

GAHC010099262022



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

Case No. : WP(C)/3469/2022

DIBYA LATA HAZARIKA
W/O- LATE BHABA KANTA DUTTA, VILL- UJANI BHARALUA GAON, P.O.-
BHARALUA TINIALI, P.S.- GAURISAGAR, DISTRICT- SIVSAGAR, ASSAM.
PIN- 785664.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-06.

3:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 29.

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

5:THE DEPUTY COMMISSIONER
SIVSAGAR
ASSAM

PIN- 785664.

6:THE DEPUTY INSPECTOR OF SCHOOLS
SIVSAGAR
P.O.
P.S. AND DIST.- SIVSAGAR (ASSAM)
PIN- 785664.

7:THE TREASURY OFFICER
SIVSAGAR
P.O.
P.S.- SIVSAGAR
DISTRICT- SIVSAGAR
ASSAM. PIN- 785664.

8:THE BRANCH MANAGER
S.B.I.
GAURISAGAR BRANCH
P.O. AND P.S. GAURISAGAR
DIST.- SIVSAGAR
ASSAM. PIN- 785664.

9:SMT. JYOTI DUTTA
W/O- LATE BHABA KANTA DUTTA
VILL.- UJANI BHARALUA GAON
P.O.- BHARALUA TINIALI
P.S.- GAURISAGAR
DISTRICT- SIVSAGAR
ASSAM. PIN- 785664

Advocate for the Petitioner : MR. A F N U MOLLAH

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

16.11.2023

1. Heard Mr. A.F.N.U. Mollah, learned counsel for the petitioner as well as Mr. P.N. Sarma, learned counsel for the respondent nos.1, 4 & 6; Mr. S.K. Medhi,

learned counsel for the respondent no.3 and Mr. S.R. Barua, learned counsel for the respondent nos.2 and 5. No one appears for the respondent no.9, though this Court in its order dated 07.06.2023 has held that the petitioner has taken steps for service of notice upon the respondent no.9 by way of *dasti*.

2. The petitioner's case is that she is the first wife of Late Bhaba Kanta Dutta and as such she should be given the family pension. On the other hand, it is the case of the State respondents that the deceased Government servant had nominated the respondent no.9 as his wife, which implies that the petitioner was not the wife of the deceased Government servant.

3. The law with regard to family pension is quite clear keeping in view the Hindu Marriage Act, 1955 and the provisions of Rule 143 of the Assam Services (Pension) Rules, 1969. As per the Hindu Marriage Act, 1955 and Rule 143 of the Assam Services (Pension) Rules, 1969, it is the first wife who would be entitled to the payment of family pension as there cannot be any valid marriage during subsistence of the first marriage, for persons professing the Hindu faith. However, there is a disputed question of fact as to whether the petitioner is the first wife of the deceased Government servant, even though a Next of Kin Certificate has been annexed to the writ petition.

4. It has been agreed to by the counsels for the parties that the issue with regard to whether the petitioner or the respondent no.9 is the first wife of the deceased Government servant should be decided by the respondent no.4. Accordingly, the respondent no.4 is directed to cause an enquiry and give personal hearing to the petitioner and the respondent no.9, prior to taking a

decision as to whether the petitioner or the respondent no.9 is the first wife/existing legal wife of the deceased Government servant at the time of his death. The respondent no.4 may also require the parties herein to submit their Aadhar Cards for verification. In the event, the parties are aggrieved with the decision of the respondent no.4, they can always take recourse to the Civil Court to prove whether the petitioner or the respondent no.9 is the first wife/existing legal wife of the deceased Government servant. The respondent no.4 should take a decision on the same expeditiously as possible and preferably within a period of 2 (two) months from the date of receipt of a certified copy of this order.

Interim order passed earlier shall continue till a decision is taken by the respondent no.4.

5. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant