

GAHC010021022020



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

Case No. : WP(C)/829/2020

AJUFA BIBI
W/O- LATE MOTIUR RAHMAN SHEIKH @ MOTIUR RAHMAN, R/O- VILL-
BHOMRABIL NO.2, P.O- GOLADANGI, P.S- GOSSAIGAON, DIST-
KOKRAJHAR, BTAD, ASSAM

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
PENSION AND PUBLIC GRIEVANCES DEPTT, DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
FINANCE (ESTT-A) DEPTT
DISPUR
GUWAHATI
PIN- 781006

3:THE DIRECTOR OF PENSION
HOUSEFED COMPLEX
BELTOLA
GUWAHATI
PIN- 781007

4:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
PIN- 781019

5:THE BODOLAND TERRITORIAL COUNCIL
REP. BY THE SECRETARY
EDUCATION DEPTT

BTC
KOKRAJHAR
ASSAM
PIN- 783370

6:THE DIRECTOR OF EDUCATION
BTC
KOKRAJHAR
ASSAM
PIN- 783370

7:THE DEEO
KOKRAJHAR
BTAD
ASSAM
PIN- 783370

8:THE DEPUTY INSPECTOR OF SCHOOLS
GOSSAIGAON
P.O AND P.S- GOSSAIGAON
DIST- KOKRAJHAR
BTAD
ASSAM
PIN- 783360

9:THE BEEO
KACHUGAON EDUCATION BLOCK
P.O AND P.S- KACHUGAON
DIST- KOKRAJHAR
BTAD
ASSAM
PIN- 783360

10:SHAJIDA BIBI
W/O- MATIUR RAHMAN SHEIKH
R/O- VILL- BHOMRABIL NO. 2
P.O- GOLADANGI
P.S- GOSSAIGAON
DIST- KOKRAJHAR
BTAD
ASSAM
PIN- 78336

Advocate for the Petitioner : MR. A A R KARIM

Advocate for the Respondent : SC, PENSION

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 13.03.2023

Mr. A. A. R. Karim, learned counsel for the petitioner. Also heard Mr. S. R. Baruah, learned counsel for the respondent Nos. 1 & 3; Mr. R. Borpujari, learned counsel for the Finance Department, Mr. B. Talukdar, learned counsel for the Elementary Education Department and Mr. A. T. Sarkar, learned counsel for the respondent No. 10.

2. The petitioner herein is admittedly the second wife of one- Md. Motiur Rahman Sheikh @ Motiur Rahman (since deceased) and the respondent No.10 is the first wife of late Md. Motiur Rahman Sheikh. Late Md. Motiur Rahman Sheikh was working as the Arabic Teacher at Bhomrabil L.E. Madrassa since 18.01.1986 and on 21.02.2019 he unfortunately expired. Admittedly as on today, neither the petitioner nor the respondent No. 10 have applied for family pension but it is the case of the petitioner that the petitioner being the second wife would not be granted the family pension for which the petitioner has approached this Court seeking equal distribution.

3. I have heard the learned counsels for the parties.

4. In a recent Judgment of the Full Bench in the case of *Mustt Junufa Bibi – Vs- Mustt Padma Begum and Ors.* reported in *2022 SCC OnLine Gau 2000*, the Full Bench had categorically held that it is the first wife who is entitled for family pension but the first wife receives the family pension as a trustee of those persons who are entitled to the family pension. In paragraph- 23 of the said Judgment, the full Bench have categorically held that where the parties are

governed by the Mohammedan Law and are not appropriately maintained by the eldest of the surviving widow or wife to whom the pension would be paid, the remedy thereof would be to make a claim for maintenance in the appropriate forum under the law and not a claim for a payment of the family pension by the State authorities directly to such persons. In view of the said observations, the instant writ petition is, therefore, not maintainable inasmuch as the writ which has been sought for is against the respondent No. 10 who is private person.

5. Under such circumstances, this Court has no other option but to dismiss the instant writ petition. It is, however, made clear that the dismissal of the instant writ petition shall not preclude the petitioner to approach the appropriate forum claiming maintenance or part of the family pension from the respondent No. 10, if the authorities disburses the family pension to the respondent No. 10.

6. This Court further observes that the petitioner would also be at liberty to approach the State Authorities who on their own volition and taking into account the facts and circumstances would be at liberty to pay the pension separately to such members of the family of the deceased employee as deemed fit.

7. With the above observation, the instant petition stands disposed of.

JUDGE

Comparing Assistant