

GAHC010068532018



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

Case No. : WP(C)/2180/2018

SAHIDA BEGUM
D/O LT.AJIMUDDIN AHMED
VILL- NO. 2, JALAH
P.O. BARALABARI
DIST. KAMRUP (R), ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF ANIMAL HUSBANDRY AND VETERINARY
DEPARTMENT

KHANAPARA
GUWAHATI-22.

3:THE ACCOUNTANT GENERAL (A/E)
MAIDAMGAON
BELTOLA
GUWAHATI -29

Advocate for the Petitioner : MR. MD S HOQUE

Advocate for the Respondent : GA, ASSAM

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

30-01-2023

Heard Mr. M. Hoque, the learned counsel for the petitioner. Also heard Ms. M. Kotoki, the learned counsel appearing on behalf of the Respondents No.1 and 2; and Mr. R.K. Talukdar, learned counsel appearing on behalf of Respondent No.3.

2. The case of the petitioner herein is that the petitioner is the second wife of one Ajimuddin Ahmed, since deceased, who was appointed as L.I. on 15.5.1954 in the Office of the Joint Director (HQ), Animal Husbandry & Veterinary Department, Khanapara, Guwahati. Late Ajimuddin Ahmed after serving for more than 39 years of regular service retired on 31.03.1993. Upon his retirement, late Ajimuddin Ahmed was paid regular pension by the office of the Accountant General (A/E), Assam vide PPO No.KAM/49308 along with other pensionary benefits. Late Ajimuddin Ahmed, during his life time married the petitioner as well as one Maijan Bibi, who was the first wife. The said Maijan Bibi was getting family pension till 26.09.2017, when she expired. The petitioner who is the second wife, thereupon approached the respondent authorities for the family pension to be paid in her name, which the respondent authorities have not done so, for which the instant writ petition has been filed seeking a declaration that the petitioner is entitled to the family pension with effect from 27.9.2017 as well as for appropriate directions for payment of the family pension w.e.f. 27.9.2017.

3. It appears on record that on 09.04.2018, this Court had issued notice making it returnable by four weeks. Almost five years have passed by, but the respondents have not filed their affidavits.

4. On the basis of the materials on record, it appears that the question involved herein is whether the petitioner being the second wife would be entitled to family pension.

5. In a recent judgment of the Full Bench of this Court in the case of ***Mustt Junufa Bibi Vs. Mustt Padma Begum @ Padma Bibi And Others*** (Writ Appeal No.160 of 2018), reported in ***(2022) SCC Online Gau 2000***, a Full Bench of this Court had determined two questions :-

(1) Whether the second or further wives of a deceased employee where both are governed by the Mohammedan Law would be entitled to the benefits of a family pension of such deceased employee?

(2) If yes, to whom the family pension is payable under the Assam Services (Pension) Rules, 1969?

6. The Full Bench, while deciding the above two questions, observed that the validity and acceptability of a marriage of a second wife or further wives where the parties are governed by the Mohammedan Law, would definitely be governed by the principles of the personal law to which the parties are subjected. It was observed that a reading of Rule 143(1) of the Assam Services (Pension) Rules, 1969, (for short 'the Pension Rules of 1969'), goes to show that for the purpose of family pension a family would comprise of the relatives of the officer, which also includes the wife

in case of a male officer. It was further observed that if the second or further wives of a male officer are acceptable and valid under the personal law governing the parties, the Full Bench of this Court was of the opinion that there is no reason as to why such second or further wives would not be construed to be a wife of the male officer. It was further observed that a conjoint reading of Note 1 to Rule 143 (ii) and Rule 143 (iii) of the Pension Rules of 1969 makes it explicit and unambiguous that the family pension would be payable to the eldest of the surviving widow in the event of there being two or more widows and further that even if there are minor children who may also be entitled to the benefits of the family pension, the pension would be paid to only one member of the family at a time, where at first instance it would be paid to the eldest of the surviving widow and thereafter, on her death to the next surviving widow, if any and in her absence to the minor children.

7. Paragraphs 19 and 20 of the said judgment is quoted hereinbelow :

“19. A conjoint reading of Note 1 to Rule 143 (ii) and Rule 143 (iii) of the Pension Rules of 1969 makes it explicit and unambiguous that the family pension would be payable to the eldest of the surviving widow in the event of there being two or more widows and further that even if there are minor children who may also be entitled to the benefits of the family pension, the pension would be paid to only one member of the family at the same time, where at first instance it would be paid to the eldest of the surviving widow and thereafter, on her death to the next surviving

widow, if any and in its absence to the minor children.

20. As a corollary to the provisions of the Rule 143 (iii) of the Pension Rules of 1969, Note 1 to Rule 143 (ii) would have to be read to mean that the family pension would be payable to the eldest of the surviving widows in the event there are two or more widows, and thereafter, on her death it would be payable to the next surviving widow, if any and thereafter, to the minor children if the occasion arises."

8. Taking into account the said judgment of the Full Bench, this Court does not see reason as to why the petitioner herein, who claims to be the second wife of late Ajimuddin Ahmed, would not be entitled to family pension.

9. Accordingly, this Court, therefore, directs the respondent authorities to verify as to whether the petitioner is the second wife of late Ajimuddin Ahmed and upon necessary verification being carried out and found that the petitioner is the second wife of late Ajimuddin Ahmed, the respondents authorities shall pay the family pension to the petitioner with effect from 27.09.2017. The said exercise shall be carried out within a period of three months from the date a certified copy of the order is submitted to the Respondent No.2 along with a copy of the writ petition. It is further directed that the Respondent No.2 shall upon completing the necessary verification and having found the petitioner being the second wife of late Ajimuddin Ahmed, process all the papers and send it to the

Respondent No.3 so that within the time limit stipulated above, the petitioner is released her family pension w.e.f. 27.9.2017.

10. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant