

GAHC010262432017



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

Case No. : WP(C)/1464/2017

MAHAMUDA KHATUN
W/O LT. ABDUS SALAM R/O VILL- ALAMKHANI P.O. SINGARIA BAZAR P.S.
NILAMBAZAR DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM and 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION ELEMENTARY DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DIRECTOR PENSION

ASSAM
HOUSEFED COMPLEX
GUWAHATI -6.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

KARIMGANJ
ASSAM

4:THE TREASURY OFFICER

KARIMGANJ
DIST. KARIMGANJ
ASSAM

5:THE ACCOUNTANT GENERAL

ASSAM
BELTOLA
GUWAHATI-27

6:THE BRANCH MANAGER

UNITED BANK OF INDIA
NILAMBAZAR BRANCH
P.S. NILAMBAZAR
DIST. KARIMGANJ
ASSAM

7:MUSSTT. MASNURUN NESSA @ MASNURN NESSA
W/O LT. ABDUS SALAM VILL- ALAMKHANI
P.S. NILAMBAZAR DIST. KARIMGANJ
ASSA

Advocate for the Petitioner : MR.R A CHOUDHURY

Advocate for the Respondent : SC, ELEMENTARY EDUCATION

Linked Case : I.A.(Civil)/604/2019

AZHAR HUSSAIN AND 3 ORS.
S/O- LATE ABDUS SALAM AND LATE MAHAMUDA KHATUN @ MAHMUDA KHATUN
R/O- VILL.- ALAMKHANI
P.O.- SINGARIA BAZAR
P.S.- NILAM BAZAR
DIST.- KARIMGANJ
ASSAM
PIN0 788719

2: ASHRAF HUSSAIN
S/O- LATE ABDUS SALAM AND LATE MAHAMUDA KHATUN @ MAHMUDA KHATUN
R/O- VILL.- ALAMKHANI
P.O.- SINGARIA BAZAR
P.S.- NILAM BAZAR
DIST.- KARIMGANJ
ASSAM
PIN0 788719

3: ALTAF HUSSAIN
S/O- LATE ABDUS SALAM AND LATE MAHAMUDA KHATUN @ MAHMUDA KHATUN

R/O- VILL.- ALAMKHANI
P.O.- SINGARIA BAZAR
P.S.- NILAM BAZAR
DIST.- KARIMGANJ
ASSAM
PIN0 788719

4: ABDUS SHAHID
S/O- LATE ABDUS SALAM AND LATE MAHAMUDA KHATUN @ MAHMUDA KHATUN
R/O- VILL.- ALAMKHANI
P.O.- SINGARIA BAZAR
P.S.- NILAM BAZAR
DIST.- KARIMGANJ
ASSAM
PIN0 788719
VERSUS

THE STATE OF ASSAM and 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EDUCATION ELEMENTARY DEPARTMENT
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GUWAHATI-6.

2:THE DIRECTOR OF PENSION

ASSAM
HOUSEFED COMPLEX
GUWAHATI -6.
3:THE DISTRICT ELEMENTARY OFFICER

KARIMGANJ
ASSAM
PIN- 788710
4:THE TREASURY OFFICER
KARIMGANJ
DIST. KARIMGANJ
ASSAM
5:THE ACCOUNTANT GENERAL

ASSAM
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GUWAHATI-27
6:THE BRANCH MANAGER

UNITED BANK OF INDIA
NILAMBAZAR BRANCH
P.S. NILAMBAZAR

DIST. KARIMGANJ
ASSAM
7:MUSSTT. MASNURUN NESSA @ MASNURN NESSA
W/O LT. ABDUS SALAM VILL- ALAMKHANI
P.S. NILAMBAZAR DIST. KARIMGANJ
ASSAM
PIN- 788719

Advocate for : MR H R A CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM and 6 ORS.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 29.03.2023

Heard Mr. F.U. Borbhuiya, the learned counsel appearing on behalf of the petitioner. Mr. S. R. Baruah, the learned counsel appears on behalf of the Director of Pension, Ms. M. Mallik, the learned counsel appears on behalf of the Accountant General (A&E), Mr. N.J. Khataniar, the learned counsel appears for the respondent Nos. 1 and 3, Mr. A. Chaliha, the learned counsel appears on behalf of the Treasury Officer and Mr. S.C. Biswas, the learned counsel appears on behalf of the respondent No. 7.

