

(2008) 04 GAU CK 0034
In the Gauhati High Court

Amrita Prava Hajong

APPELLANT

Vs

State of Meghalaya and Another

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Citation : (2008) 3 GLT 197

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.N. Sarma, J.—Having refused to pay the family pension in terms of the impugned order dated 11.1.2007 passed by the Superintendent of Police, Ri-Bhoi District, Nongpoh to the petitioner, wife of late G. Ch. Hajong, since deceased, who was serving as UB SI in the Meghalaya Police Department, the petitioner has approached this Court.

2. I have heard Ms. S. Bhattacharjee, learned Counsel for the petitioner and Mr. N.D. Chullai, learned Senior Government counsel appearing for the official respondents.

3. The facts as projected in this writ petition are not disputed. The husband of the petitioner, late G. Ch. Hajong was the member of the Meghalaya Police Service. He was working as Sub-Inspector of Police and was posted at Nongpoh in the year 2006. On 17.10.2006 the deceased was placed under suspension pending drawal of disciplinary proceeding. In course of time the Disciplinary Proceeding being No. 3/2006 was drawn up against the deceased. However, during the continuation of the proceeding and before completion of the same the incumbent expired on 21.11.2006. The disciplinary authority thereafter dropped the said departmental proceeding vide order dated 10.1.2007. In the said order it is also stated that the incumbent would not be entitled to family pension as at the time of his demise he was absent from duty and criminal cases taken up by him were still pending investigation. However, other monetary benefits due to

him will be paid to his wife.

4. It is submitted by Mr. Chullai, learned Senior Government counsel that except the family pension all other dues have been paid to the petitioner which is also admitted by the learned Counsel for the petitioner, Mrs. Bhattacharjee.

5. Challenging the aforesaid decision not to pay the family pension to the wife of the deceased, learned Counsel for the petitioner submits that under the provision of Meghalaya Civil Services (Pension) Rules, 1983, the family of the incumbent is entitled to get the family pension as he completed more than seven years of continuous service in the department. It is further contended that under the provisions of F.R. 56(2) as applicable in the State of Meghalaya, if the Government servant under suspension dies before his disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended subject to adjustment in respect of subsistence allowance already paid.

6. In view of the aforesaid provision of law, it is contended by Mrs. Bhattacharjee that the family of the deceased is entitled to get the family pension under the Meghalaya Civil Services (Pension) Rules, 1983. Mr. Chullai has contended that the provision of F.R. 56(2) does not contain anything narrating to payment of the family pension but he fairly submits that under the Meghalaya Civil Services (Pension) Rules there is no debarring clause disentitling the family pension to the family of the incumbent whose disciplinary proceeding was suspended.

7. I have considered the respective submissions made by the learned Counsel for the parties.

8. The provision relating to the family pension is regulated and guided by Rule 47 of the Meghalaya Civil Services (Pension) Rules, 1983 which is quoted hereinbelow:

47. Notwithstanding the provisions in Rules 45 and 46 above, if a Government servant after rendering minimum 7 (seven) years continuous service dies while in service, the family of such Government servant may be granted a pension at the rates and conditions mentioned below:

(i) For a period of 7 (seven) years from the date following the date of death or till the date on which officer would have reached the normal age of superannuation had he remained alive, whichever period is shorter, the pension payable under this section will be at 50 per cent of the basic pay last drawn, subject to a maximum of twice the pension admissible under Rule 46 above.

(ii) The pension payable thereafter will be at the rate laid down in Rule 46 above.

(iii) The provisions of this rule will not be applicable if the Government servant had put in less than 7 (seven) years" continuous service prior to his death.

(iv) The other provisions in this section will continue to operate.

9. The disciplinary proceeding, although drawn up against the husband of the petitioner (since deceased), could not be completed during his life time and was dropped after his expiry vide impugned order dated 10.1.2007 in such a situation, the payment of salary of the deceased incumbent during the suspended period would be regulated and guided as per provision of F.R. 56(2) which is quoted below for ready reference:

F.R. 56(1) ...

(2) Notwithstanding anything contained in Rule 51, where a Government servant under suspension dies before his disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended subject to adjustment in respect of subsistence allowance already paid.

10. A bare reading of the provision of F.R. 56(2) leaves no manner of doubt that on the death of the incumbent during the pendency of the disciplinary proceeding, his period of suspension would be treated as duty for all purposes and the family shall be paid the full pay and allowances for that period. Rule 47 of the Pension Rule guarantees a right to get a family pension by the members of the family of the Government servant after rendering minimum seven years of continuous service. In the instant case, the husband of the petitioner was appointed in the year 1986 and he expired on 21.11.2006, thus he rendered continuous service for twenty years in the Meghalaya Police Department. In view of the aforesaid provision of law holding the field, the family of the Government servant is entitled to get the family pension. Nowhere it is found in the Service Rule that in order to qualify for family pension the incumbent is to remain present on duty at the time of his demise.

11. In view of the aforesaid discussion, this writ petition is accepted and the impugned order to the effect that "he is not entitled for family pension as at the time of his demise he was absent from duty and criminal cases taken up by him were still pending investigation" stands set aside and quashed. The respondents/authorities are directed to calculate and pay the family pension payable on account of the service rendered by the husband of the petitioner. Since the family of the deceased/incumbent is in financial distress, the respondents are directed to complete the entire exercise within a period of two months from the date of receipt of the certified copy of this order and within the aforesaid period, the authorities shall calculate, sanction and pay the family pension payable on account of the service rendered by the husband of the petitioner along with the arrears.

Accordingly, this writ rejection is allowed with the above direction.