

GAHC010051442023



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

Case No. : WP(C)/1473/2023

MD. NASIR UDDIN LASKAR
S/O- MD. TAFAZUL ALI LASKAR, R/O- VILL. AND P.O. PUNIRMUKEH, P.S.
DHOLAI, DIST. CACHAR, ASSAM, PIN- 788123.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HOME AND POLITICAL DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
BELTOLA
MAIDAMGAON
GUWAHATI-29.

3:THE DIRECTOR GENERAL C.D. AND COMMANDANT GENERAL OF
HOME GUARDS
ASSAM
BELTOLA
GUWAHATI-781028.

4:THE COMMANDANT
ASRF Bn.-II

KARAGAON
KARBI ANGLONG-782480
ASSA

Advocate for the Petitioner : MR. R MAJUMDAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 17.03.2023

Heard Mr. R. Majumdar, the learned counsel appearing on behalf of the petitioner and Mr. C. S. Hazarika, the learned Standing counsel appearing on behalf of the respondent Nos. 1, 3 and 4. I have also heard Mr. R. Dhar, the learned Standing counsel appearing on behalf of the respondent No.2.

2. The case of the petitioner herein is that the petitioner was appointed as an Officer/Member of the Home Guards under Sections 6(3)(a) of the Assam Home Guards Act, 1947 w.e.f. 23.06.1983. While serving, the petitioner was promoted to the post of Constable under the Establishment of the respondent No.4 by an order dated 15.03.1985 and he continued to serve in the said post till he retired on 31.10.2021. Thereupon, the pension papers of the petitioner were sent by the concerned respondent authorities vide the communication dated 19.02.2022 to the respondent No.2 for finalizing the pension and other retirement benefits.

3. The respondent No.2 upon receipt of the pension papers issued a communication dated 22.07.2022 thereby intimating the respondent No.3 that the pension case cannot be finalized and the pension papers were returned back to the respondent No.3 with certain observations. Vide the said letter, the respondent No.2 also informed the respondent No.3 to re-submit the pension papers of the petitioner by enclosing self attested copies of PAN/Aadhaar Card

of the Government Servant and his first wife for incorporating the same in the Pension Payment Order (PPO). Further to that the Drawing and Disbursing Officer was specifically requested to personally verify and attest the joint photographs with names on the reverse to avoid any complications. It was also mentioned that the provisional pension may be granted and paid till finalization subject to the recovery from final pensionary benefits. It is the case of the petitioner that there has been a delay on the part of the respondent No.3 in submitting the pension papers for which the instant writ petition has been filed.

4. I have heard the learned counsel for the petitioner as well as the learned counsels appearing on behalf of the respondents.

5. Mr. C. S. Hazarika, the learned Standing counsel appearing on behalf of the respondent Nos. 1, 3 and 4 has submitted that the petitioner has 3 (three) wives and it is on account of the same, there has been problem in submitting the papers as per his instructions.

6. It is well settled by the judgment of the Full Bench in the case of ***Mustt Junufa Bibi Vs. Mustt Padma Begum and others reported in (2022) SCC Online GAU 2000*** that in terms with Rule 143 and Note-1 of Rule 143(ii), it is the eldest widow or the wife who would be entitled to the pension and it is only upon the death of the eldest wife/widow, the next surviving wife/widow would be entitled to family pension and thereafter the minor children. This aspect applies only in respect to those persons who are covered by Mohammedan Law.

7. In view of the law as laid down by the Full Bench, this Court finds no reason as to why the respondent No.3 should not re-submit the pension papers of the petitioner in terms with the observations made in the communication

dated 23.05.2022 by the respondent No.2. Therefore, this Court disposes of the writ petition at the motion stage itself thereby directing the respondent No.3 forthwith on the basis of a certified copy of the order being served upon the respondent No.3 to re-submit the pension papers in terms with the communication dated 23.05.2022 thereby sending the name of the first wife of the petitioner for being recorded in the service sheet as well all pension documents.

8. It is made clear that as the petitioner retired on 31.10.2021 and almost more than a year have already passed by, this Court directs the respondent authorities to release the pension of the petitioner as expeditiously as possible and not later than 3 (three) months from today.

9. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant