

GAHC010016862017



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

Case No. : WP(C)/1726/2017

SMT. RINKUMANI CHUTIA.
W/O. LT. ANIL DUTTA, R/O. GOBINDAPUR, PANIGAON, P.S. MACHKHOWA,
DIST. DHEMAJI, ASSAM.

VERSUS

THE STATE OF ASSAM and 7 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPTT., SACHIVALAYA, DISPUR, GHY.-781006,
ASSAM.

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

3:THE ACCOUNTANT GENERAL A and E MOIDAMGAON
BELTOLA GUWAHATI-19 ASSAM.

4:THE DIRECTOR OF ELEMENTARY EDUCATION KAHILIPARA
GHY.-19 ASSAM.

5:THE DIRECTOR OF PENSION HOUSEFED COMPLEX DISPUR
GHY ASSAM.

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

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

8:THE TREASURY OFFICER DHEMAJI DIST. DHEMAJI ASSAM

Advocate for the Petitioner : MR.A GOHAIN

Advocate for the Respondent : MR.C BARUAHSC, A.G.

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 08.01.2024

Heard Mr. A. Gohain, learned counsel for the petitioner. Also heard Mr. R. Mazumdar, learned standing counsel, appearing on behalf of respondents No. 1, 2, 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. 8.

The petitioner who is the wife of Late Anil Dutta has by way of instituting the present writ petition, raised a grievance with regard to non-disbursement of salaries of her husband pending since August 2007 till the date of his death i.e. 07.06.2015 with a further prayer for disbursal of the pension and pensionary benefits due to her on account of the death of her husband.

The case as projected by the petitioner in this writ petition reveals that her husband late Anil Dutta was appointed as an Assistant Teacher in Borpak Lower Primary School, Dhemaji, vide order, dated 19.12.1989. The salaries due to the husband of the petitioner not being released after 18.05.1992, he had approached this Court by way of instituting a writ petition being WP(c)5732/1999 and this Court vide order dated 19.11.1999, had disposed of the said writ petition with a direction to the Director of Elementary Education, Assam, to inquire into the matter and to record a finding as to whether the petitioner was entitled to his salaries. In the event, the husband of the petitioner was found to be entitled to his salaries, this Court had required the Director of Elementary Education to issue appropriate orders for payment

of the salaries of the petitioner and communicate the same to him.

It is the case of the petitioner that in pursuance of the orders passed by this Court, the salaries of the husband of the petitioner were being released and his services was also regularized and confirmed in his services by the respondent authorities. Thereafter, as the salaries of the petitioner's husband was again stopped from August, 2007, and there was an apprehension of his services being terminated, the petitioner's husband had approached this Court by way of instituting a writ petition being WP(c)1634/2007. This Court vide order dated 05.04.2007 while directing the maintenance of the status quo with regard to the services of the petitioner, issued notices in the matter. Thereafter, vide order dated 09.05.2007, the said writ petition was disposed of by this Court, remanding the matter to the constituted Committee.

It is to be noted here that with effect from August, 2007, the salaries of the petitioner's husband was completely stopped. Being aggrieved by the non-release of his salaries, the petitioner's husband had again approached this Court by way of instituting a writ petition being WP(c)4410/2008. This Court vide order, dated 02.01.2014, on consideration of the issues arising in the matter, was pleased to dispose of the said writ petition directing the respondent authorities to place the case of the petitioner before the Committee as constituted by this Court in the case of **S. M. Talukdar v. State of Assam & ors.** reported in **(2006) 2 GLT 216.**

It is the categorical stand of the petitioner that the respondent authorities had at no point of time terminated the services of her husband. It is stated that no order of termination was ever served upon the petitioner's husband during his lifetime. The petitioner's husband was discharging his duties regularly and continuously without any hindrance till his death occasioning on 07.06.2015 and thereafter, the petitioner

approached the respondent authorities praying for release of the arrear salaries of her husband as well as for settlement of the family pension and pensionary benefits due to her on account of the death of her husband while in service. It is also projected by the petitioner that although the respondent authorities had held hearings and she had participated in such hearings, no decision thereon was communicated to her and accordingly, she was deprived of her due family pension and other pensionary benefits on account of the services rendered by her late husband.

On a consideration of the contentions made in the present proceeding and the categorical statements made therein that the petitioner's husband during his lifetime was never served with any order of his termination from service; this Court had required the learned Standing Counsel, Director of School Education, to receive his instruction in the matter. It was further required that the departmental authorities shall place before this court the termination order issued in respect of the petitioner's husband along with proof of service of the same upon him.

In terms of the said directions, today, Mr. Mazumdar, learned standing counsel, Director of School Education, submits that no order issued towards terminating the services of the petitioner's husband is available on record. Further, it has been clarified that there is no material to show any such termination order, at any point of time, being served upon the petitioner's husband during his lifetime.

The salaries of the petitioner's husband was stopped from August, 2007, deeming that he was a terminated employee. However, in the absence of any material available on record to show that such termination order was served upon the petitioner's husband during his lifetime, it cannot be conclusively held that the petitioner's husband was terminated from his services at any point of time. It is settled

law that mere passing of 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.

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.

In view of the said conclusions reached hereinabove that the service of the petitioner's husband was never terminated at any point of time during his lifetime, this Court holds that the petitioner's husband had continued to discharge his duties till the date of death occasioning on 07.06.2015. The petitioner's husband having been held to be in continuous service till his date of death occasioning on 07.06.2015, he is, therefore, entitled to all the benefits as would be legally accruing to him for the said period of service rendered by him.

In view of the determination that the services of the husband of the petitioner was never terminated by the respondent authorities; the following directions are called for:

- (1). The petitioner's husband is entitled to receive the salary and allowances for the period from August, 2007, till 07.06.2015. The said amount would now be computed by the respondent No. 2 and released to the petitioner within a period of 2(two) months from the date of receipt of a certified copy of this order.
- (2). The service of the petitioner's husband not having been held to be terminated by the respondent authorities; the petitioner, herein, would now be entitled to receive the pension and pensionary benefits on account of the services rendered by her husband. The family pension be released to the petitioner w.e.f. 08.06.2015.
- (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 petitioner 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 petitioner.
- (4). The Director of Elementary Education, Government of Assam, shall submit the family pension proposal of the petitioner's husband for disbursal of pension and pensionary benefits 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 proposal pertaining to the petitioner from the Director of Elementary Education, Government of Assam, shall process the same and issue the Pension Payment Order(PPO) to the petitioner within a period of 3(three) months from the date of receipt of such proposal.
- (6). Pending finalization of the family pension as well as other pensionary benefits due to the petitioner; the petitioner shall be authorized to receive a provisional pension w.e.f. 08.06.2015, and the orders thereon, shall be issued 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 petitioner on account of the family pension due to her, shall be computed and released by the Director of Pension, Government of Assam, within the time frame prescribed hereinabove.

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

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

JUDGE

Comparing Assistant