

GAHC010036302023



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

Case No. : WP(C)/7656/2022

NURANI KHATUN
W/O- LATE ABDUL HAQUE
R/O- VILLAGE JHOWDANGA PART-III
P.O- JHOWDANGA
P.S- MANKACHAR
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783131

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
IRRIGATION DEPARTMENT
ASSAM
DISPUR
GUWAHATI-781006

2:THE ACCOUNTANT GENERAL (A AND G)
MAIDAMGAON
BELTOLA
GUWAHATI-29

3:THE CHIEF ENGINEER
IRRIGATION DEPARTMENT
GOVT. OF ASSAM
CHANDMARI
GUWAHATI-781003

4:THE EXECUTIVE ENGINEER
IRRIGATION DEPARTMENT
MANKACHAR DIVISION
IRRIGATION

HATSINGIMARI
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

5:THE ASSTT. EXECUTIVE ENGINEER
HATSINGIMARI MECHANICAL SUB-DIVISION DIVISION
IRRIGATION
HATSINGIMARI
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

6:THE DEPUTY COMMISSIONER
HATSINGIMARI
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

7:BULBULI KHATUN
W/O- LATE ABDUL HOQUE
R/O- VILLAGE JHOWDANGA PART-III
P.O- JHOWDANGA
P.S- MANKACHAR
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783131

Advocate for : MR. M A ISLAM
Advocate for : SC
IRRIGATION appearing for THE STATE OF ASSAM AND 6 ORS

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner	: Mr. A. N. Iqbal, Advocate
For the Respondent	: Ms. Ms. D. S. Neog, Advocate (for respondent Nos. 1, 3, 4 & 5) : Mr. S. K. Medhi, Advocate, (for respondent No. 2) : Mr. C. S. Hazarika, Advocate,

(for respondent No. 6)

: Mr. M. Ahmed, Advocate,
(for respondent No. 7)

Date of Judgment & Order: **15.03.2023**

1. Heard Mr. A. N. Iqbal, learned counsel for the petitioner. Also heard Ms. D. S. Neog, learned counsel for the respondent Nos. 1, 3, 4 & 5; Mr. S. K. Medhi, learned counsel for the respondent No. 2; Mr. C. S. Hazarika, learned counsel for the respondent No. 6 and Mr. M. Ahmed, learned counsel for the respondent No. 7.

2. The petitioner herein is that the first wife of one Late Abdul Hoque (since deceased). Late Abdul Hoque was a Grade-IV employee in the office of the Assistant Executive Engineer, Hatsingimari Mechanical Sub-Division, Irrigation Department, Hatsingimari, in the district of South Salmara Mankachar, Assam. After rendering more than 28 years of service, the husband of the petitioner expired on 26.09.2022. Admittedly, the husband of the petitioner had married with respondent No. 7 in the year 2000. It is the case of the petitioner that the respondents have taken steps for releasing the family pension and other pensionary benefits to the respondent No. 7 for which the instant writ petition was filed challenging the action of the said respondents and for a direction to the respondents to pay the service benefit of family pension of the deceased Government Servant to the petitioner. This Court vide order dated 30.11.2022 had issued notice and in the interim directed the respondents not to disburse the retiral benefits of deceased employee till the returnable date. Being affected by order dated 30.11.2022, the respondent No. 7 had filed the Interlocutory Application seeking vacation / modification / alteration of the order dated 30.11.2022 on the ground that the respondent No. 7 being the second wife is

also entitled to the retiral benefits of deceased Government Employee, namely, Late Abdul Hoque as well as also for the benefits of the family pension.

3. Two aspects arise for consideration. First is as regards the retiral benefits of Late Abdul Hoque and the second is the family pension. Let this Court, therefore, take into consideration, the first question as to whether the petitioner as well as the respondent No. 7 are jointly entitled to the retiral benefits of Late Abdul Hoque.

4. Admittedly, both the petitioner and the respondent No. 7 and Late Abdul Hoque are governed by the Mohammedan Law. The retiral benefits of Late Abdul Hoque such as the arrear pension and the other pensionary benefits was the property of Late Abdul Hoque which he would have been otherwise entitled to if he would have been alive. The petitioner as well as the respondent No. 7 as well as their children in the opinion of this Court are, therefore, entitled to equal share to the arrear pension (if any) as well as other pensionary benefits in terms of the applicable Mohammedan Law of inheritance. It is admitted at the bar that the law of inheritance applicable to the petitioner as well as the respondent No. 7 would be the Hanafi Law of inheritance. Consequently, this Court, therefore, directs the respondents authorities to release the arrear pension (if any) as well as other pensionary benefits which Late Abdul Hoque would have been otherwise entitled to if he would have been alive and not paid to late Abdul Hoque during his lifetime, in equal proportions to the petitioner as well as the respondent No. 7.

