

GAHC010099412022



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

Case No. : WP(C)/3473/2022

MONUWARA BEGUM @ MONUWAARA BEGUM
W/O- LATE MATLEB HUSSAIN @ MOTLAB HUSSAIN
R/O- VILLAGE ISLAMPUR (DEORALI)
P.O- BONGARA, P.S- AZARA
DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, DISPUR, GUWAHATI-6

2:THE ADDL. DIRECTOR GENERAL OF POLICE
BUREAU OF INVESTIGATION (EO)
ASSAM
SRIMANTAPUR
GUWAHATI

3:THE SUPERINTENDENT OF POLICE
BUREAU OF INVESTIGATION (EO)
ASSAM
SRIMANTAPUR
GUWAHATI

4:THE DIRECTOR OF PENSION
GOVERNMENT OF ASSAM
GUWAHATI

5:THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-78102

Advocate for the Petitioner : MS. S KANUNGOE

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner : Ms. S. Kanungoe, Advocate

For the Respondent : Ms. M. D. Bora, Advocate,
(for respondent Nos. 1 to 4)

: Mr. D. Deka, Advocate
(for respondent No. 5)

Date of Judgment & Order : **15.03.2023**

1. Heard Ms. S. Kanungoe, learned counsel for the petitioner. Also heard Ms. M. D. Bora, learned standing counsel for the respondent Nos. 1 to 4 and Mr. D. Deka, learned counsel for the respondent No. 5.

2. The case of the petitioner herein is that her husband one- Late Matleb Hussain @ Motlab Hussain (since deceased) was a Driver Constable under the Superintendent of Police, Bureau of Investigation (EO), Assam who retired on 31.06.2016. Unfortunately, he expired on 11.02.2018 leaving behind his family. During the lifetime of the husband of the petitioner, he had submitted some documents for the purpose of getting the pension. After the death of the petitioner's husband, the petitioner applied for family pension. However, as the respondents have not granted family pension to her, the petitioner has approached this Court under Article 226 of the Constitution seeking a direction that the respondent authorities to release the family pension to the petitioner.

3. The respondent No. 3 had filed an affidavit-in-opposition. In the said

affidavit-in-opposition, it was mentioned that Late Matleb Hussain retired as a Driver Constable from service on 30.06.2016 from the BI(E.O) vide Corrigendum Memo No. E/II-18,426/PT-IX/291 DATED 03.10.2017 issued by the Assam Police Headquarters. It was further mentioned that the husband of the petitioner has submitted an affidavit dated 17.03.2012 wherein he had declared that he had no objection if his salary/pensionary benefits would be equally divided between him and his two wives i.e. the petitioner herein and one Mrs. Renu Begum. Subsequent thereto, the Office of the respondent No. 3 had asked the petitioner's husband vide a communication dated 10.08.2016 as to whose name would be entered in his pension papers as his nominee to avoid any future litigation. In response to the said letter, the husband of the petitioner again submitted an affidavit on 11.08.2016 wherein he declared that both his wives i.e. the petitioner and Mrs. Renu Begum along with their four children are the legal heirs for preparation of his pension papers. On the basis thereof the Office of the respondent No. 3 sent the pension proposal to the Assam Police Headquarters vide Memorandum dated 31.08.2016 proposing the name of the petitioner, Mrs. Renu Begum along with their four children as legal heirs for preparation of the documents for pensionary benefits. Thereupon the Assam Police Headquarters asked the Office of the respondent No. 3 to strike out the name of Mrs. Renu Begum from the service-sheet and all his pension papers vide communication dated 18.01.2017. Subsequent thereto, on 20.03.2017, the husband of the petitioner submitted another petition wherein he had stated that as good will he nominated both his wives as his nominee in the pension papers through an affidavit even though the petitioner had divorced him. Subsequent thereto, on 22.03.2017, the husband of the petitioner again submitted a prayer petition to the Office of the respondent No. 3 wherein he requested to enter the

Divorce Certificate with his first wife and to reflect the name of his second wife in the service-sheet.

4. In view of the fact that the Assam Police Headquarters had asked to omit the name of Mrs. Renu Begum from the service-sheet as well other pension documents, the husband of the petitioner was again asked to submit such type of petition directly to the Assam Police Headquarters vide Communication dated 13.04.2017. The Assam Police Headquarters thereupon instructed vide communication dated 11.10.2017 that the name of illegally married second wife- Mrs. Renu Begum is not reflected in the service-sheet of the husband of the petitioner as well as other pension documents as nominee as per Rule-136/137 and 147 of the AS(P) Rule, 1969 and it is only the first wife who is entitled to get the family pension after the death of the Government servant in future as per the above mentioned Rules. Thereupon, after the superannuation of the husband of the petitioner, his pension case was forwarded to the Assam Police Headquarters vide communication dated 31.08.2016 proposing the name of both wives as nominee but due to some corrections related to the date of birth of the husband of the petitioner and the issue of nominating the second wife, namely, Mrs. Renu Begum, the pension case have to be re-submitted again vide letter dated 17.10.2017 by omitting the name of Mrs. Renu Begum. Subsequent thereto, the Additional Director of Police (M&L), Assam sanctioned the payment of superannuation pension w.e.f. 01.07.2016 till the death of the husband of the petitioner vide communication dated 03.11.2017. In the meantime, the husband of the petitioner expired on 11.02.2018 i.e. after three months of sanctioning of his pension by the Assam Police Headquarters.

