

GAHC010267682023



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

Case No. : WP(C)/6929/2023

WALIUL ABDUL HAMID
S/O- LT. UMAR UDDIN MIAH, RESIDENT OF VILL- MONIRCHAR, P.O.
SARKARER GAON, P.S. SOUTH SALMARA, DIST.- SOUTH SALMARA
MANKACHAR, ASSAM, PIN- 783127 (TO BE REPRESENTED BY THE ELDER
SISTER OF THE PETITIONER, NAMELY, WALINA HASIN, AGED ABOUT 26
YEARS, DAUGHTER OF LT. UMAR UDDIN MIAH, WIFE OF MOINUDDIN
SHEIKH, RESIDENT OF VILL- KACHARIGAON, P.O. KAMANDANGA, P.S.
TAMARHAT, DIST.- DHUBRI, ASSAM, PIN- 783332

VERSUS

THE STATE OF ASSAM AND 7 ORS
TO BE REPRESENTED BY THE SECRETARY TO GOVT. OF ASSAM, SCHOOL
EDUCATION DEPARTMENT, DISPUR, GUWAHATI-06

2:THE SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06

3:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 29

4:THE DIRECTOR OF PENSIONS
SURVEY
DISPUR
GUWAHATI-06

5:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
P.O. AND DIST.- DHUBRI
ASSAM
PIN- 7833301

7:THE TREASURY OFFICER
DHUBRI
P.O. AND DIST.- DHUBRI
ASSAM
PIN- 7833301

8:MAHMUDA KHATUN
W/O- LT. UMAR UDDIN MIAH
RESIDENT OF VILL- MONIRCHAR
P.O. SARKARER GAON
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN- 78312

Advocate for the Petitioner : MR. R ISLAM

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

11.12.2023

Heard Mr. R. Islam, learned counsel for the petitioner. Also heard Mr. J.K. Goswami, learned Additional Senior Government Advocate, Assam and Mr. A. Chaliha, learned Standing Counsel, Finance Department.

This writ petition is filed by the petitioner, namely, Waliul Abdul Hamid,

who is represented by the elder sister of the petitioner, namely, Walina Hasin because he is still a minor. The petitioner claims to be a person of 17 years of age who is pursuing his studies in Higher Secondary in science stream from Gyan Vikash Academy, Hatsinghimari, South Salmara Mankachar. The petitioner's father one Umar Uddin Miah had served Assistant Teacher in K.M.G. M.E. Madrassa. The mother of the petitioner had expired on 16.06.2012. The petitioner's father thereafter married the private respondent no.8, namely, Mahmuda Khatun. The petitioner's father superannuated from service on 31.01.2016. The respondent authorities cleared the pension of the petitioner's father and he received his regular pension with effect from 01.03.2019. In the pension papers, filed before the Department for availing the pension, the names of all the family members including the petitioners were mentioned by the petitioner's father. However, because of some family discord the father of the petitioner committed suicide on 02.11.2021 and left behind the petitioner and his siblings and the private respondent no.8, the petitioner's step mother. Pursuant to the demise of the father of the petitioner, the family pension was issued to the respondent no.8. However, it is submitted that the respondent no.8's behaviour towards the petitioner is not amicable and she declined to look after the petitioner and bear his expenses out of the family pension received by her. It is submitted that the petitioner is presently living hand to mouth life and

is unable to carry on his day to day expenses. He is pursuing Higher Secondary in science stream from Gyan Vikash Academy, Hatsinghimari, South Salmara Mankachar and is required to appear for the final in the coming year. However, because of lack of support from the respondent no.8, who is the sole recipient of the family pension, the petitioner is facing difficulty continuing his studies.

Under such circumstances, the petitioner has approached this Court praying for appropriate writ, direction or order.

Learned counsel for the petitioner has placed before the Court an amendment of the Rule 143 of the Assam Services (Pension) Amended Rules, 2018, which was notified by notification dated 09.08.2018. According to the amendment Rules 143 (c)(ii) Note-5 where there are two or more family members (minor son/unmarried dependant daughter) present at the time of death of widow/widower, the family pension as admissible shall be divided amongst all in equal share still their eligibility ceases as per Sub-rule (ii) (b) or (c) of Rule 143 (as amended). It is submitted by the learned counsel for the petitioner that the amendment brought about should be followed up by the Department and the petitioner's share of family pension should be disbursed to him.

Considering the peculiar facts and circumstances of the case, this Court is

of the considered view that the matter is the first instance shall be decided by the authorities bifurcating the pension, if any, as per the Rules. As per the submissions made in the Bar it is the District Elementary Education Officer (DEEO) who is required to pass appropriate order for apportioning the pension if required.

Under such circumstances, this Court is of the view that the matter should be disposed of with a direction to the DEEO, Dhubri, the respondent no.5 herein to look into the grievances of the petitioner and pass appropriate orders for apportionment of pension. It is made clear that while adjudicating the issue, the DEEO will take note of the amendments brought in to Rule 143 of the Assam Services (Pension) Amended Rules, 2018 and more particularly, "Note-II" thereof. The DEEO shall consider the matter after hearing the petitioner as well as the private respondent no.8 who is the step mother of the petitioner. Pursuant there to, if it is decided that the family pension should be apportioned then the DEEO, Dhubri shall pass necessary orders in the matter enabling the Treasury Officer to apportion the pension as per such orders passed. Certified copy of this order along with a representation be furnished to the District Elementary Education Officer within a period of 1 (one) week from the date of receipt of a certified copy of this order. Thereupon, the DEEO shall pass appropriate order as directed above within a period of 2 (two) weeks from the

date of receipt of the representation and after hearing the necessary parties.

With the above observations, the writ petition stands disposed of.

JUDGE

Comparing Assistant