

GAHC010114322022



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

Case No. : WP(C)/3936/2022

MANJU BORAH
W/O- TANGKESWAR BORAH,
R/O- MIKIR HAAT, PURANIGUDAM,
BY RELIGION HINDU,
BY PROFESSION- HOME MAKER,
DIST- NAGAON,
PIN-782141

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP BY THE PRINCIPAL SECRETARY, OF FOREST DEPARTMENT ,
PANJABARI, GUWAHATI-781037

2:DFO
BOKAKHAT
GOLAGHAT
(KOHORA RANGE)
PIN-785621

3:COMMANDANT OF 2ND AFPF
JAKHALABANDHA
SIKONI

DIST- NAGAON
PIN-782001

4:NEELAKSHI SAIKIA
W/O- LATE RUPJYOTI BORAH

R/O- 3RD APBN
JORHAT TITABAR

DIST- JORHAT

PIN-785001

5:THE DIRECTOR OF PENSION
HAVING ITS OFFICE AT HOUSEFED COMPLEX
DISPUR
GHY-6.

6:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
HAVING ITS OFFICE AT MAIDAMGAON
BELTOLA
GHY-781029

Advocate for the Petitioner : MS. M BORAH

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

14.11.2023

1. Heard Ms. M. Borah, learned counsel for the petitioner. Also heard Mr. P. Bhardwaj, learned counsel for the respondent no.4 and Mr. R.R. Gogoi, learned Standing Counsel, Forest Department. Mr. S.R. Barua, learned counsel appears for the respondent no.5.

2. The petitioner's case is that she is the mother of Late Rupjyoti Borah, who had served as a Constable in the 2nd Assam Forest Protection Force Battalion. The petitioner's son passed away in a motor accident on 20.10.2021 while on duty. The petitioner's son left behind his wife, i.e. respondent no.4 and the petitioner. The petitioner's son did not have any children with the respondent no.4.

3. The grievance of the petitioner is that the respondent no.4 has left the marital home and is not sharing the Family Pension received by her. Further, the respondent no.4 is working in the same department, where the petitioner's son had been working. She accordingly submits that the petitioner should be given a proportionate share of the Family Pension along with the respondent no.4.

4. Mr. P. Bhardwaj, learned counsel for the respondent no.4 submits that in terms of Rule 143 of the Assam Services (Pension) Rules, 1969 (hereinafter referred to as "the 1969 Rules"), a mother would have no right to a share of the Family Pension, as long as the respondent no.4 is still alive.

5. I have heard the submissions made by the counsels for the petitioner and the respondent no.4.

6. Rule 143(i) and the Amendment made thereto defines "Family" to include the following relatives of a Government servant :

- “(a) Wife, in the case of a male officer;*
- (b) husband, in the case of a female officer;*
- (c) minor sons ; and*
- (d) unmarried dependent daughters;*
- (e) Father;*
- (f) Mother;*
- (g) Eldest surviving brother upto the age of 18 years;*
- (h) Eldest surviving sister upto to age of 21 or marriage whichever is*

earlier”

7. Rule 143(iii) provides that pension awarded under the rules will not be payable to more than one member of an officer’s family at the same time. It would first be admissible to the widow/widower and thereafter to the minor children.

8. Rule 143(iv) provides that in the event of re-marriage or death of the widow/widower, the pension will be granted to the minor children through their natural guardian. In disputed cases, however, payments will be made through a legal guardian.

9. Rule 143(v) provides that the temporary increases granted on pension will not be admissible on the Family Pension granted under the Scheme in this section.

10. Further the Amendment provides that Family Pension under Rule 143 shall be admissible apart from (a) to (c) in the existing provisions as follows :

“(d) to the father;

(e) failing (d) to the mother;

(f) failing (d) & (e) to the eldest surviving brother upto 18 years of age;

(h) failing (d), (e) & (f) to the eldest surviving unmarried sister upto to the age of 21 or marriage whichever is earlier”

11. A perusal of the above provisions clearly goes to show that Family Pension can be given to only one member of the family of a deceased Government

servant at a time. The Family Pension would have to be given first to the widow/widower. Thereafter in the event of death of the widow/widower, the same shall have to be given to the minor sons and in the absence of the same, to the unmarried dependent daughters. In the absence of unmarried daughter, it would have to be given to the father, failing which, to the mother and so on. As such, Rule 143 of the 1969 Rules along with the Amendment make it clear that the mother, i.e. the petitioner does not have any right to claim a proportionate share of Family Pension along with the respondent no.4, i.e. the wife of the deceased Government servant. This is also in line with Sub-Rule (5) of Rule 137 of the 1969 Rules, which deals with the manner in which Family Pension is to be paid.

12. In view of the reasons stated above, this Court does not find any merit in this writ petition. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant