

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:TRIPURA:
MIZORAM AND ARUNACHAL PRADESH)
SHILLONG BENCH

WRIT PETITION (No) SH 322 of 2010

Smti Arefa Begum,
W/o Late Azizur Rahman Mondal,
Village Silkata PO Rajabala,
West Garo Hills District,
Meghalaya.

: Petitioner

versus

1. State of Meghalaya,
represented by Commissioner and
Secretary to the Govt. of Meghalaya.

2. The Under Secretary to the Govt.
of Meghalaya, Finance Department (Pension Cell),
Shillong.

3. General Manager,
District Industries Centre,
West Garo Hills District,
Tura.

4. The Directorate of Industries,
Meghalaya, Shillong.

5. The Accountant General,
Meghalaya, Shillong.

: Respondents

B E F O R E
THE HON'BLE MR JUSTICE T VAIPHEI

For the petitioner

: Mr SR Sen, Sr Adv
Mr S Sen,
Mr E Nongbri,
Advocates

For the respondents

: Mr H Kharmih, GA
Mr SC Shyam, CGC.

Date of Hearing

: 15.11.2012

Date of Judgment and Order

: 15.11.2012

JUDGMENT AND ORDER (ORAL)

Heard Mr E Nongbri, the learned counsel for the petitioner. I have also heard Mr H Kharmih, the learned State counsel and Mr. SC Shyam, the learned CGC, appearing for the Accountant General.

2. This is an unfortunate case. A hapless widow has been forced to march from pillar to post for the last 7 years or so to receive the elusive family pension of her deceased husband, which she is otherwise entitled to under the law, as will be revealed hereafter, due to the indifference and callous attitude of the respondent authorities including the Office of the Accountant General. This is a classic case of bureaucratic insensitivities and red-tapism; a very simple matter has been converted into a complicated matter. In their anxiety to pass the buck upon each other, they sought for needless clarifications from each other without even bothering to find out the correct legal position. Even a cursory glance at Rule 48(1)(iii) of the Meghalaya Civil Service Pension Rules, 1983 will obviate the needless exercise of seeking clarification after clarification from each other, which, in turn, would have enabled the hapless widow to avoid expensive and time-consuming litigation. I am constrained to pass the aforesaid remarks with the hope that the respondent authorities will, in future, be more careful and more sympathetic to the plight of pensioners and their families left behind by them and will not push them to come to this Court.

3. The facts are undisputed. The petitioner is the widow of late Azizur Rahman Mondal, who used to serve as Ex-Bee Keeping under the District Industries Centre (Division), Dakopgiri, Tura, he died in harness on 22.07.2004. There is no dispute that the deceased husband of the petitioner left behind him his daughter namely Smti Nazima Sultana

Begum and two sons namely Md. Shamim Arif Mondal and Md. Masum Ahmed Mondal, who were born from his marriage with his first wife, late Anzuara Begum, who had pre-deceased him on 26.06.2003. After the death of her deceased husband, the said Nazima Sultana Begum, applied for Succession Certificate as well as Guardianship Certificate, before the Addl. Deputy Commissioner, West Garo Hills Tura, who, after hearing the parties, disposed of the matter on 14.12.2006 by appointing the petitioner as the guardian of the said minor sons of the deceased born from his wed-lock with his pre-deceased first wife. It was also ordered therein that the petitioner should share the debts and securities of the deceased with the daughter of his first wife at the ratio of 60/40. The petitioner thereafter intimated the respondents about the Succession Certificate/Guardianship Certificate No.39/2004 and requested them to release all the pensionary benefits of the deceased in her name on the strength of the order dated 14.12.2006. However, the respondent No.3 allowed the petitioner to draw the GPF, leave salary and gratuity, but refused to sanction the family pension to her. At this stage, it may be observed that the learned Addl. Deputy Commissioner should not have allowed the division of the pensionary benefits between the petitioner and the daughter of the first wife of the deceased as it is admittedly against the Pension Rule. Anyway, since those benefits have already been paid to and received by them, the matter cannot be agitated before this Court at this stage, more so, when that is not the issue raised in this writ petition. As already indicated, there is no dispute among the rival parties that after the death of the first wife of the deceased, he again married the petitioner. The only problem is that the name of the petitioner was never

entered by him in his Service book as his nominee in terms of Form No.17.

4. Be that as it may, Rule 48 of the Meghalaya Civil Services (Pension) Rules, deals with the order of payment of pension to the heirs of the deceased employee. Rule 48 (1)(iii) of the Meghalaya Civil Services (Pension) Rules, 1983 [see page 48 of the First Edition of the said Pension Rules] categorically provides that pension awarded under Rule 48 will not be payable to more than one member of an officer's family at the same time and that it will be admissible to the widow/widower and thereafter to the minor children. This is clarified by the subsequent Rule 48(1)(iv) which says that in the event of remarriage or death of the widow/widower, the pension will be granted to the minor children through their natural guardian and in disputed cases, however, payments will be made through a legal guardian. A bare reading of the aforesaid two provisions will plainly shows that it is the surviving widow and not anyone else who is entitled to payment of family pension of the Government employee at the first instance and it is only in the event of the death or remarriage of the surviving widow that the question of payment of pension to the minor children of the deceased will arise. In my judgment, the respondent authorities have completely lost site of these two provisions and have in the process created unnecessary problems for the petitioner. Pointless clarifications have been called for by both the respondent authorities from each other from time to time, which, is absolutely uncalled for. This resulted in denial of the Family pension to the petitioner for over seven years. Family pension cannot be and should not be withheld on such flimsy grounds. Proper application of mind would have easily dawned on the respondent authorities to understand the exact

legal position and release the family pension to the unfortunate widow without unnecessary delay. The fact that the petitioner is the only surviving widow of the deceased, who had none other, is not in dispute. The illegality loomed large in the Succession/Guardianship Certificate issued by the Addl Deputy Commissioner, Tura, should not have come in the way of the respondent authorities to sanction the family pension when the entitlement of the petitioner thereto under the aforesaid legal provision is staring on their face. Thus, the omission of the part of the deceased to enter the name of the petitioner in his service book as his nominee in accordance with Form No.17 should not have diverted their focus from the claim of the petitioner, which is demonstrably admissible to her: they were missing the wood for the trees. They should have sanctioned the family pension to the petitioner without any loss of time once they found that there is no other surviving widow of the deceased than her; the respondent authorities are, to say the least, taking hyper technical view of the matter, which is absolutely uncalled for. No other serious and contentious issue survives for consideration.

5. For the reasons stated in the forgoing, this writ petition succeeds. The respondent authorities are therefore, directed to sanction the family pension forthwith in favour of the petitioner and release the same together with the arrears payable heretofore plus simple interest calculated at the rate of 12% per annum from the date they became due. The entire exercise shall be carried out within a period of two months from the date of this judgment.

JUDGE

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