
(2018) 07 GAU CK 0042
In the Gauhati High Court
Case No : Civil Writ Petitionl No.2271 Of 2017

Ms. Iftara Begum

APPELLANT

Vs

State Of Assam And 5 Ors.

RESPONDENT

Date of Decision : 16-07-2018

Acts Referred:

Assam Services (Pension) (Amendment) Rules, 2003 — Rule 3C, 143C

Citation : (2018) 07 GAU CK 0042

Hon'ble Judges : NELSON SAILO, J

Bench : Single Bench

Advocate : K.M. Haloi, C. Baruah, M.R.??Adhikar

Final Decision : Allowed

Judgement

1. Heard Mr. K.M. Haloi, the learned legal Aid Counsel for the writ petitioner and Mr. M.R. Adhikari, the learned State Counsel appearing for all the respondents except respondent No.5. The respondent No. 5 is represented by Mr. C. Baruah, the learned Standing Counsel, Principle Accountant General (A&E), Assam.

2. The case of the writ petitioner is that her father was working as Unarmed Branch Constable in the Assam Police and from where he retired on 30.06.1996, upon attaining the age of superannuation. After his retirement, he received his pensionary benefits as well as his monthly pension.

Unfortunately, he expired on 27.11.2005 whereafter, family pension was paid and received by the mother of the petitioner i.e; the wife of the late

Government employee. The petitioner's mother thereafter also expired on 24.05.2012 and therefore, the petitioner submitted an application for

family pension before the respondent No. 4 requesting payment of family pension to her. The said application was forwarded by the respondent No. 4

to the respondent No. 3 vide communication dated 17.07.2012 (Annexure-G). Thereafter, a series of communication took place between the

respondent No. 3 and the respondent No. 4 for clarifying the status of the writ petitioner including her physical condition.

3. Consequently, when the claim of the petitioner was referred to the respondent No. 5, but the respondent No. 5 vide communication dated

03.03.2015 rejected her claim for family pension on the ground that the entitlement for family pension by a handicapped son and daughter of a retired

Government servant became admissible only with the insertion of Rule-3 - C vide the Assam Services (Pension) (Amendment) Rules, 2003 in the

Assam Services (Pension) Rules, 1969 (Pension Rules) vide notification dated 30.05.2003. Therefore, the said provision having only a prospective

effect and considering the fact that the Government employee retired from service on 30.06.1996, the claim for disability person by the writ petitioner

was rejected and her pension papers returned. Being aggrieved, the petitioner is before this Court through the present writ petition.

4. Appearing for the writ petitioner Mr. K.M. Haloi, the learned counsel submits that the Government employee concerned after his retirement on

30.06.1996 was receiving his monthly pension till his expired on 27.11.2005. Thereafter, his wife continued to receive the family pension till she

expired on 24.05.2012. It was then that the petitioner became eligible for disability family pension in terms of Rule 143-C of the Pension Rules.

Therefore, the petitioner is entitled to claim for disability family pension under the said provision and that under no circumstances she has claimed for

retrospective application of the said provision. The learned counsel by referring to the annexures appended to the writ petition submits that the

petitioner was examined by the District Medical Board of Nagaon, Assam and found to be physically handicapped i.e; deaf and dumb by birth. She

was found to be 80 % permanently disable. The State Government under the Social Welfare Department also issued the petitioner an identity card

meant for persons with the disability. Therefore, the respondent authorities could not have rejected the claim of the writ petitioner.

5. Appearing for the State respondent i.e; respondent Nos. 1, 2, 3, 4 and 6 Mr. M.R. Adhikari, the learned State Counsel submits that as per the

instructions he has received, the Government employee concerned did not reveal before the authorities concerned prior to his retirement from service

the fact that the writ petitioner was permanently disabled. Therefore, in absence of such revelation, the petitioner cannot be entitled to pension under the pension Rules.

