

GAHC010027472017



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

Case No. : WP(C)/3635/2017

AMRIT PROVA DUTTA and ANR.
W/O LATE PRADIP DUTTA, R/O BENGENAGARA, PS-MACHKHOWA, DIST.
DHEMAJI, ASSAM

2: SMTI. MERI SAIKIA
W/O LATE GHANA SAIKIA @ GHANA KANTA SAIKIA
R/O- MACHKHOWA
PATHALIAL
PSDIST. DHEMAJI
ASSAM

VERSUS

THE STATE OF ASSAM and 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPTT., SACHIVALAYA, DISPUR, GUWAHATI-
781006, ASSAM

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPTT. SACHIVALAYA DISPUR
GUWAHATI-781006 ASSAM

3:THE ACCOUNTANT GENERAL Aand E MOIDAMGAON
BELTOLA GUWAHATI-19 ASSAM

4:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA GUWAHATI-19 ASSAM

5:THE DIRECTOR OF PENSION HOUSEFED COMPLEX
DISPUR GUWAHATI ASSAM

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER DHEMAJI
PIN-787057 ASSAM

7:THE DEPUTY INSPECTOR OF SCHOOLS DHEMAJI
DIST. DHEMAJI ASSAM

Advocate for the Petitioner : MR.U J SAIKIA
Advocate for the Respondent : SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 06.02.2024

Heard Mr. A. Gohain, learned counsel for the petitioners. Also heard Mr. U. Sarma, learned standing counsel, Elementary Education Department, appearing on behalf of respondents No. 1, 4, 6 & 7; Mr. A. Hasan, learned counsel, appearing on behalf of respondent No. 3; Mr. B. Deuri, learned Government Advocate, appearing on behalf of respondent No. 5; and Mr. B. Gogoi, learned standing counsel, Finance Department, appearing on behalf of respondent No. 2.

2. The petitioners who are the wives of Late Pradip Dutta, an Assistant Teacher of No. 1 Borajan Lower Primary School, Dhemaji, and Late Ghana Saikia @ Ghana Kanta Saikia, an Assistant Teacher of Borpak Guwaldoi Lower Primary School, Dhemaji, have joined together to institute the present proceedings, raising a grievance with regard to non-release of the salaries of their husbands w.e.f. August, 2007, till the date of their death, with a further prayer for disbursal of pension and pensionary benefits due to them on account of the services rendered by their deceased husbands.

3. The case as projected by the petitioners in this writ petition, reveals that the husband of the petitioner No. 1 viz. Late Pradip Dutta, was appointed as an Assistant Teacher in No. 607 Begenagara Amlakhiguri Lower Primary School, Dhemaji, in the year 1989 and continued to serve in such capacity till his death occasioning on

08.05.2015. The husband of the petitioner No. 2 viz. Late Ghana Saikia @ Ghana Kanta Saikia, was appointed as an Assistant Teacher in Ghinai Lower Primary School, Dhemaji, in the year 1989 and he also continued to discharge his duties in such capacity till his death occasioning on 11.06.2015.

4. It is the case of the writ petitioners that the salaries of their respective husbands were not released w.e.f. August, 2007. Accordingly, the husband of the petitioner No. 1 had approached this Court along with others by way of instituting a writ petition being WP(c)653/2008, praying for a direction to the respondent authorities for release of his salaries w.e.f. August, 2007. The said writ petition was disposed of by this Court with a direction to the respondent authorities vide order, dated 25.04.2008, requiring them to place the case of the petitioner before the Expert Committee as constituted by this Court in the case of *S.M. Talukdar v. State of Assam*, reported in *2006(2) GLT 216*.

5. The petitioners claim that their respective husbands continued to serve in their respective schools and were at no point of time, served with any termination orders by the respondent authorities. It is the categorical statement of the petitioners that their respective husband died in harness. After the death of their respective husband, the petitioners had approached the respondent authorities praying for release of the arrear salaries due to their husbands as well as settlement of family pension and other pensionary benefits due to them on account of services rendered by their respective husbands.

6. The entreaties as made by the petitioners before the authorities having failed to evoke any response, the petitioners have approached this Court by instituting the present writ petition, praying for redressal of their grievances.