5. The next question, therefore, arises as to whether the petitioner alone or the petitioner and the respondent No. 7 jointly would be entitled to the family pension. In a recent Judgment of the Full Bench of this Court in the case of *Mustt Junufa Bibi –Vs- Mustt Padma Begum and Ors.* reported in 2022 SCC

OnLine Gau 2000, the Full Bench had held that in terms unequivocal that Rule 143 (iii) of the Assam Services (Pension) Rules, 1969 (in short the Rules of 1969), Note- 1 to Rule 143 (ii) mandates that the eldest of the surviving widow would be entitled to the family pension. It is upon the death of the eldest of the surviving widow, the next surviving widow, if any, and, thereafter, to the minor children if the occasion so arises would be entitled to the family pension. The Full Bench further made it clear that the entire family pension so payable to the eldest of the surviving widow would not be the personal property of the eldest of the surviving widow inasmuch as she would receive the family pension 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. In the penultimate paragraph of the said judgment, the Full Bench further mentioned that in case 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. However, the Full Bench also observed that 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, the Judgment of the Full Bench may not be construed to be an absolute bar to make such separate payment. Paragraphs No. 19 to 23 of the said Judgment being relevant is extracted below:-

“19. A conjoint reading of Note 1 to Rule 143 (ii) and Rule 143 (iii) of the Pension Rules of 1969 makes it explicit and unambiguous that the family

pension would be payable to the eldest of the surviving widow in the event of there being two or more widows and further that even if there are minor children who may also be entitled to the benefits of the family pension, the pension would be paid to only one member of the family at the same time, where at first instance it would be paid to the eldest of the surviving widow and thereafter, on her death to the next surviving widow, if any and in its absence to the minor children.

20. *As a corollary to the provisions of the Rule 143 (iii) of the Pension Rules of 1969, 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 there are two or more widows, and thereafter, on her death it would be payable to the next surviving widow, if any and thereafter, to the minor children if the occasion arises.*

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."*

6. Taking into account the law laid down by the Full Bench of this Court as quoted herein above, the petitioner who is admittedly the eldest of the surviving widow, would therefore, be entitled to the family pension. It is further observed that the family pension so received by the petitioner would be received as a trustee for all such persons who are entitled to the family pension in terms of the Rule- 143 of the Rules of 1969. It is also the opinion of this Court that if the respondent No. 7 is aggrieved on being not maintained by the petitioner upon receipt of the family pension, the respondent No. 7 would be at liberty to initiate proceedings claiming maintenance in the appropriate forum under law.

7. Further to that, this Court is also of the view that if the petitioner and the respondent No. 7 reaches any acceptable mode of settlement, the State authorities would be at liberty to pay the pension separately to the petitioner and the respondent No. 7.

8. In view of the above, the instant petition stands disposed of with the following observations and directions:

(i) The respondent authorities in the Irrigation Department are directed to release the arrear pension, if any, as well as the pensionary benefits to which Late Abdul Hoque would have been entitled to had he been alive and not paid to Late Abdul Hoque during his lifetime; to the petitioner and the respondent No. 7 in equal proportions.

(ii) The family pension in the instant case be paid to the petitioner by the respondent authorities. The respondent No. 7 shall have a claim over the said family pension upon the same being paid to the petitioner if the respondent No. 7 is not adequately maintained and in that regard the respondent No. 7 would be at liberty to approach the appropriate forum, if

so aggrieved.

(iii) If the petitioner and the respondent No. 7 enters into an acceptable mode of settlement, the same be brought to the notice of the respondent authority and the State respondent would be at liberty to pay the family pension to the petitioner and the respondent No. 7 separately in terms with the settlement reached between the petitioner and the respondent No. 7.

(iv) The entire exercise be carried out by the respondent authorities in the Irrigation Department within 2(two) months from the date of certified copy of the instant order is served upon the Commissioner and Secretary to the Government of Assam, Irrigation Department, Dispur, Guwahati and thereafter send papers to the Office of the respondent No. 3 who shall within 1(one) month pass appropriate orders thereby granting the entitlement as mentioned herein above.

9. Before concluding, this Court finds it relevant to mention that the above directions in paragraph No. 8 (supra) have been issued on the basis that late Abdul Hoque was entitled to pension and pensionary benefits and his family would be entitled to family pension. It is made clear that in the circumstances, the respondents are of the opinion that the services rendered by Late Abdul Hoque was not pensionable and further not entitled to family pension then the above directions shall not apply. In such eventuality, the Commissioner and Secretary, Irrigation Department shall within two months from the date of service of the certified copy of this Judgment shall pass a reasoned order why the service rendered by late Abdul Hoque was not pensionable and also not entitled to family pension. In such circumstances, the petitioner and/or the respondent No. 7 would be at liberty to challenge such order in accordance with

law.

10. With the above observation and directions, the petition stands disposed of.

JUDGE

Comparing Assistant