

GAHC010035942023



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

Case No. : WP(C)/1146/2023

RATNA BEGUM BARBHUIYA
W/O-LT. SIRAJUDDIN BARBHUIYA, R/O- VILL- BOWERGHAT PART-I, P.O.
BOWERGHAT PART-I, DIST.- HAILAKANDI, ASSAM, PIN- 788164

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, ANIMAL
HUSBANDRY AND VETERINARY DEPTT., DISPUR, GUWAHATI, ASSAM,
PIN- 781006

2:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
ANIMAL HUSBANDRY AND VETERINARY DEPTT.
DISPUR
GUWAHATI
ASSAM
PIN- 781006

3:THE SENIOR ACCOUNT OFFICER
OFFICE OF THE PRINCIPAL ACCOUNTANT GENERAL (A AND E) ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 781029

4:THE UNDER SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPTT.
DISPUR
GUWAHATI
ASSAM
PIN- 781006

5:THE DEVELOPMENT OFFICER
(PIG
SHEEP AND GOAT) GOVT. OF ASSAM
ANIMAL HUSBANDRY AND VETERINARY DEPTT.
CHANDMARI
GUWAHATI
ASSAM
PIN- 781003

6:PUERNIMA RAHMAN BARBHUIYA
W/O- LT. SIRAJUDDIN BARBHUIYA
R/O- VILL- BOWERGHAT PART-I
P.O. BOWERGHAT PART-I
DIST.- HAILAKANDI
ASSAM
PIN- 78816

Advocate for the Petitioner : MD I H LASKAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

10.03.2023

Heard Mr. I. H. Laskar, the learned counsel for the petitioner and Ms. M. M. Kotoky, the learned counsel appearing on behalf of the respondent Nos.1, 2 & 5. Also heard Ms. J. Das, the learned counsel appearing on behalf of the respondent No.3 as well as Ms. S. Baruah, the learned counsel for the respondent No.4.

The case of the petitioner herein is that the petitioner is the second wife of Late Sirajuddin Barbhuiya. It is the case of the petitioner that the respondent No.6 is the first wife of Late Sirajuddin Barbhuiya and she has been receiving the family pension. However, the respondent No.6 has not

maintained her for which the petitioner has approached this Court under Article 226 of the Constitution.

The learned counsel for the petitioner, however, has submitted that in view of the judgment of the Full Bench in the case of ***Mustt. Junufa Bibi vs. Mustt. Padma Begum @ Padma Bibi and Others***, reported in ***2022 SCCOnLine Gau 2000***, the petitioner cannot maintain the present writ petition for which the petitioner has to approach the appropriate forum under law.

This Court has duly taken note of paragraph No.23 of the said judgment of the Full Bench in the case of ***Mustt. Junufa Bibi*** (supra) which is reproduced herein below:-

“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.”

Taking into account the submission to the effect that the instant petition is not maintainable in view of the fact that the direction which is

being sought for is per se a direction against the private respondent, this Court permits the petitioner to withdraw the instant writ petition. However liberty is given to the petitioner to approach the appropriate forum under law for claiming maintenance in terms with paragraph No.23 of the judgment in the case of ***Mustt. Junufa Bibi*** (supra). The petitioner is also given the liberty to approach the State respondents to take into account that the petitioner has a claim for entitlement of a part of the family pension being the second wife and it shall be within the discretion of the State respondents to consider the said claim in accordance with law.

In view of the above, the instant writ petition stands dismissed on withdrawal subject to the observations made herein above.

JUDGE

Comparing Assistant