

GAHC010005192022



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

Case No. : WP(C)/332/2022

ROSOMA KHATUN
W/O LATE MD. MARTUZA HUSSAIN, R/O GHANIWALA, WARD NO. 3,
SILCHAR, P.O.-MALUGRAM, P.S.-SILCHAR, DIST- CACHAR, ASSAM, PIN-
788002

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY PRINCIPAL SECRETARY, HEALTH AND FAMILY
WELFARE DEPARTMENT, DISPUR, GHY-06

2:THE COMMISSIONER AND SECRETARY
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GHY-06

3:THE DEPUTY COMMISSIONER
KARIMGANJ
PIN-788710

4:THE REGISTRAR OF BIRTH AND DEATHS
BHANGA HOSPITAL AND HEALTH CENTRE
KANKALESH PART-I
DIST-KARIMGANJ

5:PRESIDENT
LAMAJUAR GAON PANCHAYAT
KARIMGANJ
ASSAM
PIN-788701

6:SAHIDA BEGUM

W/O LATE MARTAZA HUSSAIN
VILL- SHERALIPAR
P.O.-BADARPUR
DIST- KARIMGANJ
PIN-78880

Advocate for the Petitioner : MR. K MIRA

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT

Date : 22-05-2023

Heard Mr. K. Mira, learned counsel for the petitioner; Ms. D. Bora, learned Standing Counsel, Health & Family Welfare Department for the respondent nos. 1, 2 & 4; Mr. R. Talukdar, learned Junior Government Advocate, Assam for the respondent no. 3; Mr. A.B.T. Hoque, learned counsel for the respondent no. 5; and Mr. P. Hazarika, learned counsel for the respondent no. 6.

2. The case projected by the petitioner in the instant writ petition file under Article 226 of the Constitution of India, in brief, is that she was the legally married first wife of one Late Martuza Hussain. Late Martuza Hussain was an employee in Bharat Sanchar Nigam Limited [BSNL] and he retired from service on reaching the age of superannuation on 31.12.2013. After retirement, Martuza Hussain was receiving regular pension pursuant to a Pension Payment Order [PPO] dated 21.04.2014. Forwarding the PPO dated 21.04.2014 issued in favour of Martuza Hussain, the Accounts Officer, O/o the Controller of Communication Accounts [CCA], Assam Telecom Circle, Guwahati vide Letter dated 18.06.2014, addressed to the Centralized Pension Processing Centre [CPCC], Kolkata, United

Bank of India, had intimated that in the event of death of Martuza Hussain, family pension of Rs. 15,475/- *plus* Dearness Relief as admissible from time to time would be paid per month to Smti. Rosoma Khatun [the petitioner] w.e.f. the date following the date of death in the manner indicated therein. According to the petitioner, Martuza Hussain expired on 25.08.2020 leaving behind the petitioner and four children.

2.1. Prior to the death of Martuza Hussain, the respondent no. 6 instituted an application bearing F.C.[Civil] no. 269/2014, before the learned Family Court, Cachar at Silchar against Martuza Hussain, as the principal defendant and the petitioner as the proforma defendant seeking inter alia a declaration that the respondent no. 6 and Martuza Hussain were legally married husband and wife. The said application, F.C.[Civil] no. 269/2014 was, however, dismissed for default on 15.10.2015. Pursuant to the death of Late Martuza Hussain, the petitioner applied for the Death Information Certificate of Late Martuza Hussain before the respondent no. 5. It is the case of the petitioner that she applied for the Death Information Certificate before the respondent no. 5 on 14.09.2020 which, according to the petitioner, is a mandatory document for submitting application to obtain the Death Certificate but the respondent no. 5 did not issue any Death Information Certificate to the petitioner purportedly on the ground that the respondent no. 5 had already issued a Death Information Certificate to the respondent no. 6. The further case of the petitioner is that in view of non-issuance of the Death Information Certificate in her favour, the petitioner has not been able to receive the family pension after the death of her husband as it requires submission of a Death Certificate recording the fact of death of Martuza Hussain.

3. The respondent no. 6 in her counter affidavit has projected that she was also a legally married wife of Late Martuza Hussain and the marriage between her and Martuza Hussain was solemnised on 02.06.2002 before the office of the Muslim Marriage Registrar, Bhangabazar. The said marriage was also registered before the Marriage Officer, Cachar, Silchar on 22.10.2013 under Section 16 of the Special Marriage Act, 1954 and the Marriage Officer, Cachar, Silchar had issued a Certificate of Marriage to that effect on 22.10.2013. It is stated that out of the wedlock, two children were born on 15.05.2003 and 27.08.2004 respectively. It is further projected that in the Voters List under Silchar Legislative Assembly Constituency [LAC], the name of the respondent no. 6 was recorded as the wife of Late Martuza Hussain.

