

(2021) 09 GAU CK 0024
In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4137 Of 2021

Punya Probha Deuri

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 09-09-2021

Acts Referred:

Assam Services (Pension) Rules, 1969 — Rule 143C, 143C(1), 143C(2), 143C(2)(iv)

Citation : (2021) 09 GAU CK 0024

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : S Roy

Final Decision : Disposed Of

Judgement

1. Heard Mr. MH Laskar, learned counsel for the petitioner. Also heard Mr. B Kaushik, learned counsel for the respondents No.1 and 4 being the authorities under the Elementary Education Department, Government of Assam and Mr. R Ahmed, learned counsel for the respondent No.3 being the Accountant General (A&E) Assam and Mr. B Gogoi, learned counsel for the respondent No.5 being the authorities under the Finance Department, Government of Assam.

2. Considering the nature of the grievance raised the array of respondent No.6 stands deleted.

3. The petitioner is a physically handicapped unmarried girl and has been physically disabled since her birth. It is stated that she has been suffering from peripheral neuritis with weakness in her both upper and lower limbs. It is also stated that the disease from which the petitioner is suffering is not curable and till date the petitioner had not recovered in any manner from her illness.

4. The petitioner relies upon the certificate dated 24.08.2009 issued by the Senior Medical and Health Officer, Bihpuria PHC who had certified that the petitioner is suffering from peripheral neuritis with weakness in her both upper and lower limbs. The District Medical Board, Lakhimpur had also issued a

disability certificate dated 09.04.2018 wherein it is declared that she is suffering from locomotor disability amounting to 40% permanent physical impairment.

5. The father of the petitioner who was the Headmaster of Dhunaguri LP School retired from service on attaining the age of superannuation on 30.04.2000 and after his retirement, he was receiving the monthly pension as entitled under the Rules bearing No.PPO/E/Sp/37,060 dated 01.05.2000 till his death on 22.01.2013. On the death of the father of the petitioner, the pension that he was receiving also stopped. In this writ petition, the petitioner claims for a permanent family pension as provided under Rule 143-C of the Assam Services (Pension) Rules 1969 on the strength that she is a disabled person. Rule 143-C is extracted as below:

"Rule 143-C-(1) This rule shall apply to pay life time family pension to the handicapped son(s)/Daughter(s) of Government servants who retired/died while in services.

(2) If the son or daughter of a Government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 18 (eighteen) years in the case of the son and 21 (twenty one) years in the case of the daughter, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely-

(i) If such son or daughter is one among 2 (two) or more children of the Government servant the family pension shall be payable to the minor son or daughter as the case may be in the order of their birth until the last minor son attains the age of 18 (eighteen) years or the last minor daughter attains the age of 21 (twenty one) years as the case may be, and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him/her for life.

(ii) If there are more than one such children suffering from disorder or disability of mind or who are physically crippled or disabled, the family pension shall be paid in the order of their birth and the younger of them will get the family pension only after the elder next above him/her ceases to be eligible:

Provided that where the family pension is payable to twin children, it shall be paid to such children in equal shares:

Provided that when one such child ceases to be eligible his/her share shall revert to the other child and when both of them ceases to be eligible family pension shall be payable to the next eligible single child/twin children;

(a). firstly to the son, and, if there are more than one son, the younger of them will get the family pension only after the life time of the elder;

(b). secondly, to the daughter, and if there are more than one daughter, the

younger of them will get the family pension only after the life time of the elder;

(iii). The family pension shall be paid to such son or daughter through the guardian as if he or she were a minor except in the case of the physically crippled or disabled son/daughter who has attained the age of majority;

(iv). before allowing the family pension for life to any such son or daughter, the appointing authority shall satisfy that the handicapped is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of a child;

(v). the person receiving the family pension as guardian of such son or daughter (or such son or daughter not receiving the family pension through a guardian) shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continues to suffer from disorder or disability of mind or continue to be physically crippled or disabled.

(3).....

(4).....".

