

GAHC010084102018



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

Case No. : WP(C)/2746/2018

SMTI. BIBI BALA BAISHYA
W/O- LT BASANTA KR BAISHYA, R/O- VILL- DHARAPUR, P.O. DHARAPUR,
DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, TO THE GOVT. OF ASSAM,
SECTT. ADMN. (NAZARAT) DEPTT., ASSAM, DISPUR, GHY-6

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
DISPUR
GHY-6

3:THE DY. SECRETARY TO THE GOVT. OF ASSAM
SECTT. ADMN. (NAZARAT) DEPTT.
DISPUR
GHY-6

4:THE DY. SECRETARY TO THE GOVT. OF ASSAM
SECTT. ADMN. (ACCOUNT) DEPTT.
DISPUR
GHY-6

5:THE DIRECTOR OF PENSION
HOUSEFED
GHY
ASSAM

6:SARASWATI BAISHYA
W/O- LT BASANTA KR. BAISHYA (DISPUTED)

R/O- VILL- DOLIBARI
P.O. DADRA
P.S. HAJO
DIST- KAMRUP (R)
ASSAM
781104

7:PRINCIPAL ACCOUNTANT GENERAL
MAIDAMGAON
BELTOLA
GUWAHATI
78102

Advocate for the Petitioner : MR. K SINGHA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 12/09/2023

Heard Mr. K. Singha, learned counsel for the petitioner. Also heard Mr. M. Bhagabati, learned counsel for respondent No.6 and Mr. A. Phukan, learned counsel for the respondent.

2. This writ petition is filed by the petitioner, who claims to be the first legally wedded wife of one late Basanta Kumar Baishya (since deceased). According to the petitioner the marriage was solemnized on 05.04.1981 as per Hindu religious rights and the marriage was solemnized socially and they started residing in the matrimonial house of the deceased husband situated at Dalibari the district of Kamrup (R). The late husband of the petitioner was working as a Grade IV employee in the office of the Deputy Secretary, Government of Assam, Sectt. Admn. (Nazarat) Department, Dispur, Assam. Out of the marriage, two daughters were born on 01.10.1982 and 12.12.1985 respectively. It is stated

that after the birth of the second child the late husband of the petitioner left her and their children suddenly and went away causing great hardship to the petitioner in sustaining her along with the two small children. Subsequently, the petitioner came to be informed that her husband had re-married respondent No.6 and out of their marriage 3 (three) children were born. Upon being aware of the second marriage of the husband of the petitioner with private respondent No.6, the petitioner approached the competent court by filing applications under section 125 Cr.P.C for maintenance. The maintenance as prayed for was accordingly awarded by the competent court and subsequently on her application it was also enhanced.

3. The petitioner's husband expired on 15.04.2013 and the petitioner thereafter applied and claimed for the deceased husband's retirement benefits. A Succession Certificate was also obtained by the petitioner from the competent court of Civil jurisdiction.

4. The petitioner is aggrieved by the Impugned order No. S(N) 130/90/159 dated 07.05.2015, which was issued by the respondent authorities in favour of the respondent No.6 forwarding all the pensionary benefits in respect of late Basanta Kumar Baishya in favour of the respondent No.6. In terms of the communication dated 07.05.2015 the matter was being processed when the petitioner approached this court. She had earlier filed W.P.(C) 3404/2015, which however was permitted to be withdrawn with liberty by order dated 16.11.2017. The matter was contested by the respective respondents disputing the claim to petitioner. While the matter was pending, both the petitioner and the respondents have arrived at an agreement and have jointly filed an affidavit on 25.08.2023. As per the said affidavit, the petitioner had agreed to part with the share of D.C.R.G amounting to Rs.1,68,345/- (Rupees one lakhs sixty eight

thousand three hundred forty five) only amongst all the legal-heirs of her late husband, namely, Basanta Kumar Baishya.

5. The learned counsel for the parties submits jointly that in view of the agreement arrived at between the petitioner and the respondent No.6, both the parties have amicably settled the matter as reflected in the joint affidavit and the petitioner has agreed to part with the D.C.R.G amounting to Rs.1,68,345/- (Rupees one lakhs sixty eight thousand three hundred forty five) only amongst all the legal-heirs of her late husband, namely, Basanta Kumar Baishya.

