

GAHC010042132020



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

Case No. : WP(C)/1381/2020

KADBHANU NESSA
(2ND WIFE), S/O LT.ABUL HASEM MONDAL, VILL. ANANDA NAGAR, P.O.
BILASIPARA, DIST. DHUBRI (ASSAM), PIN-783348

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP BY THE COMMISSIONER AND SECREATRY TO THE GOVT. OF ASSAM,
PENSION AND PUBLIC GRIEVANCES DEPTT. DISPUR, GUWAHATI-781006

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

3:THE DIRECTOR OF PENSION
ASSAM
HOUSE FED COMPLEX
DISPUR
GUWAHATI-781006

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

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
GOALPARA

6:THE DEPUTY INSPECTOR OF SCHOOLS
GOALPARA

7:THE TREASURY OFFICER
GOALPARA

8:RABIA KHATUN (1ST WIFE)
W/O LT. ABUL HASHEM MONDAL
VILL. SAGUNMARI PT-III
P.O. KADOMTOLA
DIST. DHUBRI
ASSAM
PIN-78334

Advocate for the Petitioner : MR. N AHMED

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

22.02.2023

Heard Mr. R. A. Ahmed, the learned counsel for the petitioner and Mr. P. Saikia, the learned counsel appearing on behalf of the respondent Nos.1 & 3. Also heard Mr. R. Borpujari, the learned counsel appearing on behalf of the respondent Nos.2 & 7; Mr. N. J. Khataniar, the learned counsel appearing on behalf of the respondent Nos.4, 5 & 6 as well as Mr. M. H. Choudhury, the learned counsel appearing on behalf of the respondent No.8.

2. The case of the petitioner herein in brief is that the petitioner is the second wife of Late Abdul Hashem Mondal. On the ground that the respondent No.8, in spite of having entered into an agreement with the petitioner, has not paid 50% of the family pension, the petitioner has approached this Court by filing the instant writ petition.

3. The learned counsel for the petitioner however 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 OnLine Gau 2000** and more particularly in view of the paragraph Nos.22 & 23 of the judgment, he would not like to press the instant writ petition and would resort to the remedies as available in view of the judgment of the Full Bench. This Court finds it appropriate at this stage to take into account the paragraph Nos. 22 & 23 of the said judgment which are reproduced herein below:-

“22. We further hold that the family pension being payable to the eldest of the surviving widow or wife would not mean that the entire family pension so payable would be the personal property of the eldest of the surviving widow or wife and the family pension so payable would be held by the eldest of the surviving widow or wife as a trustee for all such other persons who are entitled to the benefits of the family pension in terms of Rule 143 of the Pension Rules of 1969.

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."

4. A perusal of the above quoted paragraphs would show that it is the eldest widow who would be entitled to family pension in terms with Rule 143 of the Assam Services (Pension) Rules, 1969 and in absence of the eldest widow, the second and further widow would also be entitled to if the parties are governed by the Mohammedan Law. It further appears that as per the decision of the Full Bench, the entire family pension so payable to the eldest of the surviving widow would not be her personal property and the eldest of the surviving widow would be entitled to receive the family pension as a trustee for all such other persons who are entitled to the benefits of the family pension in terms of Rule 143 of the Pension Rules of 1969. The Full Bench has further clarified that if in the case where the second or further widows are not appropriately maintained by the eldest of the surviving widow 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.

5. Under such circumstances, the instant writ petition would not be maintainable. Taking into account the same, the learned counsel for the petitioner therefore has rightly submitted that he would like to withdraw the writ petition and to avail the remedies available to the petitioner in the appropriate forum.

6. Accordingly, this Court therefore permits the withdrawal and grants liberty to the petitioner to avail such remedies as available under the law.

7. This Court further grants liberty to the petitioner to approach the

respondent authorities by bringing to the notice of the respondent authorities the agreement entered into between the petitioner and the respondent No.8. In such case, the respondent authorities would be at liberty to take such appropriate action as mentioned in paragraph No. 23 of the above quoted judgment, if deemed fit.

8. In view of the above observation and direction, the instant writ petition stands dismissed on withdrawal.

JUDGE

Comparing Assistant