



GAHC010181132020

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5420/2020

SUCHITRA BALA ROY
W/O LATE SUBAL CHANDRA RAY
RESIDENT OF VILLAGE LALKURA
PO SAHEBGANJ, PS GAURIPUR, DIST DHUBRI, ASSAM, 783331

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ENVIRONMENT AND FOREST DEPARTMENT. ASSAM
SECETARIAT, DISPUR GUWAHATI 6
2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
ARANYA BHAWAN, PANJABARI, GUWAHATI 37 ASSAM
3:THE ACCOUNTANT GENERAL (A AND E)
ASSAM MAIDAMGAON
BELTOLA, GUWAHATI 781029
4:THE DIVISIONAL FOREST OFFICER
PORBATJHORA FOREST DIVISION CAMP
GAURIPUR, DHUBRI, ASSAM 78333

Advocate for the Petitioner : MR. J KALITA

Advocate for the Respondent : SC, AG

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 10.06.2022.

Heard Mr. J. Kalita, learned counsel for the petitioner. Also heard Mr. R.



Dhar, learned Standing Counsel for the A.G. (A& E) Assam and Mr. D. Gogoi, learned Standing Counsel, Forest Department.

2. The petitioner has filed this writ petition for release of DCRG because due to the petitioner on the death of her employed husband. The employer way back on June, 2012 forwarded a request to Accountant General (A&E) for payment of Death cum Retirement Gratuity (DCRG).
3. The Accountant General (A&E) has filed an affidavit and took a stand that as the service of the husband of the petitioner was not confirmed and therefore, in terms of Rules 140 and 142 of *Assam Services (Pension) Rules, 1969*, the petitioner is not entitled for such payment.
4. During the course of hearing the matter on 7.6.2022 and after going through the provisions of Rules 140 and 142, while this court was unable to find out any condition which stipulates that until and unless a person is confirmed in service and if he dies during his service, his family is not entitled for DCRG and while the learned counsel for Accountant General (A&E) also could not throw light on his clients stand, this Court requested, Mr. U. K. Nair, learned Senior counsel to assist this Court on the issue. Mr. Nair, learned Senior Counsel submitted that no such condition is available in the *Assam Services (Pension) Rules, 1969*. In such a situation Mr. R. Dhar, learned Standing Counsel AG (A&E) had prayed before this court that he may be granted two days time to have instruction from his client. Accordingly, matter was adjourned on 7.6.2022.
5. In the aforesaid backdrop, the Senior Accounts Officer, Legal Cell by his communication bearing No. Legal Cell/Pen-6/WP(C) No. 5420 /2020

/2022/ 86 dtd.NIL, address to learned counsel of the Accountant General (A&E) intimated that Payment order for DCRG in favour of the petitioner has been issued by way of payment order dtd.9.6.2022 However, the Senior Accounts Officer, Legal Cell by his communication cited the reasons for non payment of DCRG, which are as follows::

I. Although the Rule 135 *Assam Services (Pension) Rules, 1969* attracts for payment of gratuity to an officer who has completed five years of qualifying service but one of the condition of qualifying service as laid down in Rule 31 of *Assam Services (Pension) Rules, 1969* is that the employment must be substantive and permanent.

II. Therefore, Rule 31 had constrained the office of the Accountant General from authorizing payment of DCRG.

III. In this regard the authority had relied on a clarification dtd.20.11.2018 issued by the Pension & Public Grievance Department addressed to the Accountant General relating to admissibility of DCRG in case of death while in service.

6. The said communication dated 20.11.2018 discloses the following:

(a) That temporary service of not less than 20 years without being confirmed in any post may be allowed the pensionary benefit as available to a confirmed Govt servant on attaining the age of superannuation or on his being declared to be permanently incapacitate for further Government service by appropriate medical authority.

(b) In case of temporary Government servant with less than 20 years of qualifying service without confirmation at the time of retirement in service,



the prescribed Rule as laid down in *Assam Services (Pension) Rules, 1969* may be followed.

7. However, such stand was not taken in the affidavit in opposition, rather the ground for refusal of DCRG to the petitioner was that Rules 140 and Rule 142 debar payment of DCRG until and unless a person is confirmed in service.
8. Though the stand as aforesaid is not taken in the affidavit in opposition, however as the same are stated to the grounds which, "constrained" the Accountant General in paying the DCRG in question, let this court deal with these contentions.
9. Payment and entitlement of DCRG is dealt in Rule 135 of the Rules 1969. Sub Rule 1 of Rule 135 provides that an officer who has completed five years of qualifying service may be granted an annual gratuity not exceeding the amount as specified in sub Rule 3 of the said Rule. Sub Rule 2 provides that an officer who had completed five years of qualifying service and dies in service, a gratuity not exceeding the amounts specified in sub Rule 3 be paid to the person(s) on whom the right to receive the gratuity is conferred under Rule 136. As per Rule 136, the family includes also the wife in case of male officer.
10. It is undisputed that the husband of the petitioner on the date of his death had already completed the qualifying service of five years, inasmuch as in the present case the applicable Rule will be sub Rule 2 of Rule 135 read with sub Rule 1 of Rule 136.
11. Rule 31, on which the respondent Accountant General (A&E) relies on, provides that service of an officer does not qualify for pension

unless it conforms the conditions that the service must be under Government, Secondly, the employment must be substantive and permanent and thirdly, the service must be paid by the Government.

12. It is further provided that the Government may declare that any kind of specific services rendered in a non gazetted capacity shall qualify for pension even when either or both of the first and second conditions are not fulfilled. It is further provided that in individual cases and subject to such condition as the Govt may think fit; allow service rendered by an officer to count for pension.
13. Thus, it is absolutely clear that the condition required for grant of pension is that service should be under Government, in a substantive and permanent post and the salary be paid by the Government. Even if the first two conditions are not fulfilled, the Government can grant pension by imposing certain conditions. Even Government has power to declare any specific kind of service in a non gazetted capacity to be qualified service for grant of pension. In view of the aforesaid, the applicability of Rule 31 and the communication dated 20.11.2018 as relied on by the Accountant General is result of total non application of mind to the fact of the case as well as to the law in as much no such dispute has been raised in the present case.
14. In the aforesaid backdrop, this court rejects such contention of the Accountant General as raised in the Communication addressed to Mr. Dhar, learned counsel.
15. A further contention is raised in the said communication, issued by the Senior Accounts Officer to the Standing Counsel that the office



of the Accountant General could not authorize the DCRG earlier to the petitioner for non receipt of any clarification in regard to eligibility of service confirmation in respect of the petitioner's deceased husband.

16. The fact of the present case reveals that the employer i.e. the Divisional Forest Officer, by a communication dated 18.6.2012 addressed to the Accountant General (A&E) requested the Accountant General(A&E) to sanction DCRG and if any documents are required for such sanction and payment, the same was requested to be intimated to the Divisional Forest Officer.
17. The affidavit in opposition of the Accountant General (A&E) reflects that pursuant to a legal notice issued by the lawyer of the petitioner claiming DCRG, it was intimated to the petitioner that the matter was taken up with the Divisional Forest Officer by a communication 13.12.2020 to furnish required information. Thus it is apparent that the matter started proceeding only when a legal notice dated 12.10.2020 was issued by the Lawyer of the petitioner demanding DCRG.
18. Thereafter, on 23.12.2020, the Divisional Forest Officer intimated that it has not received any copy of the communication dated 24.12.2011 and 18.6.2012 stated to be issued by the Senior Accounts Officer. Thereafter, the Accountant General by its communication dated 4.1.2021 rejected the prayer of the petitioner on the ground as as stated in the affidavit in opposition.
19. From the aforesaid, the lackadaisical behaviour of the

respondent authorities are apparent. The petitioner is allowed to suffer and to face hardship for no fault of her but as a result of total non application of mind of the authorities and their lackadaisical approach, as discussed herein above.

20. In that view of the matter it is in the considered opinion of the Court that the petitioner, a widow of a government servant, who died while in service, has been suffering for the action / inaction of the respondent authorities for so many years. Her husband expired in the year 2005, though she was granted pension she was deprived of DCRG for wrong understanding of law inasmuch for non application of mind. After her much persuasion, the process was initiated by the Divisional Forest Officer on 18.6.2012. The petitioner had to approach this Court for her legal due in the year 2020 after all of her effort failed. The order for payment of DCRG dtd.9.6.2022 was issued, only after the order dated 7.6.2022 of this Court as discussed herein above.
21. Therefore, in the totality of the matter, this court is of the considered opinion that the petitioner is entitled for interest though the DCRG has already been directed to be paid.
22. The Hon'ble Apex Court in a recent judgment in State of *Andhra Pradesh -Vs- Dinavahi Lakshmi Kameswari* arising out of Civil Appeal No. 399/2021, by its judgment dated 08.02.2021 at paragraph 14 held that the direction for the payment of the deferred portions of the salaries and pensions is un-exceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for



years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees of the State. It was further held that though payment of interest cannot be used as a means to penalise the State Government, there can be no gainsaying the fact that the Government which has delayed the payment of salaries and pensions should be directed to pay interest at an appropriate rate.

23. Accordingly, the respondent State to pay an interest @ 6% per annum from the date on which the DCRG became due to the petitioner and same be paid within a period of six weeks from receipt of a copy of this order. If the payment is not made within six weeks from the date of receipt of a copy of this order to be furnished by the petitioner to the respondent, the interest rate shall be @ 9% per annum, thereafter.
24. A copy of this order be furnished to Mr. R. Dhar, learned Standing Counsel, Accountant General (A&G).
25. With the above observation and directions, this writ petition is disposed of.

JUDGE

Comparing Assistant