6. Mr. C. Baruah, the learned Standing Counsel for the Accountant General, Assam by relying upon the affidavit-in-opposition filed by the respondent

No. 5 on 13.07.2018 submits that by the said communication dated 03.03.2015 which is impugned by the writ petitioner, the answering respondent has

nowhere tried to interpret Rule 143-C of the Pension Rules. He submits that by the said communication, only a clarification was made to the effect

that since the amendment to the Pension Rules was notified on 30.05.2003 and as the late Government employee retired from service on 30.06.1996,

the provision will not apply to the case of the writ petitioner. The notification is only to be applied prospectively. Therefore, the writ petitioner is wrong

in taking the stand that the respondent No. 5 has sought to interpret the relevant provisions of the Pension Rules.

7. Mr. C. Baruah by referring to the certificate issued by the District Medical Board of Nagaon district, Assam as well as the identity card issued to

the writ petitioner by the Social Welfare Department further submits that the petitioner apparently has failed apply for any disability certificate or any

concessions admissible to a disabled person prior to the death of her mother on 24.10.2012 and therefore, the claim of the petitioner is belated and only

an afterthought. He submits that the identity card issued to the petitioner only has a validity of 5 years and the identity card has already expired on

26.06.2017. Therefore, in the absence of any proof that the petitioner continues to be a disabled person as on date coupled with the absence of proof

that she is unable to earn any livelihood by herself, the writ petition is only liable to be rejected.

8. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. As may be

noticed Rule 143 â?" C of the Pension Rules, provides for payment of family pension to handicapped son and daughter of Government servants who

retired or expired while in service. The said provision has been notified by the Pension and Public Grievances Department vide notification dated

30.5.2003. In absence of any indication as to the period from which they said provision is to apply, it has to be understood that the same will only apply

from the date of publication in the notification i.e; 30.05.2003. The father of the writ petitioner retired from Government service on 30.06.1996 and

after he expired, it was the mother of the petitioner who continued to get family pension till 24.12.2012. It was only thereafter that the petitioner

became eligible to claim disability family pension. Likewise, the petitioner submitted her application before the respondent authority concerned on

24.12.2012 and in doing so, it cannot be said that the petitioner has sought to apply the provision of Rule 143-C of the Pension Rules retrospectively. It

is also noticed that besides the writ petitioner, the late Government servant has two other daughters and two sons. From the next of kin

certificate issued by the Office of the Deputy Commissioner, Nagaon on 03.04.2014. The petitioner's brothers and sisters have all attained

the age of majority and therefore, it is only the petitioner who can claim for family pension under Rule 143-C of the pension Rules. Therefore,

considering the materials available on record, I am of the considered opinion that the claim of the writ petitioner for permanent disability pension could

not have been rejected on the ground that the provisions of Rule 143-C of the Pension Rules cannot be applied retrospectively. Accordingly, the

communication dated 03.03.2015 (Annexure-M) stands interfered with.

9. It is also seen that although the petitioner has annexed a number of documents in the writ petition to show and justify that she is permanently

disabled but however, having regard to the fact that Rule 143-C of the Pension Rules also provides the circumstances under which the same will be

admissible under the heading "Explanation", therefore, while interfering with the rejection of the petitioner claim for disability family pension, it is

also observed herein that, the respondent authorities will be at liberty to verify the claim of the writ petitioner with regard to her physical condition as

well as with regard to her employment status before she can be given the family pension. It is accordingly directed. The writ petitioner shall also

submit her up-to-date "Identify Card" before the respondent No. 5 for the needful.

10. In appreciation of the valuable assistance rendered by Mr. Haloi, the learned Legal Aid Counsel, the High Court Legal Services Committee shall

pay him his fees as per the Schedule prescribed.

11. The respondent authorities more particularly the respondent Nos. 2 and 5

shall undertake necessary process for finalizing the pension entitled to the writ petitioner as expeditiously as possible and preferably, within the outer limit of 8 (eight) weeks from the date of receipt of a certified copy of this order.

12. With the above observations and directions, the writ petition stands allowed. No cost.