5. It is the further case of the respondent No. 3 as stated that his Office was in the process of releasing the family pension to the petitioner as per directive

of the Additional Director of Police (M&L), Assam. However, on 05.04.2018 Mrs. Renu Begum, the second wife of the petitioner's husband submitted an application before the BIEO, Assam praying for granting of family pension on the ground of being the second wife. Subsequent thereto, on 23.05.2018, the petitioner submitted an application at the BIEO, Assam praying for family pension on the ground of legally married wife of Late Matleb Hussain. As the BIEO, Assam was not the appropriate authority to decide or grant the family pension, hence both the applications were forwarded to the Additional Director of Police (M&L), Assam for taking necessary action vide communication 06.06.2018. It further reveals from the said affidavit that Mrs. Renu Begum had approached this Court by filing a writ petition i.e. WP(C) No. 3772/2018 and this Court disposed of the writ petition vide an order dated 14.03.2022. On a perusal of the order, more particularly, at Paragraph Nos. 11 and 12 shows that the writ petition was dismissed. However, with liberty being given to the said Mrs. Renu Begum to approach the Civil Court with regard to her grievance. Paragraph Nos. 11 and 12 of the said order dated 14.03.2022 being relevant is quoted herein under:-

“11. The contradictory stand taken by the petitioner in her writ petition gives rise to a suspicion that the petitioner has not come to this Court with clean hands and has fabricated documents, besides not being truthful. However, as there are disputed questions of fact, this Court is of the view that the Civil Court is the appropriate Forum to decide the said issue with regard to whether the petitioner can be said to be the second wife of the late Md. Motleb Hussain and as to whether the respondent no.5 was divorced by her husband. It should also be noted that the respondent no. 5 is recorded as the wife of late Md. Motleb Hussain in the

service book who had retired on 30.07.2016 and who had expired on 11.02.2018. It is surprising that the Late Md. Motleb Hussain did not change the name of his wife in his Service Book, even though on considering the alleged talaqnama dated 01.08.1998 (Annexure-II), late Md. Motleb Hussain had around 20 years to change the name of his wife in the Service Book, prior to his death.

12. The above being said, this writ petition stands dismissed with liberty being given to the petitioner to approach the Civil Court with regard to her grievance."

6. It further appears that subsequent thereto on 06.04.2022, the said Mrs. Renu Begum have issued an communication to the Superintendent of Police, BIEO, to stop the disbursement of the family pension and other arrear benefits to the petitioner until the matter is decided by the Civil Court. In view of the said communication dated 06.04.2022, the family pension have not been paid to the petitioner.

7. This Court have also perused the representation dated 06.04.2022 submitted by the second wife. In the said representation, it appears that the Mrs. Renu Begum have categorically stated that she is the second wife and she is not opposed to divide the entire pension and other benefits of husband equally.

8. From perusal of the writ petition, it transpires that the instant writ petition is only as regards the claim of family pension and nothing else. The law is well settled by the Full Bench of this Court in the case of *Mustt Junufa Bibi –Vs- Mustt Padma Begum and Ors.* reported in *2022 SCC OnLine Gau 2000* wherein the Full Bench of this Court observed that Rule- 143(1) Assam Services

(Pension) Rules, 1969 (in short "the Rules of 1969") mandates 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. It was further observed that if the second or further wives of a male officer are acceptable and valid under the personal law governing the parties, there was no reason as to why such second or further wives would not be construed to be a wife of the male officer.

9. In paragraph- 19 of the said Judgment, the Full Bench upon a conjoint reading of Note 1 to Rule 143 (ii) and Rule 143 (iii) of the Rules of 1969 observed that it is 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 the 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.

10. In paragraph 22 of the said Judgment, the Full Bench held that family pension being payable to the eldest of the surviving widow or wife could 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 Rules of 1969.

11. The Full Bench of this Court further observed 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 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. However, liberty was given to the State authorities, 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, the judgment may not be construed to be an absolute bar on such separate payment. Paragraph Nos. 22 and 23 of the said Judgment being relevant is, therefore, quoted hereinbelow:-

“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.”

12. Taking into account the law laid down by the Full Bench of this Court, the petitioner herein being the first wife of late Matleb Hussain, would be entitled to the family pension. It is, however, made clear that the second wife, namely, Mrs. Renu Begum would have a claim for maintenance on the basis of the said family pension. If in the eventuality, she is not maintained by the petitioner, liberty is given to her to approach the appropriate forum in terms with the principles laid down by the Full Bench. This liberty is so given to Mrs. Renu Begum in as much as in the instant order is passed in her absence.

13. With the above observations, the instant writ petition stands disposed of.

14. Before concluding, this Court would further make it clear that the direction passed in the instant order is only in respect to the family pension and not for any other aspects.

JUDGE

Comparing Assistant