



GAHC010187532020

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

Case No. : WP(C)/5665/2020

REKHAMONI DEKA DAS
W/O- SRI. HIRENYA KUMAR DAS, R/O- VILL KULHATI (DAMDAMA), P.S.
HAJO, DIST.- KAMRUP ASSAM, PRESENTLY RESIDING AT- BEJERA, P.S.
BAIHATA CHARIALI, DIST.- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
THROUGH THE SECY., TO THE GOVT. OF ASSAM,, SECONDARY
EDUCATION DEPTT., DISPUR, GHY-06

2:THE STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
REP. BY ITS CHAIRMAN
THE CHIEF SECRETARY
TO THE GOVT. OF ASSAM
DISPUR
GHY-06

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE BODOLAND TERRITORIAL COUNCIL
REP. BY ITS PRINCIPAL SECRETARY
KOKRAJHAR
DIST.- KOKRAJHAR
BTAD
ASSAM

5:THE MEMBER
EDUCATION



BTC
KOKRAJHAR
DIST.- KOKRAJHAR
BTAD
ASSAM

6:THE DISTRICT LEVEL COMMITTEE
REP. BY PRINCIPAL SECRETARY
BTR
KOKRAJHAR
BTR
ASSAM.

7:THE INSPECTOR OF SCHOOLS
BAKSA DISTRICT CIRCLE
MUSHALPUR
DIST.- BAKSA
ASSA

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 06-09-2021

JUDGMENT & ORDER (ORAL)

Heard Mr. SC Biswas, learned counsel for the petitioner, Mr. D Mazumdar, learned Additional Advocate General, Assam appearing for the State respondents and Mr. P Nayak, learned counsel for the respondents No. 4 and 5 being the authorities under the BTC.

2. The husband of the petitioner was working as an Assistant Teacher (Science) in the Yogi Satyananda Girls High School in the Baksa district of Assam and his services were provincialised w.e.f. 01.08.1995. The husband of the petitioner did not return home from school on 20.05.2014 and since then his



whereabouts are not known to anyone. On 23.05.2014, the petitioner lodged an ejarah before the Goreswar Police Station, which was registered as Goreswar Police Station Case No.41/2014 under Section 342 of the Indian Penal Code. In respect of the missing of the husband of the petitioner, one Habeas corpus petition being W.P.(CrI) 03/2015 was also instituted. Apart from the habeas corpus petition, the petitioner also instituted another writ petition being WP(C) No.3399/2015, inter-alia claiming for family pension under Rule 143-A of the Assam Services (Pension) Rules, 1969. The said writ petition was dismissed by the learned Single Judge vide judgment dated 15.06.2015. In the circumstance, the petitioner preferred an appeal before the Division Bench which was numbered as WA 351/2015.

3. The WA 351/2015 was given a final consideration by the judgment and order dated 27.11.2017. In the writ appellate proceeding, an up-to-date status report of the Baihata Chariali Police Station Case No.154/2014 as on 03.11.2017 was placed before the Division Bench. The contents of the report was recorded in the judgment dated 27.11.2017 of the Division Bench. The purport of the status report was that the husband of the petitioner may have been involved in obtaining loan from private sources and that there may be a possibility of some of the persons from whom he had borrowed money to be involved in his disappearance. The Division Bench accordingly allowed the investigation to go on. But, however having so provided, the Division Bench also took note of the provision of Rule 143-A of the Assam Services (Pension) Rules, 1969 and observed that as per the said Rule 143-A, the family of a missing Government employee at the first instance be paid the amount of salary due, leave encashment due and the amount of GPF etc after one year from the date of receipt of a report from the police. 4. Having taken note of that the husband



of the petitioner went missing from 20.05.2014 and that the status report submitted was up to 03.11.2017, the Division Bench formed its opinion that the provision of Rule 143-A of the Assam Services (Pension) Rules, 1969 will be attracted in the present case. Accordingly, the order of dismissal by the learned Single Judge dated 15.06.2015 was set aside and the writ appeal was allowed by directing the respondents therein to pay the admissible dues to the petitioner in terms of Rule 143-A of the Assam Services (Pension) Rules, 1969 within a period of three months thereof. This writ petition is instituted on the grievance that in the meantime seven years had elapsed since the disappearance of the husband of the petitioner and it being so, the provision of Section 108 of the Evidence Act, 1872 would also be applicable over and above what was provided by the Division Bench in the judgment dated 27.11.2017.

5. Mr. D Mazumdar, learned Additional Advocate General, Assam has produced certain communications from the Deputy Director of Secondary Education, Assam as well as Director of Pension, Assam, the purport of which is that the Director was asked to look into the matter and provide urgent instruction. By another communication dated 06.01.2021 of the Director of Pension, Assam, it was provided that the order of the writ appeal was not received by the Director of Pension and therefore, he is of the view that he is not required to do anything further.