6. Learned counsel for the parties have been heard. Pleadings on record have carefully been perused. The Impugned order No. S(N) 130/90/159 dated 07.05.2015 reads as under:-

“ GOVERNMENT OF ASSAM
SECRETARIAT ADMINISTRATION (NAZARAT) DEPARTMENT
No.S(N)130/90/159 Dated Dispur the 7th May, 2015

*From : Smti P. Gohain, ACS
Deputy Secy., to the Govt. of Assam,
Sectt. Admn.(Nazarat) Department*

*To : Smti Saraswati Baishya,
W/O Late Basanta Kr. Baishya,
Vill- Dolibari, P.O-Dadara,
P.S-Hajo, Dist-Kamrup (R)*

*Sub : Total Pensionery benefits in respect of Late Basanta Kr.
Baishya, Ex-Peon,*

Ref : Your letter dated 13.11.2014.

Sir,

In inviting a reference to the letter cited above, I am directed forward herewith the total pensioner benefits in respect of Late Basanta Kr. Baishya, Ex-Peon as follows:

1. Pensional Family Pension	-Rs.8082/- Per month
2. D.C.R.G.	-Rs.1,68,345/-
3. G.P.F.	-Rs.1,90,988/-
4. G.I.S. Savings fund	-Rs.11,369/-
5. G.I.S. Insurance	-Rs.1,00,000/-
6. Leave encasement benefits	-Rs.1,49,640/-

Yours faithfully

*Deputy Secy. To the Govt. of Assam
Sectt.Admn.(Nazarat) Department.*

Memo No.S(N) 130/90/159-A

Dated Dispur the 7th May, 2015".

7. Upon perusal of the pleadings on record it is seen that late Basanta Kumar Baishya had entered into a marriage with respondent No.6 during the lifetime of the petitioner and 3 (three) children were born out of the said marriage. The said averments are not disputed by the learned counsel for the petitioner. However, from the pleadings it is also evident that petitioner is the legally wedded wife of the deceased Basanta Kumar Baishya.

8. Under such circumstances, it is the petitioner who is entitled to the pensionary benefits of her late husband in terms of the provisions of the Assam Services (Pension) Rules, 1969. The authorities are duty bound to release the pensionary benefits in favour of the petitioner in terms of the provisions of the Pension Rules.

9. This Court by order dated 07.05.2018 while issuing notice directed in the interim that if money had not been disbursed to the respondent No.6, in terms of the order dated 07.05.2015 (Annexure 4), then *status quo* was directed to be maintained on disbursement of the superannuation dues to be maintained until the returnable date. The said interim order continues to operate upon being extended by subsequent orders.

10. While the matter was thus situated, it is reflected in the order dated

07.09.2023 as well as in the joint affidavit filed by the petitioner and the respondent No.6, that one of the daughter of the respondent No.6 born out of the marriage with late Basanta Kumar Baishya and respondent No.6, namely, Smt. Saraswati Baishya, was appointed on compassionate ground as late Basanta Kumar Baishya expired while he was in service.

11. Be that as it may in the absence of any affidavit filed by the respondent department, it is not evident as to how the respondent authorities came to issue the Impugned order No. S(N) 130/90/159 dated 07.05.2015, whereby pensionary benefits were being processed in favour of respondent No.6.

12. Under such circumstances, considering the submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondent No.6 and also taking on into consideration the joint affidavit filed by petitioner and respondent no.6 on 25.08.2023, the writ petition stands closed directing the respondent authorities to release the pensionary benefits in favour of the petitioner as both parties have agreed that the petitioner is the legally wedded wife of the petitioner of the deceased late Basanta Kumar Baishya. As per the statements made by the petitioner by way of the joint affidavit executed on 25.08.2023 she has no objection if the authority gives the share of the D.C.R.G amounting to Rs.1,68,345/- (Rupees one lakhs sixty eight thousand three hundred forty five) only amongst all the legal-heirs of late Basanta Kumar Baishya.

13. The learned counsel for the respondent No.6 submits that this averment made in the joint affidavit should be taken as an averment made by the petitioner not to claim the amount of Rs.1,68,345/- (Rupees one lakhs sixty eight thousand three hundred forty five) only as D.C.R.G and give up her claim in favour of the respondent No.6. Accordingly, the official respondents are now

directed to release the amount of pensionary benefits, including the D.C.R.G in favor of the petitioner and upon receipt of such amount, the petitioner will, in terms of the averments made in the joint affidavit, release the same in favour of the petitioner within a period of 30 (thirty) days from the date of receipt of the said amount. The release of the pensionary benefits by the respondents in favour of the petitioner will also be intimated to be respondent No.6. In the said affidavit it is also recorded that the petitioner will not take any steps in future against the daughter of the respondent No.6, who has been given compassionate appointment. The said statement is also taken note of.

14. The writ petition stands disposed of in terms of the above. The authorities will release the pensionary benefits in favour of the petitioner within 60 (sixty) days from the date of receipt of a certified copy of this order and thereafter the petitioner will release the said amount as directed above.

15. No order as to cost.

JUDGE

Comparing Assistant