

GAHC010017192023



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

Case No. : WP(C)/627/2023

NUR BANU BEGUM
W/O- LT. KASIM UDDIN AHMED, VILL- TANGAON PT. I, P.O. DHANUA, P.S.
MANKACHAR, DIST.- SOUTH SALMARA, MANKACHAR, ASSAM, PIN-
783135

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, WATER
RESOURCE DEPTT., DISPUR, GHY-6

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT. DISPUR, GHY-6

3:THE CHIEF ENGINEER
WATER RESOURCE DEPTT.
ASSAM CHANDMARI, GHY-3

4:THE EXECUTIVE ENGINEER
WATER RESOURCE DEPTT.
DHUBRI DIVISION
DIST.- DHUBRI, ASSAM

5:THE SUB DIVISIONAL ENGINEER
WATER RESOURCE DEPTT.
SOUTH SALMARA MANKACHAR SUB-DIVISION
DIST.- SOUTH SALMARA MANKACHAR
ASSAM

6:THE ACCOUNTANT GENERAL (A AND E)
ASSAM MAIDAMGAON, BELTOLA
GHY-29

7:THE TREASURY OFFICER

SOUTH SALMARA MANKACHAR
HATSINGIMARI, ASSAM.

Advocate for the Petitioner : MD H R AHMED

Advocate for the Respondent : SC, WATER RESOURCE

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 08.02.2023

Heard Mr. H.R. Ahmed, the learned counsel appearing on behalf of the petitioner. Mr. R.Borpujari, the learned counsel appears on behalf of the respondent Nos. 2 & 7, Ms. J. Gogoi, the learned counsel appears on behalf of the respondent Nos. 1, 3, 4 and 5 and Ms. A.Lala, the learned counsel appears on behalf of the respondent No. 6.

2. The instant writ petition has been taken up for disposal at the motion stage itself taking into account the facts involved.

3. The case of the petitioner herein is that the petitioner is the second wife of one Kasim Uddin Ahmed(since deceased) who was serving as a Section Assistant in the Water Resource Department under the Executive Engineer, Embankment and Drainage Department presently known as the Water Resource Department. Late Kasim Uddin Ahmed had retired from service on 31/12/2003 and thereafter the pension was disbursed to him w.e.f. 01/01/2004. During his life time Late Kasim Uddin married one Sokina Begum(since deceased) as well as the petitioner. Late Sokina Begum was the first wife of Lt. Kasim Uddin Ahmed. Unfortunately Late Sokina Begum expired on 24/10/2014 during the life time of Late Kasim Uddin Ahmed. Subsequent thereto on 8/9/2021 Kasim Uddin Ahmed expired leaving behind the petitioner as the only surviving widow of Late Kasim Uddin Ahmed.

4. It could be seen from the perusal of the materials on record that in the Pension

Payment Order bearing PPO No.BUB/97321 was issued in favour of Kasim Uddin Ahmed during his life time wherein late Sokina Begum was shown as his wife. It further appears from the Annexure-2 and Annexure-3 to the writ petition that Lt Sokina Begum expired on 24/10/2014 and Late Kasim Uddin Ahmed expired on 8/9/2021. The petitioner herein also obtained the next of kin certificate from the office of the Deputy Commissioner which was issued on 25/10/2021. The same has been enclosed as Annexure-4 to the writ petition. From a perusal of the said next of kin certificate issued by the office of the Deputy Commissioner, South Salmara Mankachar District, it appears that the petitioner herein has been shown as the wife of Late Kasim Uddin Ahmed. However on account of the fact that the petitioner's name has not been included in the PPO No.BUB/97321, the petitioner has not been paid her family pension for which the petitioner has approached this court under Article 226 of the Constitution.

