



GAHC010243112022

Page No.# 1/7



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

Case No. : WP(C)/7653/2022

KANIKA DEKA AND 2 ORS
W/O- BALABHADRA DEKA, VILL- NIZBAHJANI, KALITAPARA, P.O.
NIZBAHJANI, DIST.- NALBARI, ASSAM, PIN- 781334

2: NILAKSHI DEKA
D/O- BALABHADRA DEKA
VILL- NIZBAHJANI
KALITAPARA
P.O. NIZBAHJANI
DIST.- NALBARI
ASSAM
PIN- 781334

3: BHANITA DEKA
D/O- BALABHADRA DEKA
VILL- NIZBAHJANI
KALITAPARA
P.O. NIZBAHJANI
DIST.- NALBARI
ASSAM
PIN- 78133

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF PHE,
ASSAM, DISPUR, GHY-6

2: THE CHIEF ENGINEER (PHE)
WATER ASSAM
HENGRABARI
GHY-36

3: SECRETARY TO THE GOVT. ASSAM



DEPTT. OF FINANCE
DISPUR
GHY-6

4:THE EXECUTIVE ENGINEER (PHE)
GUWAHATI DIVISION-II

5:DIRECTOR OF PENSION AND PUBLIC GRIEVANCE
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-

Advocate for the Petitioner : MR C GOSWAMI

Advocate for the Respondent : SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 19-12-2022

JUDGMENT & ORDER (ORAL)

Heard Mr. C Goswami, learned counsel for the petitioners, Mr. D Gogoi, learned counsel for the respondents No. 1, 2 and 4 being the authorities in the PHED, Mr. A Chaliha, learned counsel for the respondent No. 3 being the authority in the Finance Department and Ms. S Barua, learned counsel for the respondent No. 5 being the authority in the Pension and Public Grievance Department.

2. The petitioner No. 1 is the wife and the petitioners No. 2 and 3 are the daughters of Balabhadra Deka, who was working as a Khalasi in the respondent PHED Department. On 11.09.2020 Balabhadra Deka was entrusted the duty of working in the Panbazar Water Supply Scheme (in short PWSS). While performing his duty, the employee Balabhadra Deka went missing and in this respect Suwalkuchi River PS UD Case No. 15/2020 was registered on the



information being lodged by Kumud Deka being the brother of Balabhadra Deka. As the person concerned was missing while working over the river Brahmaputra, the investigation was also made by the Pandu river police out post resulting in Pandu RPOP GD No. 171 dated 11.09.2020 and 185 dated 12.09.2020. In this respect, there is a report submitted by the in-charge of Pandu RPOP dated 18.11.2020 which is available as Annexure-G page 26 to the writ petition. The report dated 18.11.2020 is extracted as below:-

*“With reference to the subject cited above, I have the honour to state that on 11-09-2020 at about 10-30 AM one Shri Hrishikesh Deka S/O Shri Kumud Deka of Hengrabari, Sewali Path P.S- Dispur informed telephonically that his uncle Shri Balabhadra Deka age about 50 yrs. is missing from the water supply barge, backside of old D.Cs Bunglow, Panbazar who was an employee as Khalasi PHE, Panbazar PWSS and suspected that he may be fallen into the River Brahmaputra from the said barge while he was performing his duties there. After receiving the information self alone with my staff rushed to the spot and informing the matter to River Patrolling Party, SDRF and NDRF as well as to the superior officers. This ref. Pandu RPOP GDE No. 162 and 163, dtd. 11/09/2020. During search operation one Mobile Handset bearing **SIM No. 98645-05771 and one Gamocha** found in the Cabin of said barge and seized the same.*

After reaching the P.O. I along with my staff, SDRF and NDRF conducted search operation to trace out said Balabhadra Deka but could not able to trace him. In this regard, one Shri Kumud Deka, brother of Balabharda Deka submitted an FIR addressing to the O/C, Sualkuchi RPS, accordingly O/C registered an U.D. case vide Sualkuchi RPS U.D. case No. 15/2020 and endorsed the same to me this ref. Pandu RPOP GDE Nos. 171 dtd. 11-09-2020 and 185 dtd. 12-09-2020. I along with staff, SDRF and NDRF search the said areas as well as down stream of River Brahmaputra vide GDE Nos. 180 dtd. 12-09-2020, 195 dtd. 13-09-2020 and 211 dtd. 14-09-2020 but could not success. During search operation statement of witnesses namely (i) Shri Bhaba Dev Sarma and (ii) Md. Akib Javed Ali both are employees of PHED were recorded at the P.O. about the said missing person but they not seeing the drowning of the person but presumed that he may be drowned from the barge. In this regards, W.T. messages were also sent to the down stream P.Ss/ o.Ps/RPSs/RPOPs to trace out the said untraced person vide Sig. Nos. Pandu RPOP (1) Sig. No.PND/ Vol-I/ 65-67/ 2020 dtd. 11-09-2020 and (2) Sig. No.

PND/Vol-I/82-92/2020 dtd. 17-09-2020 but not able to trace out by the PSs.

Further, it is mentioned here that the fact is requested to publish the Daily News Paper through CPRO after collecting his Photograph by this office as the victim not yet recovered and accordingly the information published on 12-09-2020, 13-09-2020 and 19-09-2020 in the leading news paper through CPRO office as per our memo No. RP/Crime/UD/148/Vol-II/2019-2020/1189 dtd. 15-09-2020 (paper cutting enclosed). This case is still pending for tracing out the victim Balabhadra Deka."

3. A reading of the aforesaid report makes it discernible that the employee Balabhadra Deka while he was working on a barge in course of his duty in the PWSS is suspected to have fallen in the river Brahmaputra. The river police had made all the efforts to trace out the disappeared husband of the petitioner No. 1, but were unsuccessful and accordingly it is a report of the river police that Balabhadra Deka is presumed to have drowned in the river Brahmaputra while working on the barge. The report of the river police dated 18.11.2020 makes it implicit and unambiguous that the husband of the petitioner No. 1 disappeared while he was performing his duty for the respondent authorities. In the circumstance, the wife and the daughters of the disappeared employee Balabhadra Deka instituted this writ petition claiming family pension.

4. Family pension for an employee, whose whereabouts are not known or suddenly disappeared is provided under Rule 143A of the Assam Services (Pension) Rules, 1969 (in short Rules of 1969), which is extracted as below:-

"[143-A- The family pension and death-cum-retirement gratuity to the families of Government servant who suddenly disappears leaving their families and whose whereabouts are not known shall be granted after observing the following formalities-

- (1) When an employee disappears leaving his family, the family may be paid in the first instance the amount of salary due, leave encashment due and the amount of G.P.F having regard to the nomination made by the employee.*
- (2) After the elapse of a period one year as provided under sub-rule(5)*

below, other benefits like death-cum-retirement gratuity/family pension may also be granted to the family subject to the fulfilment of conditions prescribed in the following sub-rules.

- (3) *The above benefits may be sanctioned by the Head Offices after observing the following formalities-*
- (i) *The family of disappeared employee must lodge a report with the concerned police station and obtain a report that the employee has not been traced after all efforts had been made.*
- (ii) *An Indemnity Bond or as per Annexure-I shall be taken from the nominees/dependents of the employee that all payments shall be adjusted against the payment due to the employee in case he appears on the scene and makes any claim.*
- (4) *The head of Officers shall assess all Government dues outstanding against the Government servant and effect their recovery in accordance with the provisions laid down in clause-7 (seven) of the Office Memorandum No. FMP.14/86/23, dated 26.5.87 and other instructions in force for effecting recovery of the Government dues.*
- (5) *The date of disappearance of the employee shall be reckoned from the date of issue of the report by the concerned police station stating that the employee has not been traced out after all efforts had been made and the period of 1(one) year after which the benefits of family pension and Death-cum-Retirement Gratuity are to be sanctioned shall also be reckoned from this date.*
- (6) *The family should apply to the Head of Office of the Government servant for grant of family pension and Death-cum-Retirement gratuity after 1(one) year from the date of disappearance of the Government servant in accordance with the prescribed procedure for sanction of family pension and death-cum-retirement gratuity as contained in OM No. FMP. 14/86/23. Dt. 26.4.87.*

Note- *in case the disbursement of death-cum-retirement gratuity is not affected within 3(Three) months from the date of application received from the applicant along with the date of application received from the applicant along with necessary documents the interest shall be paid at the rates applicable and responsibility for the delay shall be fixed.*

- (7) *Other rules and procedures of the Assam Services (Pension) Rules, 1969 shall apply in setting the cases under this rule wherever necessary."*

5. A reading of the Rule 143A(1) of the Rules of 1969 makes it discernible that a Government servant who suddenly disappears leaving their families and whose whereabouts are not known shall be granted at the first instance the amount of salary due, leave encashment due and the amount of GPF having regard to the nomination made by the employee . Rule 143A(2) provides that after the elapse of a period of one year, the other benefits like death cum retirement gratuity/family pension may also be granted to the family subject to the fulfilment of the conditions prescribed therein. Rule 143A(3) provides that the benefits may be sanctioned by the Head Offices after observing the formality that the family of the disappeared employee must lodge a report with the concerned police station and obtain a report that the employee has not been traced after all efforts had been made and further that an indemnity bond as per Annexure-I shall be taken from the nominees/dependents of the employee that all payments shall be adjusted against the payment due to the employee in case he appears on the scene and makes any claim.

6. In the instant case, the requirement of Rule 143A(3)(i) is satisfied to the extent that there is a police report by the river police of Assam that in spite of all the efforts made, the disappeared husband of the petitioner No. 1 could not be traced out and it is suspected that he was drowned while working on a barge on river Brahmaputra. In other words, it can be accepted that there is a report by the police authorities that the disappeared husband of the petitioner No. 1 had not been traced after all efforts had been made.

7. Consequently, we are of the view that the provisions of Rule 143A(1) and 143A(2) are applicable in the case of the petitioners. Accordingly, the Chief Engineer, PHED is directed to process the necessary papers for giving the necessary benefits to the petitioners as regards the amount of salary due, leave



encashment due and the amount of GPF and thereupon after one year from the date of disappearance, the other benefit like death cum retirement gratuity/family pension etc be also paid to the petitioners.

8. In doing so, for the purpose, the petitioners shall approach the office of the Chief Engineer, PHED with necessary documents to establish that they respectively are the wife and daughters of the disappeared employee Balabhadra Deka and upon the said factual aspect being satisfied, the Chief Engineer is directed to do the needful as indicated above i.e. to give the benefit under Rule 143A(1) for the first year after the disappearance and thereafter the pension etc from expiry of one year from the date of disappearance of the Government employee as per Rule 143A(2). The Chief Engineer shall do the needful and complete the same within a period of one month from the date of appearance of the petitioners before the Chief Engineer, PHED.

The writ petition is allowed to the extent as indicated above.

JUDGE

Comparing Assistant