioner is not only entitled to compassionate family pension as already directed above till the date her husband would have superannuated but would also be entitled to the family pension as per the new pension scheme by giving benefit of the period her husband had rendered service in the DRDA for calculating the pensionable service period.

Accordingly, the petitioner herein would be entitled to the family pension from the date her husband would have superannuated had he been alive.

(vii) The above exercise be completed within four months

from the date a certified copy of this order is served to the Additional Chief Secretary, Government of Assam, Panchayat and Rural Development Department.

(viii) The Additional Chief Secretary to the Government of Assam, Panchayat & Rural Development Department shall file a compliance affidavit within six months from today.

JUDGE

Pradip Kumar Kalita Digitally signed by Pradip Kumar Kalita
Date: 2026.02.05 17:10:58 +05'30'
Comparing Assistant