

(2019) 09 GAU CK 0031

In the Gauhati High Court

Case No : Writ Petition (C) No. 770 Of 2019

Lakhimai Bhagawati @APPELLANT@Hash State Of Assam And 6 Ors

Date of Decision : 11-09-2019

Acts Referred:

Citation : (2019) 09 GAU CK 0031

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : P Mahanta

Final Decision : Disposed Off

Judgement

1. Heard Mr. R.B. Gohain, learned counsel for the petitioner. Also heard Mr. S.P. Bhattacharjee, learned Standing Counsel, Elementary Education Department; Mr. R. Borpujari, learned Standing Counsel, Finance Department and Mr. B. Deuri, learned Government Advocate, Assam for the respondents.

2. The matter pertains to non-finalization of pensionary and other retiral benefits in respect of petitioner's husband, namely, late Jadav Ch. Sarma, who was serving as a Headmaster of Dhenukhana M.V. School in the district of Lakhimpur. According to the petitioner, the husband of the petitioner retired from service on 31.01.2013 and soon thereafter he died on 8.2.2013. However, the pensionary and other retiral benefits have not been granted to the petitioner's husband and before the same could be granted, he died, as mentioned above. After the death of the petitioner's husband, the petitioner has not got the pensionary/retiral benefits, except the gratuity. The apparent reason for non-finalization of the pension and retiral benefits of the petitioner's husband is that, as per records, the petitioner ought to have retired from service on 30.4.2009 on attaining 60 years of age, as his date of birth as per HSLC certificate issued by the Board of Secondary Education, Assam, should be 1.5.1949. However, the same was wrongly recorded in the service book as 1.1.1953. Because of this, the petitioner's husband continued to be in service till 31.1.2013. Accordingly, because of the aforesaid overstay in service, the authorities had to recover the excess payment made in favour of the petitioner's husband, which occasioned

the delay in finalization of the pensionary and other retiral benefits.

3. As mentioned above, the petitioner's husband was allowed to work till 31.1.2013 by the authorities and it was not on the basis of self assumption of service. The authorities could not detect earlier that he was due to retire on 30.4.2009 and the petitioner continued to serve till 31.1.2013 because of wrong recording of the date of birth in the service book as 1.1.1953. In the present case, before the authorities could detect the same, the petitioner's husband had already retired from service on 31.1.2013 and thereafter he expired on 8.2.2013. The authorities are now seeking to recover the excess payment that has been made vide order dated 29.5.2018.

4. This Court is of the view that the aforesaid procedure adopted by the State may not be permissible after the employee has died, as no adverse order could have been issued against an employee who has died. The aforesaid exercise could have been permissible had the petitioner's husband been alive. However, since the petitioner's husband has already died, the question of recovery from the entitlement of a deceased employee would not be proper.

5. As mentioned above, the petitioner's husband continued to serve till 31.1.2013 as per recording of the date of birth as 1.1.1953 in the service book, which may have been erroneously recorded. Whether the date of birth was erroneously recorded or not, that could have been ascertained by the authorities before the expiry of the deceased employee. Even if it is considered that the date of birth recorded in the service book was erroneous, it cannot be said that the service rendered by the petitioner till 31.1.2013 was entirely illegal.

6. Hence, this Court holds that the aforesaid recovery of excess payment made for the service rendered by the petitioner's husband till 31.1.2013 is not permissible. Accordingly, the respondent authorities are directed to finalize the pension of the petitioner's husband on the basis of the pay scale which he would have been entitled to on the basis of correct date of birth as may be ascertained by the authorities. However, if any recovery has been made, the same should be refunded to the petitioner as such payment already made for service rendered cannot be recovered now after the death of an ex-employee.

7. The respondents, more particularly Respondents No.4, 5 and 6 shall do the needful in terms of the above. The aforesaid exercise shall be undertaken and completed within a period of three months from the date of receipt of a certified copy of this order so that the petitioner can enjoy the retiral benefits as per rules.

8. The writ petition stands disposed of accordingly.