



THE GAUHATI HIGH COURT

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

Writ Petition (Civil) no. 923/2023

JAYEDA BEGUM
W/O- LT. SAIFUZ ZAMAN,
R/O- VILL- MOUKHOWA,
P.O. MANIKPUR, P.S. MANIKPUR,
DIST.- BONGAIGAON, ASSAM,
PIN- 783392

.....Petitioner

-Versus-

1. THE STATE OF ASSAM
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
BLOCK-C, 3RD FLOOR JANATA BHAWAN,
DISPUR, GHY-06, ASSAM
2. THE DY. COMMISSIONER BONGAIGAON
DIST.- BONGAIGAON
ASSAM, PIN- 783380
3. THE CIRCLE OFFICER MANIKPUR REVENUE CIRCLE
MANIKPUR DIST.- BONGAIGAON
ASSAM, PIN- 783392
4. NOBINA KHANAM
D/O- LT. ATOWAR RAHMAN
R/O- VILL- ABHAYAPURI RAWMARI WARD NO. 2
P.O. AND P.S. ABHAYAPURI
DIST.- BONGAIGAON ASSAM PIN- 78338

.....Respondents

Advocates :

For the Petitioner : Mr. H. Ali, Advocate

For the Respondent nos. 1, 2, & 3 : Mr. R. Talukdar, Junior Government
Advocate, Assam

Date of Hearing and Judgment & Order : 24.02.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

The petitioner has instituted the instant writ petition under Article 226 of the Constitution of India seeking **inter alia** a direction in the nature of mandamus to direct the respondent authorities, more particularly, the respondent no. 2 to issue a Next of Kin [NoK] Certificate to the petitioner on the basis of her application submitted on 23.09.2022 without further delay so as to enable the petitioner to receive the pension and other service benefits of her deceased husband and also to receive regular family pension as per the extant rules in force.

2. The case projected by the petitioner, in brief, is that the husband of the petitioner viz. Saifuz Zaman was a Junior Engineer in the Public Works Department [PWD], Government of Assam and he retired from service on superannuation in June, 2018. After his retirement, Saifuz Zaman submitted all the necessary papers before the concerned authorities for finalization and payment of his monthly pension as well as other retirement benefits. While the process of finalization of monthly pension and other retirement benefits was in progress, Saifuz Zaman expired on 09.07.2020 without receiving any monthly pension and other retirement benefits.

2.1. According to the petitioner, Saifuz Zaman married twice during his life time. The first wife of Saifuz Zaman was one Nabina Khanam [the respondent no. 4]. It is the case of the petitioner that the marriage between Saifuz Zaman and the respondent no. 4 was dissolved on 30.03.2020 by pronouncement of Talak as per the Mohammadan law. The petitioner has claimed that after dissolution of the first marriage, the respondent no. 4 left the company of Saifuz Zaman and was living separately and independently with her children as divorced wife. Saifuz Zaman had two daughters with the respondent no. 4 and, on the other hand, he had two sons from the marriage with the petitioner.

2.2. Prior to his demise, Saifuz Zaman filled up nomination form nominating the petitioner as his nominee before the concerned authorities. After the demise of Saifuz Zaman, the petitioner stated to have approached the employer of Saifuz Zaman for release of the family pension, arrear monthly pension and other retirement benefits

entitled to her husband viz. Saifuz Zaman. When so approached, the employer had asked for submission of a Next of Kin [NoK] certificate for processing the matters of family pension, arrear monthly pension and other retirement benefits in favour of the petitioner. The petitioner has stated that she had submitted an application online for issuance of a Next of Kin [NoK] certificate in her favour on 23.09.2020. The petitioner has learnt that the divorced wife of Saifuz Zaman had also submitted a separate application for issuance of legal heir certificate for inclusion of her name as Next of Kin [NoK] of Late Saifuz Zaman. In order to process the Next of Kin [NoK] Certificate, the respondent no. 3 had conducted hearings also by securing the appearance of the petitioner and the respondent no. 4 before by sending to the petitioner and the respondent no. 4. But despite hearings, the Next of Kin [NoK] Certificate has not been issued. Hence, the writ petition.

3. I have heard Mr. H. Ali, learned counsel for the petitioner and Mr. R. Talukdar, learned Junior Government Advocate, Assam for the respondent nos. 1 – 3.