2. The instant writ petition was filed by one Mahamuda Khatun(since deceased) claiming to be the first wife of Late Abdul Salem. The case of the petitioner herein is that the respondent authorities have illegally given the family pension to the respondent No. 7 which ought to be given to the petitioner. The prayers in the writ petition are for setting aside and quashing the sanctioning letter of family pension issued in the name of the respondent No. 7; for a mandamus directing and commanding the respondents not to give effect to the sanctioning letter of family pension in the name of the respondent No. 7 as

well also as for a direction that the respondent authorities should release the family pension in favour of the petitioner. In the meantime during the pendency of the writ petition, the petitioner Mahamuda Khatun expired on 7/4/2018. This aspect of the matter was brought to the notice of this Court by the sons of the petitioner by filing an Interlocutory Application being I.A. (C) No.604/2019

3. In a recent judgment of the Full Bench in the case of Mustt. Junufa Bibi Vs. Mustt. Padma Begum reported in 2022 SCC Online Gau 2000, it has been categorically held that the first entitlement of the family pension would be to the eldest of the widow and upon the demise of the eldest of the widow, the second or such further widow would be entitled to and thereafter only the minor children would be entitled to.

4. In view of the judgment of the Full Bench even assuming that the respondent No. 7 is the second wife, then also on the admitted death of the petitioner, the respondent No. 7 would be entitled to the family pension. Accordingly, the question of substituting the applicants of I.A.(C) No.604/2019 instead of the petitioner to the present writ petition does not arise as they are not entitled to the relief as sought for in the writ petition. Further as per the provisions of the Assam Service (Pension) Rules, 1969, the respondent No. 7 is now entitled to the family pension and as such the reliefs sought for in the writ petition cannot be granted to the Applicants of I.A.(C) No.604/2019. Consequently the instant writ petition therefore abates.

5. At this stage, this Court also finds it relevant to take note of a submission of Mr. F.U. Borbhuiya to the effect that the pension being a property, the entitlement of the said pension to the mother of the applicants in I.A.(C) 604/2019 stood devolved upon the death of their mother and as such a direction be given to the respondent No. 7 for the purpose of payment of the

said amount which she had received as family pension during the life time of the mother of the applicants.

6. Mr. S.C. Biswas, the learned counsel appearing on behalf of the respondent No. 7 submitted that the respondent No. 7 is the only legally wedded wife of Lt. Abdul Salem and as such the question of the mother of the applicants getting any amount does not arise. He further submitted that this is an inter se dispute between two private individuals and as such this Court ought not to exercise any jurisdiction under Article 226 of the Constitution. This Court duly agrees to the submission made by Mr. S.C. Biswas to the effect that the dispute as to whether the applicants in I.A.(C) No. 604/2019 would be entitled to the said amount, would require an adjudication of the facts as to whether the mother of the applicants was the first wife of Lt. Abdul Salem which can only be decided by a forum wherein the facts could be adjudicated.

7. Considering the above, this court therefore while disposing the writ petition as abated disposes off the interlocutory application by holding that the applicants are not entitled to be substituted to the writ petition on the grounds and reasons mentioned supra. However, the Applicants of I.A.(Civil) No. 604/2019 shall be at liberty to take resort to such remedy as available under law for recovery of the amount from the respondent No. 7, if deemed fit.

8. Accordingly, both the writ petition as well as the interlocutory application stand disposed off.

JUDGE

Comparing Assistant