

GAHC010190752022



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

Case No. : WP(C)/6259/2022

MUSSTT SOFIA BEGUM
W/O. LT. SADULLAH MIA, R/O. VILL. JOYBHUM, P.O. CHUNARI, DIST.
GOALPARA, ASSAM, PIN-783129.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR

ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

GOALPARA
DIST. GOALPARA
ASSAM.

4:THE DIRECTOR OF PENSION

ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-781006.

5:THE TREASURY OFFICER

GOALPARA
P.O. AND DIST. GOALPARA
ASSAM.

6:HALIMA BEGUM
W/O. LT. SADULLAH MIA
R/O. VILL. JOYBHUM
P.O. CHUNARI
PIN-783129
DIST. GOALPARA
ASSAM

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : SC, ELEM. EDU

Linked Case : WP(C)/5613/2023

SUFIA BEGUM
W/O- LT. SUDDULLAH MIAH

VILL- JOYBHUM

P.O.- CHUNARI
P.S.- LAKHIPUR

DISTRICT- GOALPARA
ASSAM

PIN -783129.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

EDUCATION (ELEMENTARY) DEPARTMENT

DISPUR
GHY-06.

2:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19.
3:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-06.
4:THE TREASURY OFFICER
GOALPARA TREASURY OFFICE
GOALPARA
DIST.- GOALPARA

ASSAM.
5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
GOALPARA
DIST.- GOALPARA
ASSAM.
6:HALIMA KHATUN
W/O- LT. SADULLAH MIAH

R/O- VILL- JOYBHUM

P.O.- CHUNARI

P.S.- LAKHIPUR

DIST.- GOALPARA
ASSAM

PIN- 783129.

Advocate for : MR. M U MONDAL
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

06.12.2023

Heard Mr. M.U. Mondal, learned counsel for the petitioner. Also heard Mr.

N.J. Khatoniar, learned Standing Counsel, Elementary Education Department for the respondent nos. 1 to 3, Mr. J.K. Goswami, learned Government Advocate appears on behalf of Pension Department for the respondent no.4, and Mr. A. Chaliha, learned Standing Counsel, Finance Department for the respondent no.5 and Mr. Bora appears for respond no.6, namely, Halima Begum.

Both these writ petitions have been filed by the petitioner, namely, Musstt. Sofia Begum, who claims to be the second wife of one late Sadullah Mia. The late husband of the petitioner served as a Hindi Teacher in Joybhum ME School in the district of Goalpara and he died-in-harness on 23.02.2013. The respondent no.6, namely, Halima Begum is the first wife of the late Sadullah Mia.

WP(C) No. 6259 of 2022 is filed by the petitioner seeking a direction to the respondents to grant 50% of the monthly pension and other retirement benefits as well as to finalize the 50:50 ratio of pension in respect of late Sadullah Mia in the name of his 2 (two) widows, namely, the petitioner and the respondent no.6.

The Director of Pension, Assam vide order dated 20.01.2018 released the pension of the said Sadullah Mia in the name of the first wife, namely, Halima Begum, the respondent no. 6 in the writ petitions. Being aggrieved, WP(C)

No.5613/2023 has been filed challenging the said decision. Both these petitions i.e. WP(C) No. 6259 of 2022 and WP(C) No.5613/2023 have been tagged together.

By order dated 25.09.2023 passed in WP(C) no.5613/2023, the impugned letter dated 20.01.2018 was directed not to be acted upon and accordingly, the pension which was released to the respondent no.6 has been stayed. Subsequently on 12.10.2023 order was passed in WP(C) No.6259/2022 to list the matter along with WP(C) No.5613/2023.

The issue of claim of pension between first wife and second wife has been authoritatively settled by the Full Bench judgment of this Court rendered on 22.12.2022 in Mustt Junufa Bibi vs Mustt Padma Begum @ Padma Bibi & 4 Ors. reported in (2023) 5 GLR 824 (Writ Appeal No.160/2018). In terms of the said judgment, liberty was granted to the respondents Department to consider *inter se* claims of the writ petitioner. The judgment has also held that where the parties are governed by the Mohammedan Law and any of the wives are not appropriately maintained by the eldest of the surviving widow to whom the pension has been paid, the remedy thereof would be to make a claim for maintenance in the appropriate forum under the law. Relevant paragraphs of the said judgment are extracted herein below:

21. *In the circumstance, the concept of a validity and acceptability of a second marriage where the parties are governed by the Mohammedan Law and the consequential entitlement to the benefits of a family pension and the concept to whom the family pension would be payable under the Pension Rules of 1969 are held to be two separate and unrelated concepts and the implication of the concept of a validity and acceptability of a second marriage or further marriages where the parties are governed by the Mohammedan Law would have no bearing on the concept to whom the family pension is payable under the Pension Rules of 1969. It is held that irrespective of the validity and acceptability of a second marriage or further marriages where the parties are governed by the Mohammedan Law, the family pension under Rule 143 of the Pension Rules of 1969 would be payable to the eldest of the surviving widow, which would also be applicable for a family pension where the parties are governed by the principles of Mohammedan Law, and where there may be a validity and acceptability of the second wife or further wives in respect of a deceased Mohammedan employee.*

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.

The writ petition stands disposed of in terms of the judgment of the Full Bench rendered in *Mustt Junufa Bibi* (supra). Respondents may also take note of the amendments brought in to the Rule 143 of the Assam Services (Pension) Rules, 1969 by the notification dated 09.08.2018. Accordingly, the State respondents shall consider the claim of the petitioner.

