

GAHC010224332023



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

Case No. : WP(C)/6030/2023

REZIA BEGUM
W/O LATE JABBAR ALI SARKAR, R/O VILL- BILASIPARA WARD NO. 2,
BATAPARA, P.O. AND P.S.-BILASIPARA, DIST- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT
OF ASSAM, PENSION AND PUBLIC GRIEVANCES DEPARTMENT, DISPUR,
GUWAHATI-781006

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE (ESTT-A) DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
IRRIGATION DEPARTMENT
DISPUR
GUWAHATI-781006

4:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-781006

5:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA

GUWAHATI-781038

6:THE TREASURY OFFICER
BILASIPARA
P.O.-BILASIPARA
DIST-DHUBRI
ASSAM

7:JORGINA BEGUM
W/O LATE JABBAR ALI SARKAR
R/O BILASIPARA
WARD NO. 2
BATAPARA
P.O. AND P.S.-BILASIPARA
DIST- DHUBRI
ASSAM

Advocate for the Petitioner : MS A DAS

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 18-11-2023

- 1.** Heard Mr. SC Biswas, learned counsel for the petitioner. Also heard Mr. CS Hazarika, learned counsel for the respondent Nos. 1 & 4 and Mr. N Upadhyay, learned counsel for the respondent No. 3. Mr. D Rabha, learned counsel appears on behalf of Mr. A Hasan, learned counsel for the respondent No. 5, while Mr. M Bhuyan, learned counsel appears on behalf of Mr. B Gogoi, learned counsel for the respondent Nos. 2 & 6.
- 2.** The case of the petitioner is that the respondent No. 7 is the 1st wife

of Late Jabbar Ali Sarkar and the petitioner is the 2nd wife. The petitioner's husband retired from service in the year 2004 and was availing pension. Late Jabbar Ali Sarkar however expired on 11.07.2023, leaving behind the respondent No. 7, the petitioner and two children that were born with his union with the petitioner.

3. The petitioner's counsel submits that the petitioner being the 2nd wife of Late Jabbar Ali Sarkar, the petitioner is entitled to a share of the family pension, though the family pension would have to be paid in the name of the respondent No. 7, in terms of the Full Bench judgment of this Court in the case of ***Mustt. Junufa Bibi vs. Mustt. Padma Begum @ Padma Bibi & 4 Ors.*** (WA No. 160/2018). The petitioner's counsel thus prays for a direction to be issued to the respondents, to pay an appropriate share to the petitioner, as is being given to the respondent No. 7.

4. The learned counsel for the respondents submit that they have got no quarrel with the prayer made by the petitioner's counsel, in so far as the petitioner would be entitled to a share of the family pension, provided it is proved that the petitioner is the 2nd wife of the Late Jabbar Ali Sarkar. They accordingly submit that the issue with regard to whether the petitioner is the wife of Late Jabbar Ali Sarkar may be decided by the Irrigation Department and

in this respect, the respondent No. 3 may be allowed to authorize any competent officer to decide the said issue.

5. The above prayer/proposal is not objected to by the counsel for the petitioner.

6. I have heard the learned counsels for the parties.

7. In terms of the Full Bench judgment of this Court in ***Mustt. Junufa Bibi (supra)***, which was disposed of on 22.12.2022, Rule 143 (iii) of the Assam Service (Pension) Rules, 1969 and Note 1 to Rule 143 (ii) would have to be read to mean that the family pension would be payable to the eldest of the surviving widows in the event of their being two or more widows. Further, in terms of the Division Bench judgment of this Court in ***Sirazum Nessa vs. State of Assam***, reported in ***2011 (4) GLT 751*** and in the case of ***Musstt. Khadija Begum vs. Musstt. Rejina Begum & 5 Ors.*** (WA No. 244/2017), it has been held that even the 2nd wife of a deceased Mohammedan employee would be entitled to family pension. However, the Full Bench in ***Mustt. Junufa Bibi (supra)***, has held that 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 widows or wife and the family pension so payable would be held by the eldest of the surviving widows or wife

as a trustee, for all the persons who are entitled to the benefits of the family pension, in terms of Rule 143 of the Assam Service (Pension) Rules, 1969.

8. As can be seen from the judgment passed by the Full Bench of this Court in ***Mustt. Junufa Bibi (supra)***, a 2nd wife, in respect of a marriage of persons professing the Mohammedan faith, is also entitled to a share of the family pension. The only issue that may arise is as to whether the petitioner is the wife of Late Jabbar Ali Sarkar. This aspect of the matter can be decided by the authorities, after giving an opportunity of hearing to the petitioner and the respondent No. 7. In the event that there is no dispute with regard to the petitioner being the 2nd wife of Late Jabbar Ali Sarkar, the family pension should be made payable to the respondent No. 7, who shall thereafter give a proportionate share of the family pension to the petitioner. However, in case there is a dispute with regard to whether the petitioner is the 2nd wife of the Late Jabbar Ali Sarkar and the issue cannot be settled by the respondent No. 3 or the officer deputed by him to decide the said issue, the petitioner shall be at liberty to approach the Civil Court for adjudication of the same.

9. The respondent No. 3 and/or the officer deputed by him to decide whether the petitioner is the 2nd wife of Late Jabbar Ali Sarkar shall give his decision, with regard to the said issue, within a period of 2 (two) months from the date of

receipt of a certified copy of this order.

10. The writ petition is disposed of accordingly.

JUDGE

Comparing Assistant