4. Mr. Ali, learned counsel for the petitioner has submitted that pursuant to submission of an application for Next of Kin [NoK] Certificate on 23.09.2020, the respondent no. 3 issued notices on 21.09.2021 and 06.12.2021 to the petitioner as well as the divorced first wife of Saifuz Zaman to attend hearings at his office on 04.10.2021 and 13.12.2021 along with all the relevant documents relating to their relationship with Late Saifuz Zaman. According to the petitioner, the petitioner had attended the hearings before the respondent no. 3 and was able to substantiate her claim as a Next of Kin [NoK] of Late Saifuz Zaman.

5. Mr. Talukdar, learned Junior Government Advocate, Assam has submitted that issuance of Next of Kin [NoK] Certificate is a notified service under the Right to Public Services Act, 2012, as amended, and as such, the designated authorities notified under the Assam Right to Public Service Act, 2012 are obligated to dispose of an application for Next of Kin [NoK] Certificate as per the procedure laid down therein and within the stipulated time period. Furthermore, in the event of any grievance on the part of an application, such an applicant has adequate and efficacious statutory remedy of appeal and second appeal under the Act.

6. The Next of Kin [NoK] Certificate is a certificate issued by the jurisdictional district administration. As per the procedure notified by the district administration, the Next of Kin [NoK] Certificate is issued by the office of the Deputy Commissioner/Sub-Divisional Officer [Civil] and an applicant has to make an application for issuance of Next of Kin [NoK] Certificate with the required documents in support of such claim. An applicant must be an Indian Citizen and should be wife/husband/mother/father/daughter/son/brother/sister/uncle/aunt/nephew/niece of the deceased person.

7. At this juncture, a reference to the provisions of the Assam Right to Public Services Act, 2012 [‘the ARTPS Act’, for short] is necessary.

8. The State Legislature has enacted an act, ‘the Assam Right to Public Services Act, 2012 [Assam Act no. IX of 2012]’ the Preamble of which states that it is an Act to provide for the delivery of the notified public services to the people of the State of Assam within the stipulated time limit and for matters connected therewith and incidental thereto. After receipt of the assent of the Governor, the Act was notified on 02.05.2012 and was published in the Official Gazette on 02.05.2012. The State Legislature has made certain amendments in the provisions of ‘the Assam Right to Public Services Act, 2012’ by ‘the Assam Right to Public Services [Amendment] Act, 2019 [Assam Act no. VII of 2019]’ [‘the ARTPS (Amendment) Act’, for short]. The ARTPS [Amendment] Act, 2019 was notified on 04.09.2019 and was published in the Official Gazette also on 04.09.2019. In exercise of the powers conferred by Section 15 of the ARTPS Act, the State Government has also made a set of rules viz. the Assam Right to Public Services Rules, 2012 [‘the ARTPS Rules’, for short] vide a Notification no. AR.69/2011/Pt-II/... dated 19.09.2012 and as per Rule 1[2] thereof, the ARTPS Rules shall come into force on the date of their publication in the Official Gazette. The ARTPS Rules had come to be published in the Official Gazette, in its issue dated 25.10.2012.

8.1. The ARTPS Act is extendable to the whole of Assam and as per Section 1[3], the Act shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint. By a Notification no. AR.69/2011/Pt-II/95 dated 10.04.2013, the State Government in exercise of powers conferred under sub-section [3] of Section 1 of the ARTPS Act has notified enforcement of the ARTPS Act w.e.f. 19.04.2013. The State

Government, by the same Notification, in exercise of powers conferred under Section 4 of the ARTPS Act has declared that the ARTPS Act has come into effect to the whole State except in the districts of Kokrajhar, Chirang, Baksa, Udalguri, Karbi Anglong and Dima Hasao.

8.2. The term, 'eligible person', defined in Section 2[d], means a citizen who is eligible for obtaining the notified service. As per Section 2[h], 'Right to Public Service' means the right to obtain the notified service under the ARTPS Act from time to time within the stipulated time limit as prescribed under Section 5. 'Notified service', as per Section 2[i], means any service notified by the State Government under Section 4. Section 2[k] has provided for the 'stipulated time limit' which means the maximum time to provide the service the service by the Designated Public Servant or to decide the appeals by the appellate authorities as notified under Section 4.

8.3. In exercise of the powers conferred under Section 4, the State Government may, from time to time, notify, inter-alia, the public services including the provisions for fast track service delivery ["Tatkal Sewa"], the appointment of Designated Public Servants in the administrative units/offices under it, Appellate Authorities to hear and decide the appeal by an eligible person against rejection of his application or delay in providing notified public services within the stipulated time limit, etc. Under Section 5, every eligible person has the right to obtain the services in accordance with the ARTPS Act within the time period as notified under Section 4. The responsibility has been cast on the Designated Public Servant, under Section 6, to provide the notified services under Section 4 to the eligible person within the stipulated time limit, which starts, as per Section 7, from the date when the application for obtaining a required notified service is submitted to the Designated Public Servant or to a person, subordinate to him, authorized to receive the application. It has been made mandatory under Rule 3 of the ARTPS Rules to issue acknowledgment to the citizens applying for notified services. The State Government by a Notification no. AR.32/2020/PT-I/28 dated 10.06.2021 has further made it mandatory to issue acknowledgement against each such application for notified service in order to track the delivery of notified services and to see as to whether the notified services have been delivered within the stipulated time period.

8.4. The Designated Public Servant on receipt of an application to provide a notified service shall either provide the notified service or reject the application and in case of rejection of an application, he shall have to record the reasons in writing and communicate to the person making the application [i] the reasons for such rejection; [ii] the period within which an appeal against such rejection may be preferred; and [iii] the particulars of the Appellate Authority.

9. Section 8 has made provisions for appeal as well as for second appeal before an Appellate Authority and the Assam State Commission for Right to Public Services [‘the Commission’, for short] respectively, within the time limits provided therefor. Under Section 8A, the State Government is required to constitute a body to be known as the Assam State Commission for Right to Public Services, by notification in the Official Gazette, to exercise the powers conferred on, and to perform the functions assigned to it under the Act. The powers and functions of the Commission have been outlined in sub-section [1] of Section 8D of the Act with the mandate that it shall be the duty of the Commission to ensure proper implementation of the Act and to make suggestions to the State Government for ensuring better delivery of services. For the said purpose, the Commission may [a] entertain and dispose of appeal under Section 8; [b] recommend Departmental action against any officer or employee of the State Government who has failed in due discharge of functions cast on him under this Act; [c] recommend changes in procedures for transparent and easier delivery : provided that before making such a recommendation, the Commission shall consult the Authority of the concerned Administrative Department which is to deliver the services; and [d] recommend steps to be taken by Public Authority for efficient delivery of Public Services. Sub-section [2] of Section 8D has conferred power to the Commission to frame regulations, subject to the previous approval of the State Government, consistent with the provisions of the ARTPS Act and the ARTPS Rules, for regulating its own procedure and disposal of its business with sub-section [3] thereof contains the mandate to publish such regulations in the Official Gazette.

9.1. By a notification no. AR.39/2017/149 dated 04.03.2020 of the Administrative Reforms and Training Department, Government of Assam, it has been notified that the Assam Administrative Tribunal shall exercise the powers and perform the functions of the

Assam State Commission for Right to Public Services until further order and the said notification has come into force with immediate effect.

9.2. The State Government in exercise of the powers conferred by sub-section [2] of Section 8D of the ARTPS Act has also made a set of regulations by the name of 'the Assam State Commission for Right to Public Services Regulations, 2021 [the ARTPS Regulations', for short] for regulating the procedure and disposal of business of the Commission and the ARTPS Regulations have been notified by the State Government vide a notification no. AR.21/2021/31 dated 12.11.2021.

10. Section 9 has prescribed for penalty at the rate specified from time to time as prescribed in the rules framed under the Act if the Designated Public Servant has refused to receive an application for notified services or has failed to provide the notified public services within the stipulated time period as fixed under the Act or malafidely denied the request for notified services or obstructed in any manner in providing the notified services without sufficient and reasonable cause. Provision is also made therein for imposition of penalty up to a maximum of Rs. 25,000/-. Section 10 has laid down the procedure for recovery of penalty, making provision for recovery of penalty from the salary of the concerned Designated Public Servant.

11. Section 14 of the ARTPS Act has given overriding effect to the Act. As per the said Section, in relation to the notified services under the ARTPS Act and its implementation, the provisions of the ARTPS Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in any instrument having effect by virtue of any law other than the said Act.

12. The ARTPS Rules, made in exercise of the powers conferred by Section 15 of the ARTPS Act, have provided, inter-alia, for penalty, procedure of application for first appeal or second appeal, procedure for deciding first appeal or second appeal, individual presence of applicant/Designated Public Servant in the hearing, recovery of penalty, etc.

13. The State Government has, in the meantime, in exercise of the powers conferred under Section 4 of the ARTPS Act, notified and brought a number of services under the

purview of the ARTPS Act by a Notification no. AR.69/2011/Pt-II/96 dated 10.04.2013. Amongst the services so notified and brought under the purview of the ARTPS Act includes 'Issuance of Next of Kin [NoK] Certificate'.

