

GAHC010249552022



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

Case No. : WP(C)/732/2023

REJINA BEGUM
W/O- LT. MANJUR ALI, R/O- VILL- KHEHENIPARA, P.O. BEJERA, P.S.
BAIHATA CHARIALI, IN THE DIST. OF KAMRUP, ASSAM ALSO AT VILL-
KHOIRAPARA, P.O. BEJERA,P.S. BAIHATA CHARIALI, IN THE DIST. OF
KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, PERSONNEL
DEPTT., DISPUR, GHY-06

2:THE COMM. AND SECY.
GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-06

3:THE COMM. AND SECY.
GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCE DEPTT.
DISPUR
GHY-06

4:THE DY. COMMISSIONER
KAMRUP (M)
GHY-01

5:THE COMMISSIONER
LOWER ASSAM DIVISION
PANBAZAR
GHY-01

6:THE ACCOUNTANT GENERAL (A AND E)
MAIDAMGAON
BELTOLA
GHY-2

Advocate for the Petitioner : MR G R A MOTTAQUEE

Advocate for the Respondent : GA, ASSAM

– B E F O R E –

HON'BLE MR. JUSTICE DEVASHIS BARUAH

10-02-2023

Heard Mr. GRA Mottaquee, learned counsel for the petitioner. Also heard Mr. TC Chutia, learned Government Advocate, Assam, appearing on behalf of respondent Nos.1, 3, 4 and 5, Mr. A. Chaliha, learned counsel appearing on behalf of respondent No.2 and Mr. A Hassan, learned counsel appearing on behalf of respondent No.6.

The case of the petitioner herein is that the petitioner is the wife of Late Manjur Ali and their marriage was solemnised as per the Islamic rituals and out of their wedlock a male child, namely, Moidul Islam Bora was born on 31.12.1984. Late Manjur Ali was an employee in the office of the Deputy Commissioner, Kamrup (Metro), Guwahati. During his lifetime, Late Manjur Ali married one Hafijan Begum who expired in the year 2002. Subsequently, Late Manjur Ali again married one Golegan Begum @ Gobijan Begum who expired in the year 2017. The petitioner herein is the surviving wife of Late Manjur Ali. Late Manjur Ali during his lifetime was issued Pension Paper Order being PPO No.KAM/68930 on the basis of which Late Manjur Ali was receiving his pension. However, unfortunately, he expired on 24.02.2018 due to his old age ailments. Subsequent thereto the Deputy Commissioner, Kamrup (Metro) has issued next

of kin certificate on 30.07.2022 wherein the petitioner has been shown as the wife of Late Manjur Ali. The petitioner thereupon approached the respondent authorities for the purpose of making necessary amendments/modifications to the Pension Paper Order and for making payment of family pension to her. However, the respondent authorities having not done so, the petitioner has approached this Court under Article 226 of the Constitution of India.

This Court taking into account the factual matrix and the question as to whether the petitioner is the surviving widow of Late Manjur Ali for which there would be necessity for verification of the facts involved, have taken up the matter for disposal at the motion stage itself.

The Full Bench of this Court in the case of *Mustt. Junufa Bibi vs. Mustt. Padma Begum @ Padma Bibi and others*, reported in *2022 SCC Online GAU 2000* have categorically observed in paragraphs 15, 16 and 20 that the second wife or the further wives where parties are governed by Mohammedan Law, would have to be construed to be also the family members of the deceased employee and therefore, would be entitled under Rule 143(iii) of the Pension Rules of 1969 to the benefit of the family pension. It was further observed that a reading of provisions of Rule 143(iii) with Note (1) of Rule 143(ii) would 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. The said paragraphs 15, 16 and 20 of the Full Bench's judgment being relevant are reproduced hereinbelow:

“15. As reading of Rule 143(1) goes to show that for the purpose of family pension a family would comprise of the relatives of the officer, which also includes the wife in case of a male officer. If the second or further wives of a male officer are acceptable and valid under the personal law governing the

parties, we see no reason as to why such second or further wives would not be construed to be a wife of the male officer.

16. If the validity and acceptability of the marriage of a second wife or further wives where parties are governed by Mohammedan Law would be determined by the personal laws of the parties, and the personal laws provide for the validity and acceptability of such marriage, the second wife or the further wives where parties are governed by Mohammedan Law, would have to be construed to be also the family members of the deceased employee and therefore, under Rule 143(1) of the Pension Rules of 1969 be entitled to the benefits of a family pension.

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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.”

In that view of the matter, taking into account that the Next of Kin certificate was issued by the office of the Deputy Commissioner, Kamrup (Metro) on 30.07.2022, the question therefore arises as to whether the petitioner is the sole surviving widow of Late Manjur Ali. This aspect of the matter can be verified by the office of the Deputy Commissioner, Kamrup (Metro). Accordingly, this Court directs the Deputy Commissioner, Kamrup (Metro) to verify the said aspect of the matter as to whether the petitioner is the sole surviving widow of Late Manjur Ali on the basis of certified copy along with all the necessary documents and evidence being placed before the said authority.

Upon making such verification, if it is found that the petitioner is the sole surviving widow of Late Manjur Ali, the Deputy Commissioner, Kamrup (Metro) shall process the papers through the proper channel to the office of the

Accountant General (A&E) so that the necessary modifications be carried out in the Pension Payment Order being PPO No.KMA/68930. Thereupon the office of the Accountant General (A&E) shall issue necessary instructions for release of the family pension to the petitioner.

The said exercise be completed within a period of three months from the date a certified copy of this order along with essential documents evidencing that the petitioner is the surviving widow of Late Manjur Ali, are submitted to the office of the Deputy Commissioner, Kamrup (Metro), Assam.

With these above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant