

GAHC010307252019



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

Case No. : WP(C)/9393/2019

NIRADA DOLEY MILI
W/O- LATE PRABHAT MILI, R/O- KAMALABARI, P.O AND P.S- MAJULI
KAMALABARI, DIST- MAJULI, ASSAM, PIN- 785106

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE CHIEF SECRETARY, GOVT OF ASSAM, DISPUR, GUWAHATI,
ASSAM, PIN- 781006

2:THE SECRETARY TO THE GOVT OF ASSAM
EDUCATION (ELEM) DEPTT
DISPUR
GHY
ASSAM
PIN- 781006

3:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI
ASSAM
PIN- 781019

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

5:THE ACCOUNTANT GENERAL (A AND E)
MAIDAMGAON
KRISHNAPUR
BELTOLA
GHY
PIN- 781028

6:THE DEPUTY COMMISSIONER
MAJULI
GARAMUR
ASSAM
PIN- 785104

7:THE DEPUTY INSPECTOR OF SCHOOLS
MAJULI
KAMALABARI
ASSAM
PIN- 785106

8:THE CIRCLE OFFICER
MAJULI
KAMALABARI
PIN- 785106

9:THE BEEO
KAMALBARI
MAJULI
ASSAM
PIN- 785106

10:PRABHAWATI PAYENG MILI
D/O- SRI KESHAB PAYENG
R/O- BATIMARI
P.O AND P.S- KAMALABARI
DIST- MAJULI
ASSAM
PIN- 78510

Advocate for the Petitioner : MS. M B BARUAH

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 27.01.2023

Heard Ms. M.B. Baruah, the learned Legal Aid Counsel appearing on behalf of the petitioner. Mr. J.U. Laskar, the learned State Counsel appears on behalf of respondent No. 1,4, 6 and 8 Mr. B. Kaushik, the counsel appears on behalf of the 2, 3,

7 and 9 and Mr. J.P. Kachari, the learned counsel appears for the respondent No. 10.

The learned counsel appearing on behalf of the petitioner submitted that vide the order dated 6/11/2020, the Director of Pension has passed appropriate directions to the Treasury Officer, Garamur Treasury for release of the pension to the petitioner and accordingly on the basis of the said order, the petitioner has received the family pension only once in view of the order being passed on 8/11/2021 in Cont. Case (C) No. 417/2021.

This Court upon hearing the learned counsel for the parties and taking into account the provisions of Rule 143 (iii) of the Assam Services(Pension) Rules 1969 is of the opinion that as admittedly the petitioner herein is the first wife of Late Prabhat Mili, she is entitled to the family pension. Accordingly, the Director of Pension had rightly issued the communication dated 6/11/2020 thereby according that the petitioner be entitled to the family pension.

At this stage, this Court may also take note of the objection being placed by Mr. J.P. Kachari whereby he has admitted that though the petitioner is the first wife and the respondent No. 10 is the second wife but the respondent No. 10 has two minor children.

Rule 143(iii) of the Assam Services(Pension) Rules 1969 is relevant for taking note of the said contention for which the same is reproduced herein below :-

“143(iii) Pension awarded under the rules in this Section will not be payable to more than one member of an officer’s family at the said time. It will first be admissible to the widow/widower and thereafter to the minor children.”

A perusal of the above quoted Rule would show that the pension awarded under Rule 143 would not be payable to more than one member of the officer’s family at the same time. It would first be admissible to the widow/widower and thereafter to the minor children.

Taking into account that the petitioner is the first wife of Late Prabhat Mili, the petitioner therefore would be entitled to the family pension. The respondent No. 10 who admittedly is the second wife, on the ground that she has two minor children could not be entitled to the family pension during the life time of the petitioner. Accordingly, the order dated 6/11/2020 issued by the Director of Pension to the Treasury Officer, Garamur is in order and as such the respondent authorities are therefore directed to ensure that the petitioner receives her family pension in terms with the Assam Services(Pension) Rules 1969.

With the above declaration, observations and directions, the instant writ petition stands disposed off.

JUDGE

Comparing Assistant