
(2022) 01 GAU CK 0064
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 324 Of 2022

Dipali Gogoi Borgohain

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 24-01-2022

Acts Referred:

Assam Services (Pension) Rules, 1969 — Rule 67

Citation : (2022) 01 GAU CK 0064

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : R Sensua

Final Decision : Allowed

Judgement

1. 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

deprecatd 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 â?"vs- Union of India and others, reported in (1994) 2 SCC 521

and State of Punjab and Others â?"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 Honâ??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.