14. In so far as issuance of Next of Kin [NoK] Certificate is concerned, the State Government by the Notification no. AR.69/2011/Pt-II/98 dated 10.04.2013 has notified the Designated Public Servant, Appellate Authority, Reviewing Authority, stipulated time limit, user charge for delivery of notified services, etc. as under :-

Serial No.	44.
Notified public service	Next of Kin Certificate
Stipulated time limit for providing the service [Days]	30 Days
Designation of Designated Public Servant	Additional Deputy Commissioner nominated by DC/EAC or equivalent officer appointed by SDO [Civil]
Designation of Appellate Authority	Deputy Commissioner
Time limit for disposal by Appellate Authority [Days]	30 Days
Designation of Reviewing Authority	Divisional Commissioner
Time limit for disposal by Reviewing Authority [Days]	45 Days
Documents to be enclosed with the application	1. Death Certificate of the deceased person. 2. Valid Documents showing relationship with the deceased person. 3. Self declaration Affidavit.
User charge, if any [in Rupees]	NIL
Eligibility criteria to obtain service	

15. It is a settled position of law that when there is an alternative and equally efficacious statutory remedy available for relief the exercise of jurisdiction under Article 226 of the Constitution of India which jurisdiction is discretionary and extra-ordinary in nature ordinarily not to be exercised by bypassing the machinery created under the statute for the same remedy. In this connection, following observations made by the Constitution Bench of the Hon'ble Supreme Court of India in **Thansing Nathmal and**

others vs. Superintendent of Taxes, Dhubri and others, reported in **AIR 1964 SC 1419** can be referred to : -

“7. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

15.1. The Hon'ble Supreme Court of India in **Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parish Ad Now Zila Parishad [three judges Bench]**, reported in **AIR 1969 SC 556**, has held it as a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, as observed by the Hon'ble Supreme Court in **Rashid Ahmed vs. Municipal Board, Kairana**, 'the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs' and where such a

remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor.

16. It is noticed from Annexure-6, annexed to the writ petition, that it is an acknowledgment receipt issued by the office of the Additional Deputy Commissioner, Bongaigaon in connection with the application filed by the writ petitioner as an applicant for issuance of a Next of Kin [NoK] Certificate and the date of receipt of the application was 23.09.2020. As per acknowledgement receipt, the proposed delivery date of the Next of Kin [NoK] Certificate was within 30 working days from 23.09.2020. Aggrieved by non-issuance of Next of Kin [NoK] Certificate by designated officer, the Additional Deputy Commissioner, Manikpur SDO, the petitioner has approached this Court by the instant writ petition under Article 226 of the Constitution of India seeking a direction to the respondent authorities to issue the Next of Kin [NoK] Certificate to the petitioner, as applied for already.

17. In the light of the above discussion as regards exercise of the extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution of India and the provisions of the ARTPS Act, the ARTPS Rules and the ARTPS Regulations, this Court on analysis of the provisions of the statutory remedy available to the petitioner, is of the considered view that such remedy is an efficacious and adequate one providing also for an appeal and a second appeal as well as imposition of penalty in the event the provisions provided in the statute and the rules framed thereunder, that is, the ARTPS Act and the ARTPS Rules are not followed in extending the notified public service. In such view of the matter, this Court holds that this writ petition is not to be entertained and accordingly, it is not entertained.

18. Since the designated public servant in the case in hand has already acknowledged the receipt of the application of the petitioner and has conducted hearings for the purpose of deciding the matter of issuance or otherwise of the Next of Kin [NoK] Certificate, he is obligated under the ARTPS Act and the ARTPS Rules to arrive at a decision thereon within the stipulated time period provided therein. Be that as it may, as the application of the petitioner Next of Kin [NoK] Certificate is stated to be pending as on date, this Court is of the considered view that the writ petition can be disposed of at

this stage without adverting to the merits of the claim of the petitioner for such Next of Kin [NoK] Certificate, with a direction to the designated public authority under the ARTPS Act, that is, the respondent no. 2 and the respondent no. 3 to dispose of the application submitted by the petitioner on 23.09.2020 within a period of 30 working days from the date of receipt of a certified copy of this order. It is accordingly ordered.

19. The petitioner shall furnish a certified copy of this order at the office of the respondent no. 3 to enable the said authority to take further steps in the matter. No cost.

JUDGE

Comparing Assistant