

GAHC010022962023



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

Case No. : WP(C)/718/2023

TARIFAN NESSA

W/O- LT. KAZI ABDUR RAHMAN, MOTHER OF LT. KAZI MOINUL HOQUE,
R/O- VILL- PALHAZI, P.O. PALHAZI, DIST.- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, HIGHER EDUCATION
DEPTT., DISPUR, GHY-06

2:THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GHY-29

3:THE SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-06

4:THE DIRECTOR OF HIGHER EDUCATION DEPTT.
ASSAM
KAHILIPARA
GHY-19

5:THE TREASURY OFFICER
BARPETA P.O. AND DIST.- BARPETA
ASSAM
PIN-

6:JOYNAB AHMED

W/O- LT. KAZI MOINUL HOQUE
R/O- VILL- PALHAZI
P.O. PALHAZI
DIST.- BARPETA
ASSAM
PIN- 78130

Advocate for the Petitioner : MR. S ISLAM

Advocate for the Respondent : SC, HIGHER EDU

– B E F O R E –

HON'BLE MR. JUSTICE DEVASHIS BARUAH

10-02-2023

None appears on behalf of the petitioner.

Heard Mr. K. Gogoi, learned standing counsel, Higher Education Department, appearing on behalf of respondent Nos.1 and 4, Mr. R. Ahmed, learned counsel appearing on behalf of respondent No.2 and Mr. A. Chaliha, learned counsel appearing on behalf of respondent Nos.3 and 5.

The case of the petitioner herein is that the petitioner is the mother of one Kazi Moinul Hoque since deceased. After the death of her son, the respondent No.6, who is the wife of Late Kazi Moinul Hoque has been getting the family pension and has been living separately from the petitioner. The respondent No.6, however, has not provided anything to the petitioner and as such, the petitioner is before this Court.

Taking into account the judgment of the Full Bench of this Court in the case of *Mustt Junufa Bibi vs. Mustt Padma Begum @ Padma Bibi and others*, reported in *2022 SCC Online GAU 2000* wherein it has been mentioned 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. Paragraph 23 of the said judgment being relevant is quoted hereinbelow:

“23. We also provide that in the event any such other persons who are entitled to the benefits of the family pension in terms of Rule 143 of the Pension Rules of 1969, including the second or further wives, in a case where the parties are governed by the Mohammedan Law, 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. But however, if in a given case the State authorities on their own volition are of the view that under an acceptable circumstance the authorities are agreeable or required to pay the pension separately to any such member of a family of a deceased employee, this judgment may not be construed to be an absolute bar on such separate payment.”

Under such circumstances, the instant writ petition stands disposed of thereby granting liberty to the petitioner to approach the appropriate forum claiming maintenance in terms of the abovequoted paragraph of the Full Bench's judgment.

With the above observation, this writ petition stands disposed of.

JUDGE

Comparing Assistant