3.1. It is stated that in the application, F.C.[Civil] no. 269/2014, Martuza Hussain entered appearance and filed his written statement wherein he stated that the respondent no. 6 was his legally married 2nd wife and he also acknowledged his parenthood of the two children to him and the respondent no. 6. In the written statement, Late Martuza Hussain had averred that he would have no objection if both his first family and second family got 50% share each in the family pension after his death. In view of such stand taken by Martuza Hussain in the proceedings of F.C.[Civil] no. 269/2014, the respondent no. 6 believed that the disputes were resolved and it was in such situation, the respondent no. 6 allowed the proceedings of F.C.[Civil] no. 269/2014 to be dismissed for non-prosecution on 15.12.2015. It is categorically asserted by the respondent no. 6 in her counter affidavit that she and Late Martuza Hussain along with their children were living together at the time of his death on 25.08.2020, at Village –

Sheralipur under Lamajuar Gaon Panchayat, P.O. – Badarpur, District – Karimganj, Assam.

4. The learned counsel for the petitioner and the respondent no. 6 have submitted in similar lines that the family pension after the death of Martuza Hussain on 25.08.2020 has not been released in anyone's favour till date. It is submitted that the respondent no. 4 has not issued any Death Certificate recording the factum of death of Late Martuza Hussain to any one of them. It is also submitted by the learned counsel for the petitioner and the respondent no. 6 that the issue of family pension entitlement would be determined as per the extant rules. The petitioner has asserted that she was the legally married 1st wife of Late Martuza Hussain and the respondent no. 6 has not disputed the said position of the petitioner. At the same time, the respondent no. 6 has asserted that she was the legally married 2nd wife of Late Martuza Hussain. At this moment, it is the non-issuance of the Death Certificate by the respondent no. 4 which is causing impediment for both of them to pursue the matter of family pension as per the extant procedure.

5. Section 8 contained in Chapter III of the Registration of Births and Deaths Act, 1969 has mentioned about the persons required to register births and deaths and also about the procedure to do so. Section 8 has prescribed as under :

8. Persons required to register births and deaths.—[1] It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the

State Government under sub-section [1] of Section 16,—

[a] in respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in clauses [b] to [e] the head of the house or, in case more than one household live in the house, the head of the household, the head being the person, who is so recognised by the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period;

[b] in respect of births and deaths in a hospital, health centre, maternity or nursing home or other like institution, the medical officer in charge or any person authorised by him in this behalf;

[c] in respect of births and deaths in a jail, the jailor in charge;

[d] in respect of births and deaths in a choultry, chattram, hostel, dharmasala, boarding-house, lodging-house, tavern, barrack, toddy shop or place of public resort, the person in charge thereof;

[e] in respect of any new-born child or dead body found deserted in a public place, the headman or other corresponding officer of the village in the case of a village and the officer in charge of the local police station elsewhere:

Provided that any person who finds such child or dead body, or in whose charge such child or dead body may be placed, shall notify such fact to the headman or officer aforesaid;

[f] in any other place, such person as may be prescribed.

[2] Notwithstanding anything contained in sub-section [1], the State Government, having regard to the conditions obtaining in a registration division, may by order require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding births and deaths in a house referred to in clause [a] of sub-section [1] instead of the persons specified in that clause.

6. Sub-Section [1] of Section 8 of the Registration of Births and Deaths Act, 1969 has, thus, mentioned about the persons who can give information required for registration of births and deaths. As per Clause [a] of Section 8[1], in respect of births and deaths in a house, whether residential or non-residential, not being any place referred in Clauses [b] to [e], the head of the house or, in case more than one household live in the house, the head of the household, the head being the person, who is so recognised by the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period; shall have to give or shall cause to be given, either orally or in writing, according to the best of their knowledge and belief, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under sub-Section [1] of Section 16. Section 16[1] of the Registration of Births and Deaths Act, 1969 [‘the Act, 1969’, for short] requires the Registrar to keep in the prescribed form a register of births and deaths for the registration area or any part thereof in relation to which he exercises jurisdiction.

6.1. Sub-section [2] of Section 8 of the Act, 1969 has laid down that notwithstanding anything contained in sub-section [1], the State Government, having regard to the conditions obtaining in a registration division, may by order require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding births and deaths in a house referred to in clause [a] of sub-section [1] instead of the persons specified in that clause.

7. Rule 8 of the Assam Registration of Births and Deaths Rules, 1999 [‘the Rules, 1999’, for short] has provided for extracts of registration entries to be given under Section 12 of the Act, 1969. As per Section 12 of the Act, 1969, the Registrar shall, as soon as the registration of a birth or death has been completed, give, free of charge, to the person who gives information under section 8 or section 9 and extract of the prescribed particulars under his hand from the register relating to such birth or death.

7.1. Sub-rule [2] of Rule 8 of the Rules, 1999 has inter alia provided that in the case of births and deaths referred to in clause [a] of Section 8 of the Act, 1969 which are reported direct to the Registrar of Births and Deaths, the Head of the house or household, as the case may be, or in his absence, the nearest relative of the head present in the house may collect the extracts of death from the Registrar within thirty day of its reporting.

