

GAHC010002842024



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

Case No. : WP(C)/116/2024

MONOWARA KHATUN @ MONOWARA BEGUM
W/O- LATE SALIM UDDIN , RESIDENT OF VILLAGE KALGACHIA,
P.O AND P.S - KALGACHIA, DIST- BARPETA, ASSAM, PIN--781319

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY , TO THE GOVT. OF
ASSAM, DEPARTMENT OF PENSION, DISPUR, GUWAHATI-06

2:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX. GUWAHATI-781006.

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

4:THE TREASURY OFFICER

BARPETA

P.S AND DIST- BARPETA
ASSAM
PIN-781301

5:JARINA KHATUN
W/O- LATE SALIM UDDIN

RESIDENT OF VILLAGE KALGACHIA

P.O AND P.S - KALGACHIA
DIST- BARPETA
ASSAM
PIN--78131

Advocate for the Petitioner : MR. A U CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

12.01.2024

Heard Mr. S. Islam, learned counsel for the petitioner. Also heard Ms. M. Bhattacharjee, learned Addl. Sr. Government Advocate for the respondents No. 1 & 2 and also the P&RD Department, since the department was not arrayed as a party respondent and Mr. S.K. Medhi, learned Standing Counsel, Accountant General.

This writ petition has been filed by the petitioner who is claimed to be the second wife of the one late Salim Uddin. Her late husband was serving as a Peon in the Office of the Block Development Officer, Rupsi Development Block and he died in harness on 24.11.2010 leaving behind the petitioner and respondent No. 5 who is the first wife along with five children. Pursuant to the death of her husband, the respondent No. 5 has been granted the pensionary benefits as the petitioner has not received a single amount. Aggrieved, she has filed representation before the Director of Pension which has remained pending. Having no alternative, the petitioner has approached this Court praying for appropriate writ directions or orders.

The law in respect of the claim of pension between the surviving widows of any deceased employee has been settled by a Full Bench of this Court rendered in *Mustt Junufa Bibi vs Mustt Padma Begum @ Padma Bibi & 4 Ors.* reported in (2023) 5 GLR 824 (Writ Appeal No.160/2018). The learned counsel for the parties including the counsels for the respondents does not dispute this position. In terms of the said Judgment, the following directions were issued in the said judgment:

“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."

That apart, under the pension Rules, Rule 143 also underwent certain amendments. Under the said amendments, the responsibility is cast upon the eldest eligible member of the family who shall divide it equally amongst all eligible members. Since there is no dispute that law in respect of this matter has been settled by the Full Bench, this Court considers it appropriate dispose of the matter at this stage without issuing notice.

The writ petition stands disposed of in terms of the law laid down by the Full Bench in *Mustt Junufa Bibi vs Mustt Padma Begum* (Supra) read with the amendments incorporated under Rule 143. The petitioner is permitted to file appropriate representation before the administrative Department namely, Commissioner and Secretary, Government of Assam, Department of Panchayat and Rural Development. The petitioner will file proper representation narrating all the facts and events in the matter enclosing the certified copy of this order and thereafter the department will process claims for petitioner and pass appropriate speaking order. Any such order that is passed, copy thereof shall be served on the petitioner.

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

The order as directed be passed by the administrative department will be passed within a period of sixty (60) days from the date of receipt of a certified copy of this order.

Copy of this order be marked to the Office of the learned Addl. Sr. Government Advocate, Assam

JUDGE

Comparing Assistant