(2022) 04 GAU CK 0029

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2565 Of 2021

Mitali Saikia APPELLANT

Vs

State Of Assam And 7 Ors RESPONDENT

Date of Decision : 19-04-2022

Acts Referred:
Assam Services (Pension) Rules, 1969 — Rule 21, 143A

Citation : (2022) 04 GAU CK 0029

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : M Dutta

Final Decision : Allowed

Judgement

1. Heard Mr. S.R. Gogoi, learned counsel for the petitioner. Also heard Mr. N.K. Debnath, learned counsel appearing for the PNRD department, Mr. B. Gogoi, learned counsel for the Finance Department and Mr. B. Chakraborty, learned counsel for the respondent No.6.

2. This petition is instituted by Smti. Mitali Saikia claiming family pension in respect of her deceased husband Tarun Chandra Borah, who was a Junior Engineer in the PNRD department. The deceased husband of the petitioner died on 14.07.2019. The department has raised an issue as regards the payment of family pension and some other benefits like gratuity, leave salary PF dues etc. to the petitioner for the reason that there was an over-drawal of salary of Rs.23,84,524/- by the deceased husband of the petitioner during the period of his overstay in service and therefore, the department is of the view that the excess salary paid to the deceased husband of the petitioner for the overstay period has to be recovered and therefore, the family pension cannot be paid to the petitioner.

3. Mr. N.K. Debnath, learned counsel for the PNRD department refers to Paragraph Nos. 25 and 26 to a decision of the Supreme Court rendered in State

of Bihar and Others –vs- Pandey Jagdishwar Prasad reported in (2009) 3 SCC 117. By referring to the paragraph 25 thereof, it is the submission of the learned counsel that the decision of the Supreme Court in Kailash Singh –vs- State of Bihar was on concession being made by the State before the Court that the amount of excess drawal of salary for the overstay in service is not to be recovered. In Paragraph- 26 with reference to its earlier judgment in Hari Singh –vs- State of Bihar, the Supreme Court was of the view that since the Government had never put the employee on notice to indicate that the date of birth as entered in the service book was incorrect though it could have done so, therefore the Supreme Court was of the view that there was a duty of the State to put the employee on notice about his date of retirement and not having done so, the State was not entitled to recover the excess amount. By referring to the aforesaid two propositions, Mr. N.K. Debnath, learned counsel seeks to differentiate the factual circumstance of the present case and submits that interference as regards the recovery cannot be ordered.

4. We are not expressing any view on merit of the said submission of the learned counsel, inasmuch as, in the present case, the deceased employee is no more. Any process to either recover the amount or not to recover the amount in view of the provision in paragraph 25 and 26 of the judgment of the Supreme Court in the State of Bihar and Others –vs- Pandey Jagdishwar Prasad (supra) would definitely have to undertaken after giving an opportunity of being heard to the employee concerned. As the same cannot be done in the instant case, inasmuch as, the deceased employee is no more, we are not required to express any view on the said submission of the learned counsel.

5. Further in the instant case, the core relief sought for by the petitioner is for payment of family pension in respect of her deceased husband Tarun Chandra Borah. Family pension is governed by Rule 143-A of the Assam Services (Pension) Rules, 1969 (in short, Pension Rules, 1969). In respect of any employee, who would be in a pensionable service, upon his death, family pension would be payable to the family members as per Rule 143-A of Pension Rules, 1969. Pension can be denied to an employee in pensionable service only upon following the procedure laid down in Rule 21 of the Pension Rules, 1969. In the instant case, although there may be a case of the respondent authorities for recovery of the excess salary drawn, but the same can be done upon the retirement of the employee only by following the procedure of Rule 21 of the Pension Rules, 1969. Rule 21 of Pension Rules, 1969 contemplates a proceeding against the retired employee either disciplinary or criminal. As in the instant case the husband of the petitioner, who was the employee holding a pensionable service is no more, the procedure prescribed under Rule 21 cannot be initiated against him any further. From such point of view also under the Pension Rules, 1969, the pension could not have been denied to the deceased husband of the petitioner even if the respondents are of the view that certain amounts are to be recovered for excess drawal of salary. As the pension could not have been denied to the deceased husband of the petitioner in the circumstance of the present

case, we are of the view that even the family pension cannot be denied to the present petitioner.

6. Considering the aforesaid conclusion arrived at, we allow the writ petition by directing the respondents in the PNRD department to initiate the process for payment of family pension to the writ petitioner as per law and as per entitlement and also issue a direction to the department not to withhold or deduct the payment of other retirement benefit of the deceased employee namely Tarun Chandra Borah. The retirement benefits be paid within a period of three months from the date of receipt of the certified copy of the order and during the same period the family pension be also processed forthwith.

7. Writ petition stands allowed as indicated above.