

GAHC010009802024



2026:GAU-AS:3017

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

**Case No. : WP(C)/393/2024**

SONESHWARI GOGOI  
W/O- LATE MINA RAM GOGOI,  
R/O- SUNGI GAON,  
P.O- TENGAKHAT,  
DIST- DIBRUGARH, ASSAM, PIN-786001

VERSUS

THE STATE OF ASSAM AND 5 ORS  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,  
PUBLIC HEALTH ENGINEERING DEPARTMENT, ASSAM  
DISPUR, GHY-06

2:THE DEPUTY SECRETARY  
TO THE GOVT. OF ASSAM  
PUBLIC HEALTH ENGINEERING DEPARTMENT  
ASSAM  
DISPUR  
GHY-06

3:THE EXECUTIVE ENGINEER

(PHE)  
DIBRUGARH DIVISION  
DIBRUGARH GRAHAM BAZAR  
DIBRUGARH  
PIN-786001

4:THE CHIEF ENGINEER

PHE  
WATER

ASSAM  
HENGRABARI  
GUWAHATI  
PIN-781036

5:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)  
ASSAM  
MAIDAMGAON  
BELTOLA  
GUWAHATI-781029

6:THE SENIOR ACCOUNTS OFFICER  
O/O THE PRINCIPAL ACCOUNTANTY GENERAL  
(A AND E)  
ASSAM

MAIDAMGAON  
BELTOLA  
GUWAHATI-78102

**Advocate for the Petitioner** : MR. B BARUAH, MR U RONGPI

**Advocate for the Respondent** : SC, P H E, SC, AG (A AND E)

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

**ORDER**

**Date : 24.02.2026**

Heard Mr. B Baruah, learned counsel for the petitioner. Also heard Mr. D Gogoi, learned standing counsel, P.H.E, Assam, appearing for respondent nos. 1, 2, 3 & 4 and Mr. B Chakravarty, learned standing counsel, A.G (A&E), Assam, appearing for respondent no. 5 & 6.

2. The present proceedings have been instituted by the petitioner, herein, praying for authorization to her, both family pension and other pensionary benefits, by holding that her deceased husband Lt. Minaram Gogoi was entitled to have his service regularized with effect from the date he was found to be missing i.e. w.e.f 16.04.1992. As projected in the Writ

Petition, the husband of the petitioner was initially engaged as a Work Charge Khalasi in the establishment of the respondent no. 3. Thereafter, the petitioner's husband was also upgraded to that of the post of Work Charge cum Operator, vide issuance of an order dated 11.04.1985. It is projected that since the date of his initial engagement i.e. w.e.f 06.11.1981, the husband of the petitioner was discharging the duties in the establishment of the respondent no. 3 without any break. It is projected that the husband of the petitioner had gone missing w.e.f 16.04.1992.

The husband of the petitioner having remained missing for more than a period of 7 (Seven) years, the petitioner approached the competent Court of Civil Jurisdiction for declaration that her husband is to be presumed to be dead. The said declaration was accordingly, passed by the Ld. Trial Court, in the matter, in favour of the petitioner. Thereafter, the petitioner approached the respondent authorities praying for authorization to her, family pension and other pensionary benefits, by reckoning the services rendered by her husband. The petitioner also prayed before the authorities to posthumously regularize the services of the husband of the petitioner from a date prior to the date when he had gone missing. The above approaches made by the petitioner, not being favourably considered, the petitioner has instituted the present Writ Petition.

3. Mr. B Baruah, learned counsel for the petitioner, by reiterating the facts noticed hereinabove, has submitted that after the application was made by the petitioner and the declaration of the competent Court of Civil jurisdiction, in respect of her husband, was brought on record, the departmental authorities had processed the family pension and other pensionary benefits receivable by her and forwarded the same to the Office of the Accountant General, Assam. He submits that the said papers, however, were returned from the establishment of the Accountant General, Assam, by highlighting that the orders towards regularization and confirmation of service of the husband of the petitioner, was not made part

of the pension proposal. He submits that the husband of the petitioner, having been engaged in a Work Charge establishment w.e.f 06.11.1981, till the date he had gone missing i.e. till 16.04.1992, the husband of the petitioner had served for more than 10 (Ten) years and accordingly, he is entitled to have his service regularized posthumously by creation of a post for a date, prior to the date the husband of the petitioner had gone missing.

Mr. B Baruah, learned counsel submits that the Executive Engineer, P.H.E, Dibrugarh Division i.e. the respondent no. 3, had vide communication dated 13.07.2022, forwarded the proposal for release of family pension and other pensionary benefits of the petitioner to the Chief Engineer, (P.H.E), Assam, after the same was returned from the Office of the Accountant General, Assam, with a request to offer instructions, with regard to the treatment of the period of absence of the husband of the petitioner w.e.f 16.04.1992, till the date the competent Court of Civil Jurisdiction had declared him to be presumed dead. Mr. B Baruah, learned counsel submits that the said course of action, as taken by the respondent authorities, would reveal that the respondent authorities were live to the claim made by the petitioner and were processing the matter for release to the petitioner her due family pension and pensionary benefits. In the above premises, Mr. B Baruah, learned counsel submits that a direction to be issued to the respondent authorities to regularize the service of the husband of the petitioner, with effect from a date prior to 16.04.1992, and thereafter, to authorize to her family pension and other pensionary benefits for the services rendered by her husband.

4. *Per contra*, Mr. D Gogoi, learned standing counsel, P.H.E, Assam, appearing for respondent nos. 1, 2, 3 & 4, submits that there is no policy which permits regularization of the services of a Muster Roll/Work Charge employee, posthumously. He submits that the husband of the petitioner had gone missing w.e.f 16.04.1992 and the petitioner had got the declaration to

the effect that her husband to be presumed dead from a competent Court of Civil jurisdiction in the year 2011. Mr. D Gogoi, learned standing counsel submits that during the period of time when the husband of the petitioner had gone missing, there was no policy for regularization of services of Muster Roll/Work Charge employees. The policy for regularization of services of Muster Roll/Work Charge employees, introduced in the year 2005, would have no application, in so far as it concerns the husband of the petitioner, inasmuch as, he was not in continuous service under the Government in a Work Charge establishment, on the date of implementation of the policy.

5. I have heard the learned counsel for the parties and perused the materials available on record.

6. The facts noticed, hereinabove, are not in dispute.

7. The husband of the petitioner was, while working as a Work Charge Khalasi, had gone missing w.e.f 16.04.1992. The petitioner, herein, had also, in the year 2012, got a declaration issued from the Court of Ld. Munsiff, Dibrugarh, in Title Suit no. 40/2010, to the effect that the husband of the petitioner is presumed dead. The petitioner, thereafter, had brought the said declaration on record before the respondent authorities and prayed for authorizing to her, pension and other pensionary benefits, after regularizing the services of her husband from the date prior to 16.04.1992. The said prayer is found to have not been considered by the respondent authorities.

8. Admittedly, the husband of the petitioner, at the time he had gone missing, w.e.f. 16.04.1992, was not a regularized employee and accordingly, he cannot be held to have been, at the relevant point of time, covered by the provisions of Assam Services (Pension) Rules, 1969. The question that would now arise in the present proceeding is, as to whether, a direction can be passed, at this stage, by this Court, for retrospective regularization of the services of the husband of the petitioner w.e.f 16.04.1992. This Court

notices that in the year 2005, the Government had adopted the policy decision for regularization of services of Muster Roll/Work Charge employees, working in such capacity, prior to 01.04.1993. The said policy was to be so effected, in respect of the employees working in Muster Roll/Work Charge capacities, as on the date the said policy was brought into force. The said policy does not envisage a retrospective effect extending the same to even persons not working as on the date the said policy was brought into force. Accordingly, in absence for a scheme for regularization available at the time when the husband of the petitioner had gone missing from services i.e. w.e.f 16.04.1992, this Court is not in a position to issue a direction upon the respondent authorities to regularize the services of the husband of the petitioner, from a date prior to 16.04.1992.

9. Having drawn the said conclusions, this Court would also consider as to whether, in absence of any scheme for regularization, it would be now permissible for this Court to direct the respondent authorities to regularize the services of the husband of the petitioner from a date prior to 16.04.1992 so as to enable her to receive pension and other pensionary benefits for the services rendered by the husband of the petitioner prior to 16.04.1992. The said direction would not be permissible to be issued by this Court in view of the decision rendered by a Division Bench of this Court in the case of ***State of Assam Vs. Upen Das*** reported in **(2017) 4 GLR 493**, wherein, the Division Bench of this Court had held that the services of the employees cannot be regularized and they would be entitled only to minimum scale of pay that to from a date as set out in the said judgment which is much after 16.04.1992.

10. In view of the above conclusions drawn by this Court, this Court is of the considered view that the claims made by the petitioner in the present writ petition would not mandate an acceptance and accordingly, the Writ Petition is held to be devoid of any merit and consequentially, the same stands dismissed. However, there would be no order as to costs.

**JUDGE**

**Comparing Assistant**