

GAHC010009012022



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

Case No. : WP(C)/324/2022

DIPALI GOGOI BORGOHAIN
W/O- LATE BIKASH BORGOHAIN,
R/O- SAPEKHATI, BALIKHETIA VILLAGE,
P.O- CHATIANAGURI ,
MOUZA- SAPEKHATI,
DIST- CHARAIDEO,
PIN-785692, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT, OF ASSAM,
PENSION AND PUBLIC GRIEVANCES DEPARTMENT, SACHIVALAYA,
DISPUR, ASSAM-781006

2:THE DIRECTOR OF PENSION
HOUSEFED COMPLEX
LAST GATE
DISPUR
GUWAHATI
ASSAM-781006

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
SIVASAGAR
P.O- SIVASAGAR

DIST- SIVASAGAR

ASSAM

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
SAPEKHATI
P.O- SAPEKHATI

DIST- CHARAIDEO
ASSA

Advocate for the Petitioner : MR R SENSUA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT

Date : 24-01-2022

Heard Mr. D. Borah, learned counsel for the petitioner. Also heard Mr. Girin Pegu, learned counsel for the respondents No.1 and 2 being the Pension and Public Grievances Department and the Director of Pension and Mr. A. Phukan, learned counsel for the respondents No.3, 4 and 5 being the authorities under the Elementary Education Department of the Govt. of Assam.

2. The husband of the petitioner Bikash Borgohain was temporarily appointed on 20.11.1999 as an Assistant Teacher in the scale of Rs. 3130-60-3490-90-4030-EB-4430-120-5200-175-6600/- per month. By a subsequent order dated 31.03.2003 the husband of the petitioner was absorbed in an existing post of Assistant Teacher in the Kalakata M.E. School. While he was in service the husband of the petitioner died on 15.06.2009. After the death, the petitioner was paid an amount of Rs.30,000/- on 19.01.2010 towards Group Insurance Scheme which was subscribed by her deceased husband during his service period. On 06.06.2017 the petitioner was issued with a no liability certificated by the Headmaster of Kalakata M.E. School and on the same day the last pay

certificate of the husband of the petitioner was also issued and ratified by the Block Elementary Education Officer. When the teacher concerned had died on 15.06.2009 we see no reason as to why the Headmaster of Kalakata M.E. School had taken almost eight years to issue the no liability certificate and the last pay certificate of the husband of the petitioner. Such act on the part of the Headmaster is deprecated and the Director of Elementary Education, Assam is directed to take note of the said conduct of the Headmaster and take appropriate action for causing undue harassment to the wife of the deceased employee.

3. As per the last pay certificate the deceased husband of the petitioner was drawing Rs.13,229/- comprising of Rs.9810 as Basic Pay per month and action allowance as D.A. Rs.2158/-, M.A- 350/- and Rs.981/- as HR with deduction of GIS Rs.30/- and Professional Tax of Rs.208/- per month. After receiving the document, the petitioner made an application to the District Elementary Education Officer, Sivasabar with a request to confirm the service of the husband of the petitioner and for the purpose had enclosed a copy of the appointment letter. The District Elementary Education Officer on 13.03.2019 had issued a letter to the petitioner containing certain objection raised by the Director of Pension, Assam for the purpose of pension. As per the letter dated 13.03.2019 the petitioner was required to deposit/refund an amount of Rs.4,293/- towards excess salary drawn by the deceased husband of the petitioner. We again deprecate such act, the said action on the part of the Director of Pension of the DEEO, Sivasagar to the extent that under the law laid down by the Supreme Court in *Shyam Babu Verma and others –vs- Union of India and others, reported in (1994) 2 SCC 521* and *State of Punjab and Others –vs- Rafiq Masih (White Washer) and others, reported in (2015) 4 SCC 334* an

excess salary drawn by a retired employee and more so by a deceased employee cannot be recovered unless there is a conclusion that such amount was paid in excess because of any fraudulent fault on the part of the employee concerned. As the employee had already died in the meantime, there cannot remain any further situation for the parties to arrive at any such conclusion that it was because of fraudulent act on the part of the deceased husband of the petitioner that the excess amount was paid to him. As no further progress had been made for pension by the petitioner, she submitted a representation dated 06.12.2021 before the Commissioner & Secretary to the Govt. of Assam in the Elementary Education Department requesting that the period of five months ten days which was short of the qualifying period of ten years of service for pension to be condoned.

4. Rule 67 of Assam Services (Pension) Rules 1969 empowers the Governor to condone the deficiency of not exceeding 12 months in the qualifying service of an officer for the purpose of pension. As the deceased husband of the petitioner is short by 5 months 10 days from completing 10 years of qualifying service, we accordingly require the petitioner to submit the representation before the Principal Secretary, Pension and Public Grievance Department of the Govt. of Assam who shall take the decision in the facts and circumstance as to whether the period of 5 months 10 days or any other period which may be less than 12 months be required to be condoned in order to arrive at 10 years of qualifying service by the deceased husband of the petitioner. The representation be submitted within seven days from today. Upon the representation being submitted, the Principal Secretary shall pass a reasoned order within two months therefrom and in doing so, the records of the service particular of the deceased husband of the petitioner may be looked into. We further provide that

although the husband of the petitioner may have been appointed on a temporarily basis in the year 1999, the Principal Secretary shall look into the circumstance and procedure that was adopted for the purpose of such temporary engagement and if it is found that the appointment was made after following the due procedure of law by following the proposition laid down by the Hon'ble Supreme Court the entire period of service of the petitioner should be counted towards the qualifying service for pension.

5. Any reasoned order to be passed by the Principal Secretary shall be informed to the petitioner by providing with a copy thereof. Writ petition stands allowed as indicated above. A copy of the order be provided to Mr. S.M.T. Chistie, learned counsel for the Elementary Education Department for doing the needful.

JUDGE

Comparing Assistant