

GAHC010214382022



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

WP(C)/3337/2022

JAHANARA BEGUM @ JAHANARA KHATUN AND ANR
VILL- KALATOLI
P.O- KALATOLI BAZAR
P.S- CHAYGAON
DIST- KAMRUP
ASSAM
PIN-781136

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EDUCATION (ELEMENTARY) DEPARTMENT
DISPUR
GUWAHATI-6

2:DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
GHY-06
3:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-29
4:THE TREASURY OFFICER
KAMRUP
AMINGAON. P.O- AMINGAON

DIST KAMRUP
ASSAM
PIN-781018

5:SHAHAR BHANU
W/O- LATE SHAH ALAM
R/O- VILLAGE KANDHULIMARI
P.O- KALATOLI
P.S- CHAYGAON

DIST KAMRUP
ASSAM
PIN-781136

Advocate for : MR. M A SHEIKH
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

13-09-2023

Heard Mr. M.A. Sheikh, learned counsel for the petitioners. Also heard Mr. S.R. Boruah, learned Government Advocate, Assam.

2. One Shah Alam, who is the husband of the petitioner no.1 and the father of the petitioner no.2 (who is a minor daughter of the petitioner no.1), was a retired Headmaster of Topamari L.P. School. The husband of the petitioner no.1 died on 03.03.2018. The petitioner no. 1 is the second wife of the said Shah Alam. The private respondent no.5, who is the first wife of the husband of the petitioner no.1, has been getting all the pensionary benefits. Being aggrieved, the petitioner no.2, being the second wife of late Shah Alam, has filed this case with a prayer for appropriate orders from this Court. An I.A. has also been filed by the petitioner no.1 praying for a direction to the respondent authorities not to grant 66% of the pension to the respondent no.5.

3. Learned counsel for the parties have referred to a Full Bench Judgement of

this Court rendered in *Junufa Bibi (Mustt) vs. Padma Begum (Mustt) & Ors.* (W.A. No.160/2018) reported in *2023 (1) GLT (FB) 736*.

4. Learned counsel for the parties fairly submit that the findings of the Full Bench rendered in *Junufa Bibi (Mustt) (supra)*, will address the grievances raised by the petitioner in the present petition.

5. Learned counsel for the parties have been heard. The pleadings have been carefully perused. The judgment rendered by the Full Bench of this Court in *Junufa Bibi (Mustt) vs. Padma Begum (Mustt) & Ors.* (W.A. No.160/2018) reported in *2023 (1) GLT (FB) 736* has also been perused. The relevant paragraphs of the said judgment are extracted herein below:

“.....

15. As reading of Rule 143(1) 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. If the second or further wives of a male officer are acceptable and valid under the personal law governing the parties, we see no reason as to why such second or further wives would not be construed to be a wife of the male officer.

16. If the validity and acceptability of the marriage of a second wife or further wives where parties are governed by Mohammedan Law would be determined by the personal laws of the parties, and the personal laws provide for the validity and acceptability of such marriage, the second wife or the further wives where parties are governed by Mohammedan Law, would have to be construed to be also the family members of the deceased employee and therefore, under Rule 143(1) of the Pension Rules of 1969 be entitled to the benefits of a family pension.

17. But a further question remains as to whether being entitled to the benefits of a family pension would also necessarily mean that the State Authorities providing for a family pension would have to pay or apportion and pay the family pension to the second and further wives of a deceased employee separately where the parties are governed by the Mohammedan

Law.

18. For the purpose, we look into the provisions of Note 1 to Rule 143(ii) of the Pension Rules of 1969. A reading of Rule 143 (i) of the Pension Rules of 1969 makes it discernable that the wife in case of a male officer would be included as a family for the purpose of the Rules and a marriage for the purpose of pensionary benefits to the spouse of a retired official shall mean a marriage before or after retirement. Note 1 to Rule 143 (ii) provides that in cases where there are two or more widows pension will be payable to the eldest surviving widow and on her death, it will be payable to the next surviving widow and the term eldest would mean seniority with reference to the date of marriage. Rule 143 (iii) further provides that the pension so awarded under Rule 143 will not be payable to more than one member of the officer's family at the same time.

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.

21. In the circumstance, the concept of a validity and acceptability of a second marriage where the parties are governed by the Mohammedan Law and the consequential entitlement to the benefits of a family pension and the concept to whom the family pension would be payable under the Pension Rules of 1969 are held to be two separate and unrelated concepts and the implication of the concept of a validity and acceptability of a second marriage or further marriages where the parties are governed by the Mohammedan Law would have no bearing on the concept to whom the family pension is payable under the Pension Rules of 1969. It is held that irrespective of the validity and acceptability of a second marriage or further marriages where

the parties are governed by the Mohammedan Law, the family pension under Rule 143 of the Pension Rules of 1969 would be payable to the eldest of the surviving widow, which would also be applicable for a family pension where the parties are governed by the principles of Mohammedan Law, and where there may be a validity and acceptability of the second wife or further wives in respect of a deceased Mohammedan employee.

22. We further hold that the family pension being payable to the eldest of the surviving widow or wife would not mean that the entire family pension so payable would be the personal property of the eldest of the surviving widow or wife and the family pension so payable would be held by the eldest of the surviving widow or wife as a trustee for all such other persons who are entitled to the benefits of the family pension in terms of Rule 143 of the Pension Rules of 1969.

23. We also provide that in the event any such other persons who are entitled to the benefits of the family pension in terms of Rule 143 of the Pension Rules of 1969, including the second or further wives, in a case where the parties are governed by the Mohammedan Law, are not appropriately maintained by the eldest of the surviving widow or wife to whom the pension would be paid, the remedy thereof would be to make a claim for maintenance in the appropriate forum under the law and not a claim for a payment of the family pension by the State authorities directly to such persons. But however, if in a given case the State authorities on their own volition are of the view that under an acceptable circumstance the authorities are agreeable or required to pay the pension separately to any such member of a family of a deceased employee, this judgment may not be construed to be an absolute bar on such separate payment.”

6. Upon due perusal of the findings of the Full Bench rendered in *Junufa Bibi (Mustt) (supra)* as well as the pleadings and upon hearing the learned counsels for the parties, this Court is of the opinion that in view of the judgment rendered by the Full Bench of this court in *Junufa Bibi (Mustt) (supra)*, the petitioners are at liberty to approach the appropriate forum for redressal of their grievances.

7. Accordingly, the prayers made in the writ petition cannot be allowed. However, as directed above, grievances in respect of maintenance, if any, are permitted to be ventilated before appropriate forum as directed by the Full Bench in *Junufa Bibi (Mustt) (supra)*.

In that view of the matter, the writ petition stands closed.

JUDGE

Comparing Assistant