7.2. Sub-rule [3] of Rule 8 of the Rules, 1999 has inter alia provided that in the case of domiciliary events of births and deaths referred to in clause [a] of sub-section [1] of Section 8 which are reported by persons specified by the State Government under sub-section [2] of Section 8, the person so specified shall transmit the extracts received from the Registrar of Births and Deaths to the concerned Head of the house or household as the case may be, or in his absence, the nearest relative of the head present in the house within thirty days of its issue by the Registrar.

8. The Health & Family Welfare [A] Department, Government of Assam has

issued an Office Memorandum bearing no. HLA.100/2012/198 dated 08.04.2013 on the subject : 'Issuance of Death Certificate', which is relatable to Section 8[2] of the Act, 1969.

9. The Office Memorandum dated 08.04.2013 has mentioned to the effect that for registering death, the informant will have to submit an application in the office of the Registrar of Births and Deaths. It has further specified the persons authorized under the Act, 1969 who can be termed as informant and notifier at the place of occurrence. In case the death occurs in a house, the Head of the household/oldest person of the household/heir of the deceased can be the informant and the ANMS/ASHAs/Anganwadi Worker/Gaonburah/Keeper or owners, etc. can be the notifier. As about the procedure to obtain Death Certificate, the Office Memorandum has further provided that the informant/notifier shall apply with duly filled Death Reporting Form [F.2] along with Form-4A [Non Institutional Cases] to the local Registrar of Birth and Death within 21 days at the place of occurrence. On receipt of such an application, the concerned Registrar is to issue the Death Certificate, free of charge to the person who has given the information for registration as soon as the registration of death has been completed. The Office Memorandum has further mentioned that a person can have additional copy of the Certificate of Death on payment of prescribed fee per copy. It is also mentioned therein that there is no limit for applying for additional copies of the Death Certificate. The Office Memorandum has further prescribed that the fee for extra copy of a death certificate as Rs. 5 per copy.

10. In view of the above explanation provided in the Office Memorandum dated

08.04.2013 of the Health & Family Welfare [A] Department, Government of Assam and the provisions contained in the Act, 1969 and the Assam Registration of Births and Deaths Rules, 1999 and the admissions made by the petitioner and the respondent no. 2 with regard to their respective relationship with Late Martuza Hussain in the afore-stated manner, there is no necessity for any adjudication in this writ petition regarding the entitlement of the petitioner or the respondent no. 6 to obtain the Death Certificate in respect of the death of Late Martuza Hussain. The writ petition has been preferred seeking directions [i] to issue the Death Certificate in respect of death of Martuza Hussain and [ii] not to issue the Death Certificate in favour of the respondent no. 6.

11. It is, therefore, observed that the petitioner and/or the respondent no. 6 can apply for the Death Certificate, jointly as applicants or individually as applicant in respect of the death of Late Martuza Hussain before the Registrar of Births and Deaths, Bhanga Hospital & Health Centre, Kankalesh [the respondent no. 4] projecting the respective relationship[s] with Late Martuza Hussain, as admitted by them in the pleading submitted in the case in hand, by submitting such application in the prescribed form by adhering to the procedure prescribed and by depositing the prescribed fee as mentioned in the Office Memorandum dated 08.04.2013. It is noticed that certifying the factum of death of Late Martuza Hussain on 25.08.2020, the Secretary of Lamajuar Gaon Panchayat, Karimganj within whose territorial jurisdiction the death had occurred, has already issued a certificate on 10.09.2020. The said certificate dated 25.08.2020 or any other certificate from any notifier mentioned in the Office Memorandum dated 08.04.2013 can be submitted along with the application before the respondent no. 4 in the prescribed format.

12. Sub-rule [1] of Rule 8 of the Rules, 1999 has laid down that the extracts of particulars from the register relating to death are to be given to an informant under Section 12 of the Act, 1969 in Form no. 6, which Form is as under :-

Death Certificate

[Issued under Section 12/17]

This is to certify that the following information has been taken from the original record of death which is the register for [Local Area] of Tahsil of District of State

Name

Sex

Date of death

Place of death

Registration No

Date of Registration

Date

Signature of issuing authority Seal

No disclosure shall be made of particulars regarding the cause of death as entered in the Register. [See proviso to Section 17[1]].

13. In the event such application[s] is/are received by the respondent no. 4, he shall proceed to process the application, received first in point of time, and after processing the Certificate of Death and/or additional copy of the Certificate of Death in respect of Late Martuza Hussain shall be provided by the said authority to the petitioner as well as the respondent no. 6 in the prescribed Form no. 6, appended to the Rules, 1999, mentioning only the particulars indicated above within 3 [three] weeks from the date of receipt of such an application.

14. This order disposes of the writ petition. No cost.

JUDGE

Comparing Assistant