GAHC010184772023

2026:GAU-AS:14024

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

Case No. : WP(C)/4822/2023

LUKUMONI KONWAR
W/O- HEMA KONWAR, VILL- BOGDAI GAON, P.O. SANTAK, DIST.- SIVASAGAR

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY (HOME AND POLITICAL DEPARTMENT), GOVERNMENT OF ASSAM

2:COMMISSIONER AND SECRETARY TO THE FINANCE DEPARTMENT
ASSAM
GHY-06

3:ACCOUNTANT GENERAL
ASSAM
MAIDAM GAON
BELTOLA
GHY-29

4:THE INSPECTOR GENERAL OF POLICE
ULUBARI
GHY-06

5:THE DEPUTY INSPECTOR GENERAL OF POLICE
DIG
EASTERN RANGE
JORHAT
ASSAM
PIN- 785001

6:COMMANDANT AB
1ST APBN

LIGIRI PUKHURI
NAZIRA
SIVASAGAR
PIN- 78568

BEFORE

HON'BLE Mr. JUSTICE BUDI HABUNG

Advocate for the Petitioner : Mr. M. Saikia, ld. Adv.

Advocate for the Respondents : Mr. D. Borah, ld. Govt. Adv.,

Resp. Nos. 1, 4, 5 & 6;

Mr. A. Chaliha, ld. SC, Finance, Resp. No.2; and

Ms. Tinglung, ld. Counsel appearing on behalf of Mr. R. K. Talukdar, ld. SC, AG, Resp. No.3.

Date on which Judgment is reserved : 17.09.2026

Date of Hearing : 17.09.2026

Date of Judgment and Order : 22.09.2026

Whether the pronouncement is of the Operative part of the Judgment?

:No

Whether the full Judgment has been pronounced ? : Yes

JUDGMENT & ORDER

(CAV)

Heard Mr. M. Saikia, learned Counsel for the petitioner. Also heard Mr. D. Borah, learned Government Advocate for the State respondent Nos. 1, 4, 5 and 6; Mr. A. Chaliha, learned Standing Counsel, Finance Department, for respondent No. 2; and Ms. Tinglung, learned Counsel appearing on behalf of Mr.

R. K. Talukdar, learned Standing Counsel, Accountant General, for respondent No. 3.

2. The petitioner, the wife of Late Shri Hema Konwar, filed this writ petition under Article 226 of the Constitution of India. She challenges the order dated 30.06.2018, by which her late husband's application for voluntary retirement was accepted. The petitioner has also challenged the communication dated 15.05.2023 whereby her request under the Right to Information Act, 2005, was not entertained.

3. The petitioner's late husband, Shri Hema Konwar, was serving as a Constable (AB) under the 1st Assam Police Battalion, LPR, Sivasagar, at Ligiri Pukhuri, Nazira. He was appointed on 14.07.2009. According to the petitioner, after serving for about 8 years and 10 months, her husband applied for voluntary retirement due to illness and physical discomforts. The said application was accepted by an order dated 30.06.2018.

4. The petitioner's husband subsequently passed away on 22.09.2019. According to the petitioner, she came to know of the order relating to his voluntary retirement only when she approached the authorities for pensionary and other service benefits of her late husband. She thereafter filed an application under the Right to Information Act, 2005 to obtain relevant documents and information.

5. Learned counsel for the petitioner argued that the acceptance of the application for voluntary retirement itself requires examination. Her husband had served only about 8 years and 10 months of service when it was accepted. It is submitted that, under FR 56(c), a Government servant can seek voluntary

retirement only upon fulfilling the conditions prescribed therein. It is argued that the competent authority could not have accepted the application without the statutory requirements being satisfied.

6. It is further submitted that the husband's application referred to his illness and seizure disorder in his application. Under the circumstances, the authority should have examined the matter according to the applicable rules before accepting the request for voluntary retirement. It is therefore prayed that the order dated 30.06.2018 be quashed and that the petitioner be granted the consequential pensionary and other benefits.

7. Learned Government Advocate, on the other hand, submits that the application for voluntary retirement was made by the petitioner's husband himself. He repeatedly approached and expressed his unwillingness to continue in service on account of his illness and physical difficulties. It is submitted that the application was accordingly accepted by the authority.

