



GAHC010108432016



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

Case No. : WP(C)/1560/2016

SMTI. RABILATA RAJBONGSHI
W/O LT. SASADHAR RAJBONGSHI R/O VILL- NOONTOLA P.O. BAIRAPUR,
NOONTOLA P.S. SARBHOG, DIST. BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA and 3 ORS
THROUGH- THE SECRETARY, TO THE GOVT. OF INDIA, HOME
DEPARTMENT, NEW DELHI.

2:THE DIRECTOR GENERAL OF BORDER

SECURITY FORCE
PUSHPA BHAWAN
MADANGIR ROAD
NEW DELHI- 110006.

3:THE SENIOR ACCOUNTS OFFICER

PENSION SECTION -V
PAD BSF
PUSPA BHAWAN
MANDANGIR ROAD
NEW DELHI- 110006.

4:THE COMMANDANT
84 BATTALION
BORDER SECURITY FORCE
C/O 56 APO
PIN - 933084.

5:ACCOUNTANT GENERALA and E



MAIDAMGAON
BELTOLA
GUWAHATI
ASSAM
PIN- 781029

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri K.R. Patgiri, Advocate
Advocate for respondents : Ms. R. Devi, learned C.G.C
B. Chakraborty, SC, Accountant General

Date of hearing : 09.05.2024

Date of judgment : 09.05.2024

An order dated 05.12.2015 passed by the BSF authorities whereby the claim for family pension of the petitioner has been rejected is the subject matter of challenge in this writ petition.

2. Bereft of details, the facts projected by the petitioner is that her husband Sasadhar Rajbongshi was appointed as a constable in the BSF on 13.06.1960. While in service, vide an order dated 01.08.1969, the husband of the petitioner was discharged from service on medical grounds. Upon such discharge, the husband was getting invalid pension throughout his lifetime. However on the death of the husband on 13.09.2006, the petitioner has not been given the family pension. The petitioner had filed representation before the authorities and the same was followed by filing of a writ petition being WP(C)/4001/2014 which was disposed of by this Court vide an order dated 22.08.2014 to consider



the case of the petitioner. Pursuant to the said direction, the impugned order has been passed on 05.12.2015 whereby the claim of the petitioner for family pension was rejected. It has been stated in the order that such claim was not admissible as per the Central Civil Services (Pension) Rules (hereinafter called the Rules).

3. I have heard Shri K.R. Patgiri, learned counsel for the petitioner. I have also heard Ms. R. Devi, learned C.G.C., representing the BSF authorities. Shri B. Chakraborty, learned Standing Counsel, Accountant General is also present.

4. Shri Patgiri, the learned counsel for the petitioner has submitted that denial of the family pension to the petitioner would be absolutely unfair and unreasonable inasmuch as there is no dispute to the marital status of the petitioner being the widow of the deceased employee who had passed away on 13.09.2006. It is also submitted that since the marriage was after the discharge from service, representations were made to nominate the petitioner as the nominee. It is also stressed that till the death of the husband, he was getting the invalid family pension and therefore, the entitlement of the petitioner cannot be denied.

5. On the aspect of the minimum length of service, the learned counsel has submitted that Rule 38 deals with 'Invalid Pension' and Rule 49 is on the 'Amount of Pension' which stipulates tenures of a minimum period of service. The Rules however contain a provision in the form of Rule 88- 'Power of Relax'. Under the aforesaid provision, in case of undue hardships in any particular case, the requirement of the Rules may be relaxed to such extent in exceptional cases with a further rider that concurrence from the Department of the Personnel and Administrative Reforms is to be taken. The learned counsel for the petitioner submits that reading of the impugned order dated 05.12.2015 does not indicate



that there was any application of mind towards applying the provision of Rule 88 while taking the decision.

6. *Per contra*, Ms. Devi, the learned C.G.C. has submitted that the impugned order dated 05.12.2015 does not suffer from any legal or factual infirmity. It is submitted on behalf of the respondents that there is no manner of doubt that the deceased husband did not complete the minimum length of service so as to entitle the petitioner to claim the family pension. On a query by this Court as to the fact of granting invalid pension to the husband till his expiry in the year 2006 in spite of not meeting the minimum length of service, the learned C.G.C. has submitted that at the time of appointment of the petitioner, the BSF was yet to be formed which was constituted in the year 1965 and till 1976, the invalid pension was paid through the Accountant General. She has also clarified that old cases were not verified and therefore the pension was paid to the husband of the petitioner during his lifetime.

7. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

8. The fact regarding the marital status of the petitioner is not in dispute. It is also not in dispute that on discharge of the husband of the petitioner on medical grounds on 01.08.1969, he was granted the Invalid Pension till his expiry on 13.09.2006. This Court has noticed that the minimum length of the service as prescribed in the Rules to be entitled for Invalid Pension is 10 years. The petitioner's husband had served for a period of 9 years 1 month 18 days in spite of which the authorities took a conscious decision to grant him the pension throughout his life time. The explanation sought to be made on behalf of the respondent authorities is that initially such pension being paid by the Accountant General, the same was not detected. Such explanation, though may



be technically correct is not acceptable in view of the fact that the subject matter involves pension to a member of the Force who was discharged on medical grounds and the period of service rendered by him is 9 years one month 18 days which is marginally short from the strict requirement of 10 years.

9. Be that as it may, the issue of receipt of Invalid Pension by the husband of the petitioner during his lifetime was never raised and all along he was getting the same. The question therefore arises that on his death whether the family pension can be denied to his wife on the ground that he did not complete the minimum length of 10 years in service. The petitioner, as would be revealed from the materials placed on record would be currently aged about 75 years.

10. This Court has considered the provision of Rules 88 which reads as follows:

“88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, that Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner :

Provided that no such order shall be made except with the concurrence of the Department of Pension & Pensioner's Welfare.”

11. The aforesaid Rule clearly bestows a power to relax any rules if it causes undue hardships in a particular case and in such cases, the requirement of the Rule can be dispensed with or relaxed to such extent to arrive at a just and equitable conclusion. As noted above, concurrence of the Department of Personnel and Administrative Reforms would also be required.

12. From a reading of the impugned order dated 05.12.2015, it does not appear that there have been any consideration towards applying the provisions



of Section 88 of the Rules, even assuming that on a strict application, the petitioner may not be held to be entitled for family pension. As observed above, the fact of payment of Invalid Pension to the husband of the petitioner during his lifetime for a period from 1969 to 2006 may itself be a ground to continue paying the Family Pension to the wife of the deceased employee i.e., the petitioner. However, even if the Rules are strictly applied, the present facts and circumstances make it a case wherein the power of relaxation is required to be applied and appropriate orders be passed for grant of Family Pension to the petitioner.

13. In view of the aforesaid facts and circumstances and taking into account that the deceased husband of the petitioner had served the BSF for a period of 9 years 1 month 18 days, the remaining period to meet the qualifying period of 10 years is required to be considered by invoking the powers under Rule 88 of the Rules. The impugned order dated 05.12.2015 accordingly stands set aside and the matter is remanded back for a fresh consideration in accordance with the observations made above.

14. The consideration and consequential order for payment of Family Pension to the petitioner is to be passed expeditiously as the petitioner is aged about 75 years and in any case within a period of 3 months from the date of receipt of the certified copy of this order.

15. Writ petition accordingly stands allowed.

JUDGE

Comparing Assistant