



GAHC010063252022

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

Case No. : WP(C)/2431/2022

USHA ADHIKARI
W/O- LATE DURGA PRASAD UPADHYAYA, R/O- VILL CHAULKARA, P.O-
NIKASHI, DIST-BAKSA,BTAD, ASSAM, PIN-781372

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
SACHIVALAYA, DISPUR, GUWAHATI-781006

2:THE PRINCIPAL SECRETARY

TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT DISPUR
GUWAHATI-781006

3:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
JURIPAR
GUWAHATI-37

4:THE DIRECTOR
OF PENSION
ASSAM
HOUSEFED COMPLEX
GUWAHATI-06

5:THE CHIEF EXECUTIVE OFFICER
KAMRUP ZILLA PARISHAD
GUWAHATI



DIST- KAMRUP (M)
ASSAM
PIN-781001

6:THE TREASURY OFFICER
KAMRUP TREASURY
DIST- KAMRUP (M)
ASSAM
PIN-78100

Advocate for the Petitioner : MR. K R PATGIRI

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 26-09-2022

Heard Mr. K.R. Patgiri, learned counsel for the petitioner and Mr. K. Konwar, learned counsel for the respondents No. 1, 3 and 5, being the authorities under the Panchayat and Rural Development Department of the Government of Assam. Also heard Ms. A. Talukdar, learned counsel for the respondents No. 2 and 5, being the authorities under the Pension and Public Grievance Department and Mr. A. Chaliha, learned counsel for the respondent No. 6, the Treasury Officer, Kamrup(M).

2. The husband of the petitioner Durga Prasad Upadhaya who was appointed as a Tax Collector of Rajapara Gaon Panchayat on 01.03.1976, later on was promoted to the post of Gaon Panchayat Secretary on 16.09.1996 died on 25.09.2017 while he was still in service. This writ petition is instituted by the wife of the deceased employee on the grievance of not being paid the family pension.

3. Mr. K. Konwar, learned counsel for the respondents in the Panchayat and Rural Development Department states that there was a disciplinary proceeding pending against the deceased husband of the petitioner when he died and therefore, the respondents are not further processing the family pension of the petitioner.

4. The family pension is governed by Rule 140 of the Assam Services (Pension) Rules, 1969 (for short 'the Rules of 1969'), which inter alia, provides that if a Government employee dies in service after having rendered more than one year of service, in such event, the family would be entitled to a family pension. Admittedly, the deceased husband of the petitioner having appointed on 01.03.1976, promoted on 16.09.1996 and died on 25.09.2017, had completed more than one year of service in order to make the petitioner entitled for family pension under Rule 140-C of the Rules of 1969. Family pension would be applicable if under the Rules, the deceased employee was in a pensionable service and entitled to pension. The submission of the respondents that there was a disciplinary proceeding pending against the petitioner when he died in our view, cannot be a reason to arrive at any conclusion that the deceased husband of the petitioner was not entitled to pension. Deprivation of pension can be made only under Rule 21 of the Rules of 1969, which inter alia, provides that if there was a disciplinary or a criminal proceeding, either contemplated or pending, against a Government employee, the pension can be withheld. But the said provision in respect of withholding the pension of a Government employee would be inapplicable once the Government employee dies, as there can be no further occasion to either continue with the disciplinary proceeding or to contemplate the disciplinary proceeding and therefore, the condition precedent to invoking the Rule 21 of the Rules of 1969 would no longer exist on the death



of the Government employee.

5. From such point of view, it cannot be said that the husband of the petitioner was not in a pensionable service so as to disentitle the petitioner to family pension. Accordingly, the respondents in the Panchayat and Rural Development Department are directed to process the family pension of the petitioner and complete the same and bring it to its logical end within a period of 6(six) weeks from the date of receipt of certified copy of this order.

Writ petition stands disposed of as indicated above.

JUDGE

Comparing Assistant