

GAHC010070652022



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

Case No. : WP(C)/2731/2022

RUPU BEGUM
W/O LT. AMAD UDDIN, VILL-BARKATPUR, P.O.-BARKATPUR, DIST-
KARIMGANJ, ASSAM, PIN-788155

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY, ELEMENTARY,
EDUCATION DEPARTMENT, GOVERNMENT OF ASSAM, DISPUR,
GUWAHATI-6

2:COMMISSIONER AND SECRETARY
DEPARTMENT OF FINANCE
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-6

3:ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI

4:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DIMA HASAO
DIST-DIMA HASAO
ASSAM

6:DEPUTY INSPECTOR OF SCHOOLS
DIMA HASAO
DIST-DIMA HASAO
ASSAM

7:SAJNA BEGUM
W/O LT. AMAD UDDIN
VILL-BARKATPUR
P.O.-BARKATPUR
DIST-KARIMGANJ
ASSAM
PIN-788713

8:THE DIRECTOR OF PENSION
HAVING HIS OFFICE AT KAHILIPARA
DISPUR
GUWAHATI-781006

Advocate for the Petitioner : MR. K A MAZUMDER

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

21.06.2023

1. Heard Mr. KA Mazumder, learned counsel for the petitioner. Also heard Mr. C Sarma, learned counsel representing respondent Nos. 5 and 6, Mr. PN Sarma, learned counsel representing respondent Nos. 1 and 4, Mr. R Barpujari, learned counsel representing respondent No. 2, Mr. SK Medhi, learned counsel represent No. 3, Mr. SR Baruah, learned counsel representing respondent No. 8 and Ms. R Choudhury, learned counsel for the respondent No. 7.
2. The first dispute in the present writ petition is non-release of

compassionate family pension on the death of one Amad Uddin, who died in harness while he was in service on 21.06.2021.

3. The second dispute is the apportionment of such pension and pensionary benefit among the two wives of the deceased Government servant i.e. the petitioner and the respondent No. 7.
4. Mr. C Sarma, learned counsel representing employer of the deceased husband of the petitioner and respondent No. 7 submits that the pension proposal has already forwarded to the Director of Pension, Assam, House Fed by a communication dated 13.06.2023.
5. Mr. SR Baruah, learned counsel representing Director of Pension submits that such proposal, if is in order can be settled within a period of two months from the date of receipt. However, he is not having any instruction whether the communication dated 13.06.2023 has been received in the office of the Director of Pension.
6. In view of the aforesaid, Mr. Mazumder submits that the present writ petition be disposed of directing the concerned authorities more particularly the Director of Pension to settle the compassionate family pension proposal of the petitioner at the earliest.
7. Coming to the second determination regarding apportionment of the pension, Ms. Choudhury, learned counsel appearing on behalf of respondent No. 7, on instruction, submits that her client is having no difficulty in sharing 50% of the compassionate family pension with the petitioner, the second wife inasmuch a joint application has been filed by both the wives for pension.
8. However, Mr. Barpujari, learned counsel submits that the compassionate

family pension cannot be disbursed in two accounts inasmuch as the entire process has now been digitized and even if a direction is issued that will create severe difficulty for the treasury officer to implement such order. Mr. Barpujari further submits that in case of a compassionate family pension there is no scope for the Accountant General or Director of Pension to make a determination to bifurcate the pension and to make a direction to pay to different beneficiaries, therefore, the treasury officer being only an executing authority shall have no power to transfer such amount into two different accounts in case of compassionate family pension.

9. In view of such submission, Ms. R Choudhury submits that as her client has instruction that she will have no objection to share 50 % of the compassionate family pension with the petitioner as they have submitted the application for compassionate family pension jointly, therefore, even if the payment is transferred to the account of respondent No. 7, she will transfer 50% share immediately to the account of the petitioner.
10. In view of the aforesaid consensus, the following directions are issued:
 - I. The Director of Pension shall take on record the proposal sent by the employer of the deceased employee as discussed hereinabove and settle the pension proposal within a period of two months from today.
 - II. The respondent No. 7 on receiving the monthly pension shall transfer the 50% share of the same to the account of the petitioner, second wife within a period of 10 days from the date when such

amount is transferred to her account.

III. This court while passing this order has also considered the peculiar facts and circumstances of the present case inasmuch as this court in **Musstt. Mariom Begum Mariom Bibi {WP(C) 1824/2006}** dated 21.06.2006 held that the principle recognizing the right of second wife to receive a part of the family pension under Mahammedan Personal Law is a wholesum principle, which is embedded in reason of fairness and equity.

11. With the aforesaid determination, the present writ petition stands disposed of.

JUDGE

Comparing Assistant