

GAHC010010032021



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

Case No. : WP(C)/442/2021

LADURI RAY
W/O LATE KALI NATH RAY
VILLAGE SINGIMARI, PS ABHAYAPURI, DIST BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM, LAND AND
REVENUE DEPARTMENT, DISPUR, GUWAHATI 6

2:THE DEPUTY COMMISSIONER
BARPETA
ASSAM 781301

3:THE ACCOUNTANT GENERAL (A AND E)
ASSAM MAIDAMGAON
BELTOLA
GUWAHATI 781029

4:SURUCHI RAY
W/O LATE KALI NATH RAY
VILLAGE SINGIMARI
PS ABHAYAPURI
DIST BONGAIGAON
ASSA

Advocate for the Petitioner : MR. A T SARKAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

06.02.2023

Heard Mr. A. T. Sarkar, the learned counsel for the petitioner and Mr. S. Dutta, the learned counsel appearing on behalf of the respondent No.1. Also heard Mr. T. C. Chutia, the learned senior Government Advocate appearing on behalf of the Deputy Commissioner, Barpeta as well as Mr. M. J. Baruah, the learned counsel appearing on behalf of the respondent No.4. I have also heard the Standing Counsel of the Office of the Accountant General, Mr. R. K. Talukdar.

2. Admittedly the petitioner herein is the legally wedded wife of Late Kali Nath Ray who expired on 16.03.1995 due to illness. During the lifetime of Late Kali Nath Ray when he was posted at Chaygaon Revenue Circle, he entered into a relationship with the respondent No.4. Further, on account of the said relationship of Late Kali Nath Ray with the respondent No.4, there were certain household problems for which Late Kali Nath Ray provided a separate residence at the same village to the petitioner along with his three children. Upon the death of Late Kali Nath Ray on 16.03.1995, the respondent No.4 instituted a proceedings before this Court which was registered and numbered as WP(C) No.1708/2013 disclosing inter-alia that she was the legally wedded wife of Late Kali Nath Ray. This Court on the impression that the respondent No.4 was the wife of Late Kali Nath Ray vide an order dated 28.11.2013 in WP(C) No.1708/2013 directed the respondents to release the pensionary benefits and thereafter the family pension to the respondent No.4 within a reasonable period of time. Further, this Court also imposed an exemplary cost of Rs.2,00,000/- to be paid by the respondents in the said writ petition to the respondent No.4 herein as expeditiously as possible but not later than 31.01.2004. On the basis of the said order passed by this Court dated 28.11.2013, the respondent No.4 got the arrear pension of Late kali Nath Ray, the pensionary benefits, the compensation awarded by this Court as well as have been since then drawing the family pension.

3. The petitioner herein, on coming to learn about the same, wanted to seek necessary modification to the said order. However, it appears from the records and more particularly from the affidavit filed by the respondent No.4 that there was a mutual family settlement entered into between the petitioner and the respondent No.4 whereby it was agreed that the respondent No.4 would part with half of the family pension to which she is being paid, i.e. Rs.3,330/- out of Rs.6,660/- received by the respondent No.4 as family pension.

4. Subsequent thereto, when the petitioner came to learn that she has a right as being the legally wedded wife to get the family pension, she has approached this Court under Article 226 of the Constitution taking into account the provisions of Rule 143 (iii) of the Assam Services (Pension) Rules, 1969 (for short, the Rules of 1969).

5. The respondent No.4 has filed an affidavit wherein there was no denial to the fact that the petitioner is the legally wedded wife of Late Kali Nath Ray. However, it was on account of the mutual agreement entered into between the petitioner and the respondent No.4 that the petitioner was being paid 50% of the family pension which the respondent No.4 got. To the said effect, the respondent No.4 also enclosed certain counterfoils of the payment being made to the petitioner.

6. In the backdrop of the above pleadings, the question therefore arises as to whether the petitioner herein is entitled to the family pension or whether it is the respondent No.4 who can continue to get the family pension. At this stage it may be relevant herein to mention that a pension payment order No.901603038086 has been issued by the Accountant General (A&E) on the basis of which the respondent No.4 is drawing the family pension.

7. Rule 143 (iii) of the Rules of 1969 being relevant is quoted herein below:-

(iii) Pension awarded under the rules in this Section will not be

payable to more than one member of an officer's family at the same time. It will first be admissible to the widow/widower and thereafter to the minor children.

8. A perusal of Rule 143 (iii) of the Rules of 1969 stipulates that the pension awarded under the Rules in the Section of the Rules of 1969 would not be payable to more than one member of an officer's family at the same time. It would be admissible to the widow/widower and thereafter to the minor children. It is no longer res-integra that it is the widow and if legally permissible to marry, two or more, the first widow would be entitled to family pension taking into account the provision of Rule 143 (iii) of the Rules of 1969. Under such circumstances, this Court therefore declares that the petitioner herein would be entitled to family pension of Late Kali Nath Ray.

9. Accordingly, this Court directs the respondent No.3, the Accountant General (A&E) to make necessary changes to the pension payment order No. 901603038086 thereby including the name of the petitioner and striking out the name of the respondent No.4. The said exercise be carried out by the respondent No.3 on the basis of the declaration being made by the instant order and the Deputy Commissioner, Barpeta who is the authority under whom Late Kali Nath Ray used to work is directed to take necessary steps so that the Accountant General (A&E), Assam is in a position to make necessary changes in the pension payment order. The said exercise be completed within a period of 45 (forty five) days from the date a certified copy of the instant order is served upon the Office of the Accountant General (A&E), Assam as well as the Deputy Commissioner, Barpeta. The petitioner is further directed to submit the necessary documents evidencing that she is the wife of Late Kali Nath Ray along with the certified copy of this Order.

10. Taking into account that there was a mutual settlement between the

petitioner and the respondent No.4, this Court further directs that the respondent authorities shall not take any coercive action against the respondent No.4 for recovery of the amount which the respondent No.4 received on the basis of the order dated 28.11.2013 issued in WP(C) No.1708/2013. It is also directed that upon the passing of this order, the respondents shall not release any further amount to the respondent No.4.

11. A copy of the instant order be served upon the Mr. T. C. Chutia, the learned senior Government Advocate and Mr. R. K. Talukdar, the learned Standing Counsel appearing on behalf of the Accountant General for necessary compliance.

12. With the above observation and direction, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant