

GAHC010145492023



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

Case No. : WP(C)/3986/2023

MRS. ASIA BIBI
W/O LATE ASIRUDDIN SHEIKH, R/O VILL- TAMAKUBARI, P.O.-
BARKANDA, P.S.-BILASIPARA, DIST- DHUBRI, ASSAM, PIN-783348

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PENSION AND PUBLIC GRIEVANCE DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SERICULTURE DEPARTMENT
DISPUR, GUWAHATI-6

3:THE DIRECTOR OF SERICULTURE
ASSAM
KAHILIPARA
GUWAHATI-22

4:THE ASSISTANT DIRECTOR OF SERICULTURE
GOALPARA
ASSAM, PIN-783101

5:THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-29

6:THE TREASURY OFFICER
BILASIPARA TREASURY
DIST-DHUBRI
ASSAM
PIN-783348

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

8:SMTI. SAMARTHA BHANU BIBI
W/O LATE ASIRUDDIN SHEIKH
R/O VILL- TAMAKUBARI
P.O.-BARKANDA
P.S.-BILASIPARA
DIST- DHUBRI
ASSAM
PIN-78334

Advocate for the Petitioner : MD. S ALOM
Advocate for the Respondent : SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

09-10-2023

Heard Mr. S. Alom, learned counsel for the petitioner. Also heard Ms. M. Bhattacharjee, learned Additional Senior Government Advocate appearing for respondent Nos. 1 and 7; Mr. R. Dhar, learned standing counsel, Sericulture Department, for respondent Nos. 2, 3 and 4; Mr. R. Ahmed, learned standing counsel, Accountant General, for respondent No. 5; Mr. A. Chaliha, learned standing counsel Finance Department, for respondent No. 6 and Mr. M.H. Talukdar, learned counsel for respondent No. 8.

The petitioner is the wife of Asir Uddin Sheikh, who served as Manager in the office of the Assistant Director of Sericulture, Goalpara. He retired from service on 31-03-2012 on attaining the age of superannuation at 60 years and expired on 29-05-2021.

The grievance of the petitioner is that the office of the Accountant General (A&E), Assam, issued the Pension Pay Order in favour of her late husband, Asir Uddin Sheikh

showing her name as second wife. The claim of the petitioner in the present writ petition is for payment of proportionate family pension in equal share to the petitioner and the respondent No. 8.

The Division Bench of this Court in the case of **Sirazun Nessa vs. State of Assam and ors.**, reported in **2011 (4) GLT 751** while considering as to whether the second wife of a Muslim employee is entitled to any share in the family pension of her late husband and after examining Rule 143(1), has answered in the affirmative.

In that case the Division Bench held that the Rule has not ruled out taking into consideration the valid marriage of two or more wives of a Muslim employee and directed that the second wife would be entitled to family pension.

In the case at hand, the petitioner has produced her marriage certificate with her late husband Asir Uddin Sheikh. Further, Mr. Talukdar, learned counsel for respondent No. 8 has also submitted that the law is already settled and, therefore, proportionate family pension between the two wives will have to be considered by the office of the Accountant General, Assam.

In that view of the matter, this Court directs that the petitioner shall be entitled to proportionate family pension, which would, however, be determined by the office of the Accountant General, Assam and for this purpose, the concerned authority may ask the petitioner and the respondent No. 8 to clarify the ratio of their claim in accordance with Mohammadan Law.

Let such steps be taken and completed within a period of three months from the date of receipt of a certified copy of this order.

With the above observations and directions, the instant writ petition is disposed of.

JUDGE

Comparing Assistant