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

6. The Full Bench of this Court in the case of **Musstt. Junufa Bibi Vs. Musstt. Padma Begum and Ors.** reported in **2022 SCC Online Gauhati 2000** after taking into consideration the provisions of Rule 143 of the Assam Services (Pension) Rules, 1969 (for short 'the Rules of 1969') had observed that Rule 143(1) goes to show that for the purpose of family pension a family would comprise of the relatives of the officer, which also includes the wife in case of a male officer. If the second or further wives of a male officer are acceptable and valid under the personal law governing the parties, the Full Bench was of the opinion that there was no reason as to why the second or further wives would not be construed to be a wife of the male officer. It was further observed that if the validity and acceptability of the marriage of a second wife or further wives where the parties are governed by Mohammedan Law would be determined by the personal laws of the parties, and the personal laws provide for the validity and acceptability of such marriage, the second wife or the further wives where

the parties are governed by the Mohammedan Law, would have to be construed to be also the family members of the deceased employee and therefore, under Rule 143(1) of the Pension Rules of 1969 would be entitled to the benefits of the family pension.

7. In paragraph No. 20 of the said judgment, the Full Bench after taking into consideration the provisions of Rule 143(iii) of the Pension Rules 1969 as well as the Note 1 to Rule 143 (ii) and observed that the family pension would be payable to the eldest of the surviving widows in the event there are two or more widows, and thereafter, on her death it would be payable to the next surviving widow, if any and thereafter, to the minor children if the occasion arises. Paragraph 15, 16 and 20 of the said judgment of the Full Bench being relevant are quoted herein below :

“15. As reading of Rule 143(1) goes to show that for the purpose of family pension a family would comprise of the relatives of the officer, which also includes the wife in case of a male officer. If the second or further wives of a male officer are acceptable and valid under the personal law governing the parties, we see no reason as to why such second or further wives would not be construed to be a wife of the male officer.

16. If the validity and acceptability of the marriage of a second wife or further wives where parties are governed by Mohammedan Law would be determined by the personal laws of the parties, and the personal laws provide for the validity and acceptability of such marriage, the second wife or the further wives where parties are governed by Mohammedan Law, would have to be construed to be also the family members of the deceased employee and therefore, under Rule 143(1) of the Pension Rules of 1969 be entitled to the benefits of a family pension.

20. As a corollary to the provisions of the Rule 143 (iii) of the Pension Rules of 1969, Note 1 to Rule 143 (ii) would have to be read to mean that the family pension would be payable to the eldest of the surviving widows in the event there are two or more widows, and thereafter, on her death it would be payable to the next surviving widow, if any and thereafter, to the minor children if the occasion arises.”

8. In the instant case, it is the case of the petitioner that the petitioner is the

second wife of Late Kasim Uddin Ahmed and to prove the same has enclosed the next of kin certificate issued by the Deputy Commissioner, South Salmara. Taking into account the said judgment of the Full Bench, the petitioner herein would be entitled to the family pension, if the petitioner is the surviving widow of late Kasim Uddin Ahmed. The question as to whether the petitioner would be the surviving widow of Late Kasim Uddin Ahmed is subject to verification by the authorities concerned.

9. Under such circumstances, this Court therefore disposes off the writ petition with a direction to the petitioner to submit the necessary papers evidencing that she is the surviving widow of late Kasim Uddin Ahmed along with a certified copy of the instant order. The authorities concerned shall on the basis of the said documents and the certified copy of the instant order, more particularly, the respondent No. 4 shall verify as to whether the petitioner is the surviving widow of Late Kasim Uddin Ahmed and thereupon if it is found that the petitioner is the surviving widow of Late Kasim Uddin Ahmed, the respondent No. 4 shall process the necessary papers so that the respondent No. 6 can take appropriate action for making necessary modification to the pension payment order and thereupon issue appropriate direction for release of the family pension. The respondent No. 7 shall upon such direction being issued by the respondent No. 6 do the needful as is required under the law. The said exercise be completed within a period of 3(three) months from the date the petitioner herein submits the necessary papers along with the certified copy of the instant order to the respondent No. 4.

9. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant