



GAHC010224372021

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

Case No. : WP(C)/926/2022

ABHESWARI BASUMATARY
W/O- LATE LAXMIRAM BASUMATARY, MOTHER OF DECEASED
EMPLOYEE LATE GOPINATHBASUMATARY, R/O VILLAGE NO.2,
CHARAGAON, P.O- HANCHORA, DIST- CHIRANG, BTC, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF ELEMENTARY EDUCATION, ASSAM, DISPUR, GHY 06

2:THE DIRECTOR
OF ELEMENTARY EDUCATION
KAHILIPARA
GHY 19
KAMRUP (M)
ASSAM.

3:THE DIRECTOR OF PENSION AND PUBLIC GRIEVANCES
HOUSEFED COMPLEX
DISPUR
GHY-06

4:THE DEPUTY INSPECTOR OF SCHOOLS
BIJNI
P.O- BIJNI
DIST- CHIRANG
ASSAM

5:THE ACCOUNTANT GENERAL
MAIDAMGAON
BELTOLA



GUWAHAT

Advocate for the Petitioner : MR. S NATH

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date: 15.02.2022

Heard Mr. S Nath, learned counsel for the petitioner. Also heard Mr. NJ Khataniar, learned counsel for the respondents No.1, 2 and 4 being the authorities under the Elementary Education Department, Government of Assam, Ms. DD Barman, learned Additional Senior Government Advocate for the respondent No.3 being the Director of Pension and Public Grievances, Assam and Mr. A Hasan, learned counsel for the respondent No.5 being the authorities in the Accountant General, Assam.

2. The son of the petitioner Gopinath Basumatary was an Assistant Teacher in 253 No.Dahalapara LP School, Bijni and he was appointed on 27.01.1996 and received his regular scale of pay from 1998.

3. The son of the petitioner while in service died on 13.05.2007 in harness due to heart attack. This writ petition is instituted by the petitioner claiming for family pension under Rule 143 of the Assam Services (Pension) Rules 1969 (for short, the Rules of 1969) on account of the pensionable service rendered by her

deceased son.

4. The petitioner is a 79 years old lady and it is stated that the application for pension was submitted by her on 03.09.2020. Ms. DD Barman, learned Additional Senior Government Advocate appearing for the Director of Pension points out that the copy of the application annexed does not bear any endorsement by the Department of it having been received. Without going into such question, we take note that under the un-amended Rule 143 of the Rules of 1969, there was no provision of family pension in respect of a mother of a deceased employee. By the Notification No.PPG(G)10/2013/38 dated 20.08.2015 of the Commissioner and Secretary to the Government of Assam in the Pension and Public Grievances Department, the Assam Services (Pension) Amendment Rules, 2015 (for short, the Amendment Rules of 2015) was notified. As per the Amendment Rules of 2015, for the purpose of Rule 143 of the Rules of 1969, after Rule 143(ii)(c), the following had been added.

Rule 143 (ii) of the Amendment Rules of 2015 is extracted as below:

“....Family pension under this Rule shall be admissible to the following provisions of Rule 143 (ii) of the Assam Services (Pension) Rules, 1969 apart from (a) to (c) in the existing provisions.

(d) to the father.

(e) failing (d) to the mother

(f) failing (d) & (e) to the eldest surviving brother upto 18 years of age.

(g) failing (d) (e) & (f) to the eldest surviving unmarried sister upto the age of 21 or marriage, whichever is earlier.

In addition to above, a Sub Rule 143 (ii)-A will also be included.”

5. A reading of the amended Rule 143 (ii) as per the Amendment Rules of 2015 would go to show that on and from the Notification dated 20.08.2015 even a dependant mother of a deceased employee would be entitled to family pension in a situation where the father is no more. In the instant case, it is stated that the petitioner being the mother of an employee of the Elementary Education Department is entitled to a family pension under the amended Rule 143 of the Rules of 1969.

6. We have taken note that the Amendment Rules of 2015 was made in exercise of the powers under the provisions of Article 309 of the Constitution of India. Thereafter the Rules of 1969 was further amended by the Assam Services (Pension) Amendment Rules 2018 (for short, the Amendment Rules of 2018). Note-3 of the Amendment Rules of 2018 provides as extracted:

“Note 3: If at the time of submission of family pension claim, there are no minor children in the family, the family pension shall be paid from the date of filing application by the claimant or from the date of coming into force of this notification whichever is later. No claim for arrear benefit under this clause shall be entertained. Otherwise, the family pension shall be paid from the date following the date of death of the widow/widower as the case may be.”

7. A reading of the Note 3 of the Amendment Rules of 2018 would go to show that for the purpose of family pension, it would be paid from the date of



filing of the application by the claimant or from the date of coming into force of the Notification dated 09.08.2018 by which the Amendment Rules of 2018 was notified. It further provided that no claim for arrear benefit would be entertained. A conjoint reading of the Amendment Rules of 2015 and the Amendment Rules of 2018 would go to show that the entitlement of family pension to a mother would either be from the date of filing of the application or from the date of coming into force of the amendment, whichever is later. In the instant case, it is stated that the application was filed by the petitioner on 03.09.2020.

8. A reading of the provisions of the two amendments as per Amendment Rules of 2015 and Amendment Rules of 2018 would go to show that the petitioner would be entitled to a family pension from the date on which the application for such claim was made i.e. 03.09.2020.

9. Accordingly, we allow this writ petition and direct the Director of Pension and Public Grievances Department to process the application of the petitioner for payment of family pension and the same be paid from 01.03.2022 onwards. As regards the claim of the petitioner for family pension from the date of application upto 01.03.2022, the respondents in the Directorate of Family Pension and Public Grievances may verify from the records as to on which date the petitioner actually filed such application and necessary order be passed for payment of the family pension for the period between the date of application and 01.03.2022 and the same be done within a period of four months from the date of receipt of the certified copy of this order.



10. In addition to the above, in order to facilitate the process, the petitioner may submit a fresh application for family pension forthwith so that the Directorate of Family Pension can process the same for payment of the family pension from 01.03.2022 onwards. But for the period between the earlier application dated 03.09.2020 and 01.03.2022, the earlier application would be acted upon.

11. The petitioner to obtain a certified copy of this order and place it before the Director of Pension and Public Grievances, Assam immediately.

12. For the purpose as the deceased son of the petitioner was an employee of the Elementary Education Department, the Director of Elementary Education Assam also to do the needful and to cooperate with the Director of Pension and Public Grievances Assam so that the needful can be done as indicated hereinabove.

13. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant