

GAHC010258302018



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

Case No. : WP(C) 8030/2018

1:CHANDAMATI NATH
W/O- LT JIBAN NATH, VILL- DAHALI, P.O. BATARHAT, P.S. PALASHBARI,
DIST- KAMRUP (R), ASSAM, PIN- 781122

VERSUS

1:THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, PWD DEPTT.,
DISPUR, GHY-6

2:THE PRINCIPAL SECRETARY
FINANCE DEPTT.
DISPUR
GHY-6

3:THE EXECUTIVE ENGINEER (M)
PLANT MECHANICAL N.H. DIVISION
PW (B AND NH) DEPTT.
GHY-7

4:THE ACCOUNTANT GENERAL
ASSAM MAIDAMGAON
BELTOLA
GHY-2

Advocate for the Petitioner : MRS. R DEVI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH**

ORDER

Date : 29-03-2019

Heard Ms. R. Devi, learned senior counsel for the petitioner. Also heard Mr. S. S. Roy, learned Govt. Advocate for the State respondent, Mr. A. Hasan, learned standing counsel for the AG and Mr. P. Nayak, learned standing counsel for the Finance Department.

2) The grievance of the petitioner is for non release of gratuity. The stand of the respondent authorities more particularly of the respondent No. 4, is contained in para 6, which reads as follows:

“That with regard to the statements made in paragraph No.7 of the writ petition, the humble deponent begs to state that the date of joining of the deceased employee was taken as 22.07.2005 instead of 01.11.1992 as there was no initial pay voucher nor any Un-Interruption Service Certificate attached with the pension papers. As such the net qualifying service of the deceased employee was 11 years 9 months 11 days. However, the respondent authority subsequently in the letter dated 28.11.2018 has clarified that the qualifying service of the incumbent should be 18 years 6 months 30 days and not 11 years 9 month 11 days. In absence of initial service particulars and since the net qualifying service was below 20 years, the Death cum Retirement Garatuity (DCRG) was not authorized. The aforesaid reason fro not paying Gratuity amount to the petitioner is detailed in the office letter dated 15.02.2019, addressed to the Ex. Engineer (M) Plant Mechanical ND Division PW (B & NH) Division Ulubari, Guwahati-7.”

3) Law relating to payment of gratuity is governed by Section 4 of the Payment of Gratuity Act, 1972, which reads as follows:

“4. Payment of gratuity. (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -
(a) on his superannuation, or
(b) on his retirement or resignation, or
(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.”

4) Section 4 provides that a person who has completed 5 years of service is entitled to

payment of gratuity. Accordingly, the stand taken by respondent is not penable in law. The petitioner is entitled to receive gratuity in terms of the Payment of Gratuity Act, 1972.

5) Accordingly, the present petition is allowed with direction to the respondent authorities to work out the gratuity payable to the petitioner which may be paid within a period of two months from the date of receipt of a certified copy of this order.

JUDGE

Comparing Assistant