6. Both the instructions do not give an answer to the question as to why the specific direction of the Division Bench in the judgment dated 27.11.2017 in WA 351/2015 had not been duly complied with by providing the petitioner with the required benefits under Rule 143-A of the Assam Services (Pension) Rules, 1969.

7. Mr. D Mazumdar, learned Additional Advocate General, Assam by referring



to the provisions of Rule 143-A of the Assam Services (Pension) Rules, 1969 submits that under the said Rule, there is a requirement that Rule 143-A can be acted only upon receipt of a report from the police authorities and in the instant case, there is no such conclusive report from the police authorities and therefore, the provision of Rule 143-A of the Assam Services (Pension) Rules, 1969 could not be invoked for giving the necessary benefits to the petitioner.

8. Without going into all such issues being raised, what we take note of that Section 108 of the Evidence Act, 1872 provides that when a question is involved whether a man is alive or dead and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is on the person who affirms it. A reading of Section 108 of the Evidence Act, 1872 would go to show that the first condition to be satisfied is that the person who would have naturally heard of him had he been alive had not heard or seen the person concerned for seven years or more.

9. In the instant case, this writ petition is filed by the wife of Hiranya Kumar Das, who has been missing since 20.05.2014 and the petitioner being the wife had neither seen nor heard of the person concerned for more than seven years. From that point of view, the first condition of Section 108 of the Evidence Act, 1872 is satisfied in the present case.

10. The second condition of Section 108 of the Evidence Act, 1872 is that if any other person claims that the person concerned is still alive, it is for that person or authority to prove it that the person concerned is still alive.

11. In the instant case, the only manner in which the presumption under Section 108 of the Evidence Act, 1872 can be rebutted by the respondent



authorities is that if the respondent authorities or any person acting under them has a specific knowledge that the husband of the petitioner is still alive and in such event the benefits of Section 108 can be denied. But, no material is available before the Court that any of the officials from the respondent Department or anybody acting under them has any specific knowledge that the husband of the petitioner is still alive. So from the said point of view, even the second condition applicable to Section 108 of the Evidence Act, 1872 is satisfied in the present matter.

12. The stand taken by the respondents is that as because a police report is not available in order to initiate the proceeding under Rule 143-A of the Assam Services (Pension) Rules, 1969, therefore, the authorities are unable to pay the pensionary benefits to the petitioner under Rule 143-A.

13. A reading of Rule 143-A of the Assam Services (Pension) Rules, 1969 would go to show that such benefits payable to the family of a Government employee who disappears leaving his family is for providing immediate relief under Rule 143-A i.e. within a period of one year of a report being received from the concerned police station. The police report is necessary in order to confirm the disappearance of the employee concerned.

14. In the instant case, when more than seven years have elapsed and Section 108 of the Evidence Act, 1872 is applicable, we are of the view that the requirement of Rule 143-A of the Assam Services (Pension) Rules, 1969 for a police report in order to confirm the disappearance of the person for providing the benefits under the Rule 143-A has in the meantime become redundant. The presumption of law under Section 108 of Evidence Act, 1872 would now be the basis to arrive at the conclusion of the disappearance of the government employee. After the passage of seven years when the provision of Section 108



of the Evidence Act, 1872 is already attracted in the matter, the requirement of Rule 143-A of the Assam Services (Pension) Rules, 1969 to have a police report to initiate the process under the said Rule is now no longer relevant.

15. We have taken note that the Director of Pension is not a respondent in the present proceeding. Accordingly, we require the Director of Pension, Assam to be added as respondent No.8 and Mr. G Pegu, learned Additional Senior Government Advocate accepts notice on behalf of the Director of Pension.

16. In light of the judgment of the division Bench in WA 351/2015 dated 127.11.2017, we direct the respondents in the Secondary Education Department, Government of Assam as well as the respondents in the Pension Department, more particularly the Director of Pension to forthwith bring the process of payment of family pension to the petitioner under Rule 143-A of the Assam Services (Pension) Rules, 1969 to its logical end and in doing so, the conclusions and opinion rendered hereinabove be made the basis for the purpose. What would be the actual amount of family pension and whatever collateral benefits to be given to the petitioner be decided by the Secondary Education Department and the Director of Pension in an appropriate manner as provided under the law.

17. What we require is that whatever amount the petitioner is entitled as a family pension under Rule 143-A of the Assam Services (Pension) Rules, 1969 be immediately started to be given to the petitioner. For the purpose, we provide that from the month of October, 2021 onwards at least the monthly family pension be given to the petitioner by completing all the necessary formalities. This direction is specifically addressed to the Director of Secondary Education, Assam as well as to the Director of Pension, Assam, who shall conjointly ensure that the requirement of this order is duly complied with. Rest



of the benefits be given to the petitioner after calculating the same within a period of three months from the date of receipt of a certified copy of this order.

18. The communications provided by Mr. D Mazumdar, learned Additional Advocate General, Assam are kept on record.

19. In terms of the above, the writ petition stands allowed.

JUDGE

Comparing Assistant