8. Learned Government Advocate, however, fairly submits that the records may be examined to ascertain whether the order accepting the application for voluntary retirement was passed by the competent authority and whether the requirements of FR 56(c) were duly satisfied before acceptance. It is also submitted that, depending upon the result of such examination, the petitioner may approach the competent authority for consideration of her claim for pensionary/family pensionary benefits under the applicable rules and Government scheme.

9. Learned counsel appearing for the Finance Department also submits that the claim of the petitioner may be examined by the competent authority in

accordance with the applicable rules and the Government's scheme relating to family pension/compassionate family pension issued by the Government under Office Memorandum dated 31.10.2017. He further submits that under FR-56, an employee may avail voluntary retirement either on attaining the age of 50 years or on completing twenty years of qualifying service, whichever is earlier.

10. The main question for consideration is whether the acceptance of the application for voluntary retirement submitted by Late Shri Hema Konwar was valid in law.

11. The applicable rule provides for voluntary retirement subject to the prescribed conditions, including the requirement of attaining a prescribed age or completing the prescribed qualifying service and giving the required notice to the appropriate authority. The relevant provision FR 56(c), is reproduced below:

> "*(c) Any government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from, service after he has attained the age of fifty years or has completed 25 years of services, whichever is earlier.*
>
> *Note- The term 'appropriate authority' referred to in the above clauses means the authority which has the power to make substantive appointment to the post or service from which the government servant is required or wants to retire."*

12. In the present case, it is not disputed that the petitioner's husband had rendered only about 8 years and 10 months of service. Therefore, the question whether he had attained the prescribed age for seeking voluntary retirement, the date and contents of his application, the period of notice, the authority to whom the application was submitted, and the competence of the authority which accepted the same are all matters which require examination on the basis of the original service records.

1**3.** At this stage, the Court does not consider it appropriate to make a final finding either upholding or invalidating the order dated 30.06.2018 without examining the relevant service records. The fact that the petitioner's husband himself submitted an application for voluntary retirement does not, by itself, waive the need to comply with the statutory requirements governing such retirement.

14. Accordingly, the competent authority shall call for and examine the complete service records of Late Shri Hema Konwar, including: (i) his application for voluntary retirement; (ii) the date on which such application was submitted; (iii) the notice period prescribed under the applicable rules; (iv) the age and qualifying service of the deceased employee as on the relevant date; (v) the authority competent to accept the application for voluntary retirement; (vi) the order dated 30.06.2018 and the records leading to its issuance; and (vii) all other relevant service and pension records.

15. Upon such examination, the competent authority shall determine whether the acceptance of the application for voluntary retirement dated 30.06.2018 was valid and in accordance with FR 56(c) and the other applicable rules.

16. If the authority finds that the voluntary retirement was validly accepted, the petitioner’s claim for retirement/ pensionary and family pensionary benefits shall be examined in accordance with the applicable rules and the scheme governing such benefits.

17. If, on the other hand, the authority finds that the acceptance of the voluntary retirement was not in accordance with the applicable rules, the authority shall examine the consequential position of the deceased employee’s

service and the petitioner's entitlement to family pension, compassionate family pension and other admissible benefits, in accordance with law and the applicable Government orders/schemes.

18. The competent authority shall pass a reasoned and speaking order after giving the petitioner an opportunity to produce any relevant documents or representation in support of her claim.

19. The aforesaid exercise shall be completed within a period of four months from the date of receipt of a certified copy of this order.

20. As regards the communication dated 15.05.2023 relating to the petitioner's application dated 25.04.2023, under the Right to Information Act, 2005, the competent authority shall also examine, to the extent permissible under law, whether the relevant documents concerning the petitioner's late husband's service and voluntary retirement can be furnished to her, particularly the documents necessary for determination of her claim for pensionary and family benefits. Such consideration shall be subject to the exemptions, if any, applicable under the Right to Information Act, 2005.

21. It is made clear that this Court has not expressed any final opinion on the validity of the voluntary retirement or on the petitioner's ultimate entitlement to any particular pensionary benefit. The competent authority shall take a decision strictly based on the applicable rules and the original records.

22. With the aforesaid directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant