

GAHC010128432022



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

Case No. : WP(C)/4417/2022

MANMALA BEGUM
W/O. SAYED TAFSHIL UDDIN AHMED, VILL. MAZDIA, P.O. PASCHIM
MAZDIA, P.S. SARTHEBARI, DIST.- BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM, PENSION AND PUBLIC GRIEVANCE DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF PENSION
HOUSEFED COMPLEX
BELTOLA
GUWAHATI-7
ASSAM.

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

4:THE DIRECTOR OF ELEMENTARY EDUCATION

KAHILIPARA
GUWAHATI-19.

5:THE DEPUTY INSPECTOR OF SCHOOL
BARPETA
P.O.
P.S. AND DIST. BARPETA

ASSAM
PIN- 781301.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER

CHENGA EDUCATION BLOCK
P.O. CHENGA
P.S. TARABAR
DIST- BARPETA
ASSAM.

7:HAMIDA BEGUM
W/O- SYED TAFSHIL UDDIN AHMED
VILL. MAZDIA
P.O. PASCHIM MAZDIA
P.S. SARTHEBARI
DIST. BARPETA
ASSAM
PIN- 781305

Advocate for the Petitioner : MR. A M S MAZUMDER

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

09-10-2023

Heard Shri AMS Mazumdar, learned counsel for the petitioner. Also heard Shri S. R. Baruah, learned State Counsel appearing for the respondent nos. 1 & 2. Ms. J. Das, learned counsel appearing on behalf of Shri R. Ahmed, learned counsel for the AG; Ms. S. Chutia, learned Standing Counsel, Department of Elementary Education. Also heard Shri F. A. Laskar, learned counsel for the respondent no. 7.

2. Considering the subject matter in dispute and also upon hearing the learned counsel for the contesting parties, this writ petition is disposed of at the admission stage.

3. The petitioner is the first wife of one Syed Tafshil Uddin Ahmed, who was working as the Head Teacher of 120 No. Rowmari Gaon LP School under Chenga Education Block of Barpeta district, who had retired on 30.11.1991. On 28.10.2014, the husband of the petitioner had expired and therefore the question of family pension had arisen. Admittedly, the respondent no. 7 is the second wife of the deceased government servant.

4. This writ petition was instituted as the said family pension was granted to the second wife to the exclusion of the petitioner.

5. Shri Mazumdar, the learned counsel for the petitioner has however submitted that this Court had passed an order dated 30.06.2022 while issuing notice and directed that the family pension benefits given to the respondent no. 7 would remain stayed. Shri Mazumdar, learned counsel for the petitioner has however informed that thereafter the entire matter of pension is being held up.

6. The learned counsel has also placed reliance upon the case of **Mustt. Junufa Bibi Vs Mustt Padma Begum @ Padma Bibi & Ors.** reported in **2023 (1) GLT 736** wherein the Hon'ble Full Bench of this Court in a case of similar nature has laid down as follows:-

“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.

24. The reference made by the order dated 21.12.2021 is answered accordingly."

7. The learned counsel has also submits on instructions that he would maintain the respondent no. 7, who is admittedly the second wife and as per the personal law governing the parties, such marriage is permissible.

8. Shri Baruah, the learned State Counsel submits that in view of the contentions advanced on behalf of the petitioner, the petition can be disposed of by directing that while the family pension would be released in the name of the petitioner, the petitioner would also take care and maintain the respondent no. 7, who is admittedly the second wife.

9. The learned counsel for the AG as well as the Department endorse the submissions made by Shri Baruah, the learned State Counsel.

10. Shri Laskar, learned counsel for the respondent no. 7 submits that in terms of the judgment of the Hon'ble Full Bench, direction may be issued for maintenance of the respondent no. 7 in accordance with law.

11. In view of the aforesaid facts and circumstances, the present writ petition is disposed of by directing that the family pension be released in the name of the petitioner, who however would also maintained the respondent no. 7 as per the law laid down by the Hon'ble Full Bench in the aforesaid case of ***Mustt. Junufa Bibi***

(supra).

12. The concerned officials of the Department, especially the respondent no. 5 is accordingly directed to send the proposal in the name of the petitioner to the Director of Pension in the line of the observations made above for completion of the process.

13. Writ petition accordingly stands disposed of.

14. The interim order passed stands merged with the final order.

15. Since this matter pertains to family pension, the entire process as directed to be completed expeditiously and preferably within 60 (sixty) days from today.

JUDGE

Comparing Assistant