7. Mr. Sarma, learned standing counsel, Elementary Education Department, has not brought on record any material to demonstrate that the services of the petitioners' husbands were in fact terminated and such orders of termination were served upon the petitioners' husbands during their lifetime. Only a vague statement that has been made that the names of the petitioners' husbands were reflected in a list of terminated employees but such projection has not been supported by any document that the orders of termination purportedly issued against the petitioners' husbands were in fact served on the petitioners' husbands during their lifetime.

8. The salaries of the petitioners' husbands were stopped from August, 2007, deeming that they were terminated employees. However, in the absence of any material available on record to show that such termination order was served upon the petitioners' husbands during their lifetime, it cannot be conclusively held that the petitioners' husbands were terminated from their services at any point of time. It is settled law that an order of dismissal or termination would not be effective unless it is published or communicated to the employee concerned. If the authorities pass an order of termination but it is not communicated to the employee concerned, such order would have no effect and only on account of issuance of such order, without having the same served upon the employee concerned, the service of the employee concerned cannot be deemed to have been terminated.

9. At this stage, it is relevant to take note of the decision of the Hon'ble Supreme Court in the case of *Dulu Devi v. State of Assam & ors.*, reported in (2016) 1 SCC 622, wherein, under similar circumstances, the Hon'ble Supreme Court had held that in the absence of material being brought on record of an order of termination from service being served upon the person concerned; the service of such person cannot be held to be actually terminated.

10. In view of the said conclusions reached hereinabove that the service of the petitioners' husbands were never terminated at any point of time during their lifetime, this Court holds that the petitioners' husbands had continued to discharge their duties till their date of death occasioning on 08.05.2015 and 11.06.2015, respectively. The petitioners' husbands having been held to be in continuous service till their date of death occasioning 08.05.2015 and 11.06.2015, respectively, they would be entitled to all the benefits as would be legally accruing to them for the services rendered by them.

11. In view of the determination that the services of the petitioners' husbands were never terminated by the respondent authorities; the following directions are called for:

- (1). The petitioners' husbands are entitled to receive the salary and allowances for the period from August, 2007, till the date of their death i.e. 08.05.2015 and 11.06.2015, respectively. The said amount would now be computed by the respondent No. 2 and released to the petitioners within a period of 2(two) months from the date of receipt of a certified copy of this order.
- (2). The services of the petitioners' husbands not having been held to be terminated by the respondent authorities; the petitioners, herein, would now be entitled to receive the pension and pensionary benefits on account of the services rendered by their respective husbands. The family pension be released to the petitioners w.e.f. 09.05.2015 and 12.06.2015, respectively.
- (3). The respondent No. 2, herein, shall take requisite initiative to have the pension papers for disbursal of the family pension as well as other pensionary benefits to the petitioners processed, in the manner required and

thereafter, submit the same to the Director of Pension, Government of Assam, for disbursal of the family pension as well as other pensionary benefits to the petitioners.

- (4). The Director of Elementary Education, Government of Assam, shall submit the family pension proposals of the petitioners' husbands for disbursal of pension and pensionary benefits after processing to the Director of Pension, Government of Assam, within a period of 1(one) month from the date of receipt of a certified copy of this order.
- (5). The Director of Pension, Government of Assam, on receipt of the family pension proposals pertaining to the petitioners from the Director of Elementary Education, Government of Assam, shall process the same and issue the Pension Payment Order(PPO) to the petitioners, herein, within a period of 3(three) months from the date of receipt of such proposals.
- (6). Pending finalization of the family pension as well as other pensionary benefits due to the petitioners; the petitioners shall be authorized a provisional pension w.e.f. 09.05.2015 and 12.06.2015, respectively, and the orders thereon, shall be issued by the Director, Elementary Education Department, Assam, within a period of 1(one) month from the date of receipt of a certified copy of this order.
- (7). The arrears accruing to the petitioners on account of the family pension due to them, shall be computed and released by the Director of Pension, Government of Assam, within the time frame prescribed hereinabove.

12. The petitioners, for facilitating the implementation of the directions passed hereinabove; shall individually submit a certified copy of this order before the Director of Elementary Education Department, Government of Assam, along with a forwarding letter, at the earliest.

13. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant