(2021) 08 GAU CK 0049

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2479 Of 2021

Mainao Gayari APPELLANT

Vs

State Of Assam And 8 Ors RESPONDENT

Date of Decision : 13-08-2021

Acts Referred:

Assam Services (Pension) Rules, 1969 — Rule 137(1)

Citation : (2021) 08 GAU CK 0049

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : C Goswami

Judgement

1. Heard Mr. C. Goswami, learned counsel for the petitioner. Also heard Mr. P.N. Gowami, learned Additional Advocate General for the respondents

No.1, 2, 3, 6, 7 and 8 being the authorities under the Elementary Education Department, Pension Department and Finance Department of the Govt. of

Assam.

2. When the writ petition came up before this Court on 06.08.2021, we have taken note that the petitioner who is a widow has instituted this petition

for payment of family pension in respect of her deceased husband Late Phanidhar Gayari and further that the deceased husband was receiving the

pension from the Tihu branch of UCO bank. The very fact that the deceased husband of the petitioner was receiving the pension itself goes to show

that under Rule 137(1) of Assam Services (Pension) Rules, 1969, the petitioner being the wife of the deceased employee was entitled to a family

pension

3. Rule 137(1) on its own make the wife/husband of such employee to receive

the family pension on the death of the employee concerned.

4. In the instant case, it is stated that the deceased husband of the petitioner was receiving his family pension through the Tihu branch of the UCO

bank. The Tihu branch by a communication dated 18.09.2014 addressed to the Director of Pension, Assam stated that as per the PPO No.43549

which was in respect of the deceased husband of the petitioner, no family pension record was submitted and therefore, the bank required the Director

of Pension to forward any record of family pension if it is available in the office of the Director of Pension. As no response was received, a

subsequent reminder by the communication dated 22.04.2015 was made by the bank. It is not known as to whether the said communications were

received in the Office of the Director of Pension and it would be for the bank authorities to produce the record as to whether the same was received,

more so, in view of the statement from the Office of the Director of Pension that the said communications were not received. The communication

dated 22.04.2015 annexed to the writ petition shows that the a copy thereof was received by Debrabata Gayari who is stated to be the son of the

petitioner on 28.04.2015. But again it is not discernible whether that communication also was received in the Office of the Director of Pension.

5. In the aforesaid circumstance, we passed an order dated 06.08.2021 requiring the Director of Pension to show cause as on the next date as to why

appropriate order should not be passed for having not paid the family pension to the petitioner since the year 2012 when her husband had died. The

Director in response thereof had produced the communication dated 07.08.2021 from the Director to the Treasury Officer, Tihu which shows that in

the original PPO No.PPO/E/43549 as per the records maintained in the Directorate of Pension, the name of the family pensioner and the amount of

family pension to be paid was clearly mentioned. Along with the communication dated 07.08.2021 another addendum 07.08.2021 was also enclosed

which pertained to the requirement of inserting of the name of the Moyna Gayari as the family pensioner in respect of her deceased husband and the

amount of family pension was stated to be Rs.4480/- per month from 27.10.2012 upto 31.03.2016 and thereafter Rs.11,110/- per month from

01.04.2016 onwards.

6. Considering the said communication, we have already passed the order dated

09.08.2021 directing the Treasury Officer, Tihu to take up the matter

with some urgency with the authorities of the UCO Bank Tihu branch and to ensure that the family pension is paid to the petitioner every month from

01.09.2021 onwards at the rate as determined in the addendum to the PPO dated 07.08.2021. The arrear family pension was directed to be paid within

a period of two months thereafter. From the said point of view, although the core grievance of the petitioner for payment of family pension had

already been met, but another aspect for determination would remain, that is the entitlement of the petitioner to an interest on the unpaid arrear amount

as provided by the Supreme Court. Under Rule 137(1) of Assam Services (Pension) Rules, 1969 the petitioner is entitled to receive the family pension

from 2012 onwards. But because of the non-payment of the family pension as indicated above, she would now receive it only from September, 2021

onwards and the arrear amount would be received within a period of two months thereafter.

7. As per the proposition of law laid down by the Supreme Court in State of Uttar Pradesh and Others â?"vs- Dhirendra Pal Singh reported in (2017)

1 SCC 49 , wherein, it has been provided that in case any delay in payment of pension, the authorities concerned would have to pay an interest of 6%

on the delayed payment. As admittedly, there is a delay in paying the family pension to the petitioner from 2012 onwards upto 2021, on the basis of

such proposition being laid down by the Supreme Court, the petitioner would be entitled to an interest of 6% per annum. In the circumstance, a

question that would remain to be answered is which of the respondent authorities would be liable to pay the said interest of 6%, i.e. whether it will be

the Director of Pension, or it will be the Office of the Treasury Office, Tihu or it will be Tihu branch of the UCO Bank.

8. For the purpose, issue notice, returnable 2 (two) weeks. Extra copies be furnished be furnished within three days. Steps on the respondents No. 4

and 9 by registered post with A/D within three days. The petitioner to also serve dasti service on the respondent No.5 through the Registry of the

Court.

9. Considering the aspect that the petitioner is a lady aged about 63 years, we require the learned counsel for the petitioner to provide the notice of

dasti service through the Registry of this Court to be handed over to the learned counsel for the Treasury Officer at Tihu who shall facilitate the

service of notice on the respondent UCO Bank, Tihu Branch and thereafter file an affidavit of service. The respondent UCO Bank Tihu branch shall

provide the Court with the record as to whether the communications dated 18.09.2014 and 22.04.2015 to the Director had been duly served in the

Office of the Director or not more so, in view of the specific statement of the Director of Pension that the said communications are not available in

their record.

10. List after two weeks.

