



GAHC010118292022

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

Case No. : WP(C)/4109/2022

SANGITA BANIA
S/O- LATE BHASKAR KALITA, R/O- HOUSE NO. 01/A, JAPORIGOG,
KRISHNA NAGAR BAZAR, GUWAHATI, P.O. AND P.S. DISPUR, DISTRICT-
KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 9 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HOME DEPARTMENT, JANATA BHAWAN,
DISPUR, GUWAHATI-06.

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT (PAY AND RESEARCH UNIT)
BLOCK- F
2ND FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI-06.

3:THE UNDER SECRETARY TO THE GOVT. OF ASSAM
FINANCE (PAY AND RESEARCH UNIT) DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCE DEPARTMENT
HOUSE-FED COMPLEX
DISPUR
GUWAHATI-06.

5:THE DIRECTOR GENERAL OF POLICE



ASSAM
ULUBARI
GUWAHATI-07.

6:THE DEPUTY INSPECTOR GENERAL OF POLICE (A)
ASSAM
GUWAHATI-07.

7:THE SUPERINTENDENT OF POLICE
DIST.- TINSUKIA
ASSAM.

8:THE SCREENING COMMITTEE
REPRESENTED BY ITS CHAIRMAN
THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-07.

9:THE DIRECTOR OF PENSION
HOUSEFED COMPLEX
DISPUR
GUWAHATI-6.

10:THE ACCOUNTANT GENERAL (A AND E)
MAIDAMGAON
BELTOLA
GUWAHATI- 781029
DIST. KAMRUP(M)

Advocate for the Petitioner : MR. S BORTHAKUR

Advocate for the Respondent : GA, ASSAM

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

Date : 22-06-2022

JUDGMENT & ORDER (ORAL)

Heard Mr. A Deka, learned counsel for the petitioner. Also heard Mr. SS Roy, learned Junior Government Advocate for the respondents No.1, 4, 5, 6, 7, 8 and 9 being the authorities under the Home Department, Government of Assam, Mr. B Gogoi, learned counsel for the respondents No.2 and 3 being the authorities under the Finance Department of the Government of Assam as well as Mr. A Hasan, learned counsel for the respondent No.10 being the Accountant General (A&E) Assam.

2. The husband of the petitioner, Bhaskar Kalita was serving as the Sub Inspector in the Assam Police had joined his services on 28.03.2008 and he died on 04.05.2018. On his death, the petitioner being the wife of the deceased employee is being paid the family pension corresponding to the scale of pay that was applicable to the deceased husband of the petitioner when he died. Under the MACPS, the deceased husband of the petitioner was entitled to one financial upgradation on completion of ten years of service. Accordingly, upon completing ten years of service on 30.03.2018, the deceased husband of the petitioner was entitled to the MACPS benefit. In the circumstance, petitioner had made a claim that as the husband of the petitioner was entitled to one MACPS benefit, the petitioner be accordingly paid the pensionary benefits corresponding to a scale of pay which would include such MACPS benefit. But the claim stood rejected by the communication dated 31.07.2021 of the Deputy Inspector of Police (A) Assam. In the said communication, the Deputy Inspector of Police (A) Assam was of the view that the benefit of MACPS would have been applicable to the deceased husband of the petitioner from 01.01.2019 i.e. on the first day of January of the next year in which the employee concerned had completed 10 years of service and as on 01.01.2019 as the deceased husband of the



petitioner was not alive, therefore, the benefit would not accrue to him. We are unable to agree with the reasoning of the Deputy Inspector of Police (A) Assam on the ground that the legal right which had already accrued to an employee during his service tenure cannot be taken away on the ground that at the time when the benefit is to be given the deceased employee is no more.

3. Mr. B Gogoi, learned counsel for the respondents has also been heard on the aforesaid question, but no proposition of law could be produced before the Court, which may indicate that the service benefit which may accrue to an employee during his service tenure can be denied because on the date on which the benefit is to be granted the employee is no more.

4. We also take note of that once the service benefit had accrued to an employee during his service tenure, the same can be taken away only after following the proper procedure i.e., by giving a reasonable opportunity of being heard. The same procedure would also be applicable in the present case, but as the employee i.e. the husband of the petitioner is no more, there is no scope of giving a show cause notice for taking away the benefit which already had accrued to the deceased employee. From such point also we are of the view that the benefit of MACPS which had already accrued to the deceased husband of the petitioner cannot be denied. We also notice that the MACPS does not provide that once a benefit is accrued to the employee, but dies before the actual benefit can be given, such benefit would no longer be applicable.

5. Considering the matter in its entirety, we interfere with the communication



dated 31.07.2021 of the Deputy Inspector of Police (A) Assam and direct the respondent authorities to grant the pensionary benefits to the petitioner at the rate of the scale of pay which would include the benefits of MACPS which the deceased husband of the petitioner was entitled w.e.f. 01.01.2019. In doing so, the necessary procedure as provided in the Notification dated 06.07.2017 be followed.

6. Writ petition accordingly stands allowed.

JUDGE

Comparing Assistant