6. Rule 143-C-(1) provides that a handicapped son or daughter of a government servant who had retired or died while in service would be entitled to a lifetime family pension. Rule 143-C(2) circumscribes that if a son or daughter of a government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 18(eighteen) years in the case of a son or 21(twenty-one) years in the case of a daughter, the family pension shall be payable to such son or daughter for life subject to certain conditions stated therein. We have taken note that Rule 143-C(2) provides that in order to be entitled for a lifetime family pension, the disabled son or daughter of a government servant must suffer from such disorder or disability of mind or is physically crippled so as to render him or her unable to earn a living. The basic requirement in order to be enabled to receive the lifetime family pension is that the disabled son or daughter of a government servant who claim pension must be suffering from a disability of such extent which would render him or her unable to earn a living.

7. In the instant case, the petitioner has relied upon the disability certificate dated 09.04.2018 issued by the District Medical Board, Lakhimpur certifying that she is suffering from 40% locomotor disability resulting in permanent physical impairment. The said certificate does not indicate in any manner whether the disability of the petitioner is of such extent that she is unable to earn her living because of her disability.

8. Rule 143-C(2)(iv) provides that before allowing the family pension for life to such son or daughter of a government servant, the appointing authority shall

satisfy itself that the disability is of such nature so as to prevent the person concerned from earning his or her livelihood and the authority to take a decision on the said question as to whether the disability is of such extent so as to disenable the person concerned to earn a living would be a Medical Officer not below the rank of a Civil Surgeon. In other words, if the concerned Civil Surgeon having the jurisdiction over the matter examines the person concerned and certifies that the disability is of such extent that the person concerned will not be able to earn his or her living, in such event, it has to be understood that the requirement of Rule 143-C(2) is satisfied to the extent that the person concerned is entitled to a lifetime family pension.

9. In the instant case, as there is no material before the Court regarding any assessment by the competent authority as to whether the petitioner is suffering from a disability of such extent which would prevent her from earning her living, we are of the view that interest of justice would be met if the petitioner is duly examined by the concerned Civil Surgeon as regards the extent and the implication of her disability. As the Civil Surgeon is under the Department of Health and Family Welfare Department, Government of Assam, we require the Secretary to the Government of Assam in the Health and Family Welfare Department as well as the Joint Director of Health Services, Lakhimpur to be arrayed as the respondents No.6 and 7 respectively.

10. Mr. B Gogoi, learned counsel accepts notice on behalf of respondents No.6 and 7 respectively. The cause-title of the writ petition be corrected accordingly by deleting the existing respondent No.6 and in its place to array the Secretary to the Government of Assam in the Health and Family Welfare, Department, Government of Assam and the Joint Director of Health Services, Lakhimpur as the respondents No.6 and 7 respectively.

11. Accordingly, as stated by Mr. MH Laskar, learned counsel upon instruction from the petitioner, the petitioner will make herself available before the Joint Director of Health Services, Lakhimpur on 29.09.2021 at 11.A.M. Upon the petitioner making herself available before the Joint Director, the Joint Director shall do the needful to arrange for the petitioner to appear before a Medical Officer not below the rank of a Civil Surgeon. The Medical Officer to accordingly examine the extent of disability of the petitioner and take a decision and issue a certificate as to whether the extent of disability is such that the petitioner is unable to earn her living because of the disability. If the certificate issued by the Medical Officer certifies that the petitioner is unable to earn her living because of the disability, the respondents in the Education Department through the Director of Elementary Education, Assam shall forward the proposal to the Pension Department for payment of lifetime family pension to the petitioner and upon such proposal being forwarded the pension department shall also do the needful to bring it to a logical end for payment of the necessary pension.

12. On the other hand, if the certificate of the Medical Officer not below the rank of a Civil Surgeon does not indicate that the physical disability of the petitioner is

of such extent which renders her unable to earn a living no further process would be required to be made by the respondents. But liberty shall remain with the petitioner to take recourse to appropriate action under the law against such evaluation.

13. The Joint Director shall ensure that the petitioner is examined by a Medical Officer not below the rank of a Civil Surgeon on the same day itself as it may not be convenient for a disabled person to go to the authorities concerned more frequently. Once the certificate is issued in favour of the petitioner, the petitioner shall place the same before the Director of Elementary Education Assam for doing the needful who shall complete the process within a period of one month from the date of issuance of the certificate and the pension department shall bring the matter to its logical end within a period of one month thereafter.

14. In terms of the above, this writ petition stands disposed of.