
(2001) 08 GAU CK 0005
In the Gauhati High Court
Case No : C.R. No. 3552 of 1995

Rejia Khatun

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-08-2001

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 7
Assam Services (Pension) Rules, 1969 — Rule 24, 69
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2001) 3 GLT 262

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Advocate : K.H. Choudhury and M.A. Sheikh, for the Appellant; H.K. Mahanta, for the Respondent

Judgement

A.H. Saikia, J.—Heard Mr. K.H. Choudhury, learned senior counsel who has been appointed by this Court as amicus-curiae, assisted by Mr. M.A. Sheikh, learned Counsel for the Petitioner. Also heard Mr. H.K. Mahanta, appearing on behalf of the State Government.

2. This is a case of 1995. Despite the notice issued on the Government counsel who accepted the same on 1.9.95 at the time of issuing rule, no affidavit-in-opposition has been filed as usual, nor has any record been produced on behalf of the Respondents where the matter has been taken up for hearing. Since no affidavit-in-opposition is forthcoming on behalf of the State Respondents, in view of the settled position of the law laid down in the case of Naseem Bano Smti v. State of Uttar Pradesh and Ors. reported in AIR 1993 SC Page 2592 , the averments made in this writ petition are deemed to be accepted by the State Respondents.

3. The case of the Petitioner in this writ petition is that her husband Late Md. Azgar Ali was appointed as Assistant Teacher at Koladuba Muktab with effect from 24.11.1961 and lateron he was made permanent Headmaster in the said

school with effect from 26.9.1963. While the Petitioner's husband was working as Headmaster in the said school, he was involved in a criminal case i.e. G.R. Case No. 1731/80 u/s 302/34 IPC and accordingly, he was convicted in the said case vide judgment and order dated 19.3.87 passed by Sessions Judge, Nagaon, in Sessions Case No. 62(N) 81 u/s 302/34 IPC alongwith four Ors. and sentenced to suffer imprisonment of life and to pay fine of Rs. 200/- (Rupees two hundred) each. Being aggrieved by the said judgment and order referred above, the husband of the Petitioner alongwith Ors. preferred a criminal appeal being No. 65/1987 before this Court. But during the pendency of the said criminal appeal, the husband of the Petitioner Md. Azgar Ali died and the said appeal as regards the Appellant Mr. Azgar Ali was abated.

4. Be it mentioned here that immediately after the conviction of the husband of the Petitioner, the D.I. of Schools, Nagaon, Assam, vide its order dated 6.4.87 discharged the said Azgar Ali from service with effect from 19.3.87, on the date of his conviction by the Sessions Judge, Nagaon. The said order is made available as Annexure-3 of the writ petition and is extracted as under:

Office of the Deputy Inspector of Schools, Nagaon, Assam.

Order No. 356 dt. 6.4.87.

ORDER

Md. Azgar Ali, the Headmaster of Balikotia is discharged from service w.e.f. 19.3.87 as the Court held him guilty of murder.

Sd/- Sri Dharmeswar Nath, Deputy Inspector of Schools, Nagaon, Assam.

5. A perusal of the said order clearly shows that the deceased Md. Azgar Ali, Headmaster of the school was discharged from service from the date of his conviction by the trial Court.

6. It is stated that immediately after the death of her husband during the pendency of the criminal appeal in this High Court, the Petitioner had approached the authority praying for family pension etc. to her. Since she has not been paid any family pension, the Petitioner has moved this Court claiming the relief of granting family pension to her.

7. On perusal of the records including the writ petition, it is found that the Petitioner has not approached the concerned authority praying such relief of granting family pension to her. Instead, one Md. Mujahidul Islam, the son of late Azar Ali, the husband of the Petitioner, had approached to the Deputy Inspector of Schools, Nagaon, for granting family pension to his father's family by a representation which is annexed as Annexure-6 to this writ petition. I have not found any other demands made on behalf of the Petitioner before the competent authority.

8. Be that as it may, Mr. K.H. Choudhury, the learned senior counsel appearing on behalf of the Petitioner vehemently argues that since the Petitioner is an

illiterate uneducated widow, she could not file any representation before the concerned authority and the representation as Annexure-6 was only filed on behalf of her son and since the Government has not paid any heed to the said representation she has no other alternative but to approach this Court.

9. Mr. Choudhury, learned senior counsel in support of his submission, relies on the decision of this Court in WP(C) No. 938/2000 in the case of Bapu Ram Hazarika v. State of Assam and Ors. disposed on 13.03.2001 wherein this Court held as follows:

Before adverting to other points, I am at this stage point out that discharging of an office after enquiry is unknown in legal jurisprudence. Normally if a person is punished on enquiry, he is either dismissed or removed. The terminology of "discharge" is applied only in case of probationary officer.

