

GAHC010090942022



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

Case No. : WP(C)/3165/2022

SMT. MADHABI BALA DEBI NATH
W/O- SANJIT KR. NATH, R/O- JHAGRARPAN PART-III, P.O.- JHAGRARPAN,
DIST.- DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, P.H.E. DEPTT.,
DISPUR, GHY.-06.

2:THE CHIEF ENGINEER

PUBLIC HEALTH ENGINEERING (PHE) DEPTT.
HENGABARI
HEALTH COMPLEX HENGABARI
GHY.- 36.

3:THE EXECUTIVE ENGINEER

PHE
DHUBRI DIVISION
DHUBRI
P.O. AND DIST.- DHUBRI
ASSAM
PIN- 783301.

4:THE ACCOUNTANT GENERAL

ASSAM
MAIDAMGAON
BELTOLA
GHY.- 781029.

5:THE SECRETARY TO THE GOVT. OF ASSAM

FINANCE DEPTT.
DISPUR
GHY.- 781006.

6:SANJIT KR. NATH
S/O- RAJ KANTA NATH
R/O- JHAGRARP PAR PART-III
P.O. JHAGRARP PAR
DIST.- DHUBRI
ASSAM. PIN- 783325.

7:DIPALI NATH
W/O- SANJIT KR. NATH
R/O- JHAGRARP PAR PART-III
P.O.- JHAGRARP PAR
DIST.- DHUBRI
ASSAM. PIN- 783325

Advocate for the Petitioner : MR. S ISLAM

Advocate for the Respondent : SC, P H E

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

28.08.2023

Heard Mr. S Islam, learned counsel for the petitioner and Ms. S Ahmed, learned Standing counsel, Public Health Engineering Department, Assam for the respondent Nos. 1 to 3. Also heard Mr. D Rabha, learned Standing counsel, Accountant General (A&E), Assam for the respondent No. 4; Mr. B Gogoi, learned Standing counsel, Finance Department, Assam for the respondent No. 5 as well as Mr. M Kalita, learned counsel appearing on behalf of the respondent Nos. 6 & 7.

2. The husband of the petitioner, namely, Sanjit Kumar Nath, an employee of the Public Health Engineering Department retired from service on 31.01.2022 on attaining the age of superannuation at 60 years as a Plumber under the Executive Engineer, PHE, Dhubri Division, Dhubri.

3. The respondent No. 6 married the petitioner on 06.08.1983.

- 4.** The petitioner has alleged that the respondent No. 6, while in service, without dissolving the marriage with her, married the respondent No. 7.
- 5.** The petitioner has also stated that at the time of retirement, the respondent No. 6 received a large amount from his employer, but he did not share any part of it with the petitioner.
- 6.** The petitioner is aggrieved as the respondent No. 6 is contemplating to incorporate the name of the respondent No. 7 in his Service Book as his nominee, entitling the said respondent No. 7 for the family pension of the respondent No. 6, disregarding her better claim being the first wife of the said respondent No. 6.
- 7.** As such, the petitioner has preferred this writ petition, praying amongst others, for a direction to the respondent No. 6 as well as the authorities in the PHE Department of the State to incorporate her name in the Service Book of the respondent No. 6 as his wife and further, for a direction to the respondents, including the respondent No. 6 to release 50% of the retirement benefits given to the respondent No. 6/her husband, in her favour.
- 8.** By filing an affidavit on 23.06.2023, the respondent No. 6 placed before the Court that pursuant to the order of the learned Principal Judge, Family Court, Dhubri dated 06.04.2022 passed in F.C. (Crl) No. 35/2020 for maintenance under Section 125 CrPC as claimed by the petitioner, he is paying Rs. 10,000/- per month to the petitioner as maintenance in terms of the said order dated 06.04.2022 of the learned Principal Judge, Family Court, Dhubri.
- 9.** Further, the respondent No. 6 also stated that he has no objection if the name of the petitioner is incorporated as his nominee in his Service Book by the respondent authorities in the PHE Department, enabling her to get the family pension after his expiry.
- 10.** It is also stated by the respondent No. 6 that there is no provision under the Assam Services (Pension) Rules, 1969 to share the pensionary benefits by a retired Government employee/pensioner with his wife.
- 11.** As per the provisions of the Assam Services (Pension) Rules, 1969, family pension is granted to the family of an officer, who dies in service or dies after retirement, where family for the said purpose is defined in Sub-Rule (1) (a) of Rule 136 of said 1969 Rules.

12. As such, the petitioner will be entitled for family pension of her husband, Sanjit Kumar Nath, only after his demise.

13. In view of the statement of the respondent No. 6 made in his affidavit, noted above, the respondent No. 6 shall do the needful nominating the name of the petitioner, Madhabi Bala Devi Nath as his wife in his Service Book and intimating the Executive Engineer, PHE Department, Dhubri Division, Dhubri to incorporate the name of the petitioner in that regard, enabling her to draw the family pension after the demise of the respondent No. 6.

14. However, the petitioner is not entitled to any other share of pensionary benefits of the respondent No. 6 during his lifetime as per the provisions of said 1969 Pension Rules.

15. After hearing the learned counsels for the parties and considering the above as well as the statements made by the respondent No. 6 in his affidavit filed on 23.06.2023, this writ petition is allowed to the extent above.

JUDGE

Comparing Assistant