In view of the Full Bench Judgment rendered by this Court as referred above, this Court upon due consideration of the submissions of the counsel for the parties deem it appropriate to relegate the aggrieved parties to approach the respondent authorities. The respondent authority will consider the rival claims and pass necessary orders. That by notification no. dated 09.08.2018 Rules 143 of the Assam Services (Pension) Rules, 1969 was amended. The relevant portion of the amended Rules is extracted below:

GOVERNMENT OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT

DISPUR :: GUWAHTI-G.
ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 9 August, 2618

No.PPG(G) 10/2013/49 : In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Assam is pleased to make the following rules, further to amend the Assam Services (Pension) Rules, 1969, hereinafter referred to as the principal Rules, in the manner hereinafter appearing, namely :-

Short title & commencement 1.: 1) These rules may be called the Assam

Services (Pension) Amended Rules, 2018

2) They shall come is force with immediate

.

Amendment of rule 143

2.In' the principal Rules, in Rule 143-

(a) in sub-rule (i), in clause (d), the words "unmarried minor daughters" shall be substituted by the words "unmarried dependent daughters."

(b) in sub-rule (i); in clause (c), for the punctuation mark "." appearing at the end, the punctuation mark "." shall be substituted and thereafter the following proviso shall be inserted, namely :-

"Provided that family pension shall be allowed to continue beyond 2t years of age to an unmarried dependent daughter of a

Government Servant/ Pensioner, subject to the fulfillment of the following conditions:-

(i). that there is no disabled child eligible for life time family pension;

(ii) that a certificate of non-marriage and non-employment in the prescribed format duly certified by the C.O/B.D.O. concerned (Annexure-III) shall be furnished by the unmarried dependent daughters to the Treasury or Bank once in a year."

(c) In sub-rule (ii), in clause (c), after Note 1 the following new notes shall be inserted, namely, - Note 2, Note 3, Note 4 and Note 5:-

Note 2 : In cases where there are two or more family members (minor son/unmarried dependent daughters) present at time of death of the widow/widower, the family pension as admissible shall be divided to all of them in equal shares till their eligibility ceases as per sub-rule (ii) (b) or (c) of rule 143 (as amended). If all members are minors, the family pension shall be paid through legal/natural guardian, otherwise family pension shall be paid in the following manner --

(a) the family pension shall be paid to the eldest eligible member of the family who shall divide it equally among other eligible members;

(b) if the eldest eligible member becomes ineligible to receive the family pension, it shall be paid to the next eligible member of the family who shall divide it equally among other eligible members and so on.

(c) in every case, the family pension recipient has to sign and submit an indemnity bond to the competent authority so that the recipient divides the amount amongst the beneficiaries in equal share.

Note 3.: If at the time of submission of family pension claim, there are no minor children in the family, the family pension shall be paid from the date of filing application by the claimant or from the date of coming into force of this notification whichever is later. No claim for arrear benefit under this clause shall be entertained. Otherwise, the family pension shall be paid from the date following the date of death of the widow/widower as the case may be.

Note 4 : In cases where family pension is already being drawing on the date of publication of this notification, it shall be allowed to continue by the current recipient till his/her eligibility ceases as per normal rules and thereafter the family pension shall be paid as per the procedure mentioned above at Note 2 under Rule 143(ii)(c).

Note 5 : The eligibility of dependent father, mother, brother (up to

18 years) and unmarried sister (up to 21 years) for family pension under the notification No. PPG(G) 10/2013/38 dated 20/08/2015 issued by this department is applicable only if there is no unmarried dependent daughters or disabled child eligible for life time family pension present in the family of the deceased Government Servant. The above mentioned notification is also applicable in cases where the Government Servant dies unmarried.”

The provisions of this notification shall cover all cases of family pension irrespective of the date of death of the Government Servant/Pensioner.”

A careful perusal of the amendment shows that as per Note-2 “where there are two or more family members (minor son/unmarried dependent daughters) present at the time of the death of the widow/widower. As per Note-2 the family pension shall be paid in the following manner:

- (a) The family pension shall be paid to the eldest eligible member of the family who shall divide it equally among other eligible members;
- (b) If the eldest eligible member becomes ineligible to receive the family pension, it shall be paid to the next eligible member of the family who shall divide it equally among other eligible members and so on.

- (c) In every case, the family pension recipient has to sign and submit an indemnity bond to the competent authority so that the recipient divides the amount among the beneficiaries in equal status.

Upon perusal of the judgment referred by the Full Court rendered in Mustt Junufa Bibi (supra) as well as by the amendments produced in Rules 143, this Court is of the view that the matter requires a decision by the authorities concerned as to the claims made by the present petitioner. The authorities will decide the claims of the petitioner and if the claims of the petitioner be redressed as per the law laid down by the Full Court judgment passed in Mustt Junufa Bibi (supra) as well as taking into consideration of the amendment made under the Rules 143 of the Assam Pension Rules, 1969. Any particulars that may be found necessary by the authorities concerned while deciding the claims of the petitioner, the same may be called for from the petitioners who will accordingly furnish the same to the concerned authorities. The matter shall be decided as expeditiously as possible preferably within a period of 60 (sixty) days from the date of receipt of a certified copy of this ordered.

Interim order passed earlier will continue till the matter is decided by the authority concerned.

The writ petitions stand disposed of in terms of the above

JUDGE

Comparing Assistant