10. It is submitted, from the record itself, it reveals that the Petitioner was only "discharged" from his service and once he is discharged, not being dismissed or removed, the deceased himself is entitled to pension as he has already rendered twenty four years of service as Headmaster.

11. Supporting the submission, Mr. Choudhury, learned senior counsel has referred to the various provisions of law laid down in the Assam Services (Discipline & Appeal) Rules 1964 for short "Appeal Rules" the Assam Services (Pension) Rules, 1969 (for short "Pension rules") and also F.R. 52.

12. Now let us see those provisions. Rule 7 of the disciplinary rules which runs as follows:

7. Nature of penalties - The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:

(i) Censure;

(ii) Withholding of increments or promotion;

(iii) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the Government of Assam or the Central Government or any other State Government or any local or other authority to whom services of a Government servant had been lent;

(iv) Reduction to a lower service, grade or post, or to a lower time scale, or to a lower stage in a time scale;

(v) Compulsory retirement;

(vi) Removal from service which shall not be a disqualification for future employment;

(vii) Dismissal from service which shall ordinarily be a disqualification for future employment.

Rule 24 and Rule 69 of Assam Services (Pension) Rules, 1969 read as follows:

24. Misconduct or inefficiency. No pension may be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency; but to officers so dismissed or removed compassionate allowances or/and compassionate gratuity may be granted when they are deserving of special consideration; provided that the allowance/gratuity granted to any officer shall not exceed two thirds of the pension/gratuity which would have been admissible to him if he had retired on medical certificate.

...

69. If an officer is selected for discharge owing to the abolition of a permanent post, he shall, unless he is appointed to Anr. post the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of his own, have the option:

(a) of taking any compensation pension or gratuity to which he may be entitled for the service he has already rendered, or

(b) of accepting Anr. appointment or transfer to Anr. establishment even on a lower pay, if offered, and continuing to count his previous service for pension.

The F. Rule 52 of the Fundamental Rules runs as under:

F. Rule 52. The pay and allowances of a Government servant who is dismissed or removed from service cease from the date of such dismissal or removal.

13. On a bare perusal of those provisions of law, it appears that the word "discharge" has nowhere been defined or mentioned in those provisions except in Rule 69 of the pension rules wherein the word "discharge" occurs in relating to abolition of some permanent post as mentioned hereinabove.

14. It is seen that under Rule 7 of the Appeal Rules, penalty can only be imposed as censure, withholding increment of compulsory retirement, removal from service, dismissed from service etc., but the word "discharge" does not come within the purview of Rule 7 of the Appeal Rules which clearly goes to show that the discharge is not a punishment. From the interpretation of those provisions of law, it also goes to show that once the person is not dismissed or removed from the service, he is entitled to for all his benefits like pension, gratuity on his retirement or death. In the instant case, the husband of the Petitioner was admittedly discharged from service and as such by a discharge being simpliciter from service, the Petitioner is entitled to family pension in view of the above provisions of law.

15. F.R. 52 of the other hand, has clearly showed about the situation of pay and allowances of one person who is dismissed or removed from service. That being the position, the Petitioner's husband not being dismissed or removed from service, the pensionary benefits like family pension cannot be withheld by the authority.

16. Being situated with such legal position, I am of the view that the Petitioner is entitled to family pension of her husband who was discharged from service and died during the pendency of this criminal appeal.

17. But from the record what appears is that the Petitioner has not approached the authority concerned for redressal of for such relief. Since she failed to approach the authority for such relief, I am of the considered view that ends of justice will be satisfied if the Petitioner is directed to approach the authority by filing a representation praying for grant of family pension of her deceased husband.

18. In that view of the matter, it is directed that the Petitioner shall approach the competent authority by filing an appropriate representation in this regard within a period of two months from today and on such presentation of the representation before the competent authority, the authority shall look into the matter and on proper investigation and enquiry, he shall consider the case of the Petitioner for giving family pension with all retiral benefits of late Azgar Ali in accordance with law. The entire process of such consideration be completed within 6 months from such presentation of the representation as mentioned above.

19. The Petitioner shall furnish a certified copy of the order alongwith a copy of the writ petition with all annexures appended thereto before the competent authority who shall do the needful as indicated hereinabove.

20. Before parting with the case, I would like to offer my thanks to Mr. K.H. Choudhury, learned senior counsel for rendering his valuable assistance to this Court on being appointed as amicus-curiae to assist this Court in this regard.

This disposes the writ petition. No Costs.