

GAHC010179422022



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

Case No. : WP(C)/5963/2022

NUR JAHAN BEGUM
W/O- LATE MOTLEB ALI @ ABDUL MOTALEB @ ABDUL MUTALIP,
R/O- VILL. GARUBANDHA,
P.O.- SANDAHKHAITI,
P.S.- MAYONG,
DIST. MORIGAON (ASSAM).

VERSUS

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

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

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

4:THE DIRECTOR OF PENSIONS

HOUSEFED COMPLEX
DISPUR
GUWAHATI-06.

5:THE DEPUTY INSPECTOR OF SCHOOL

MORIGAON
RAJAGAON
DISTRICT- MORIGAON
ASSAM. PIN- 782105.

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
MORIGAON
RAJAGAON
DIST.- MORIGAON
ASSAM
PIN- 782105.

7:THE BLOCK ELEMENTARY EDUCATION OFFICER
MAYONG BLOCK
JAGI-BHAKATGAON
DIST.- MORIGAON
ASSAM
PIN- 782411.

8:THE TREASURY OFFICER
MORIGAON
RAJAGAON
DIST.- MORIGAON
ASSAM
PIN- 781025.

9:MORIYAM BEGUM
W/O. LATE MOTLEB ALI @ ABDUL MOTALEB @ ABDUL MUTALIP

R/O- VILL. GARUBANDHA

P.O- SANDAHKHAITI

P.S.- MAYONG
DIST.- MORIGAON (ASSAM)

Advocate for the Petitioner : MD B ISLAM, MR S HUSSAIN,MR M HOQUE

Advocate for the Respondent : SC, ELEM. EDU, MR. R RAHMAN (R-9),MR. DITUL DAS (R-9),SC, FINANCE,SC, AG,GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 30.09.2024

Heard Mr. B. Islam, learned counsel for the petitioner and Ms. S. Chutia, learned Standing counsel for the respondent Nos. 1, 2, 6 and 7. Also heard Mr. P. Saikia, learned Government Advocate for the respondent No. 4 and Mr. D. Das, learned counsel for the respondent No. 9.

2. In this petition, under Article 226 of the Constitution of India, the petitioner, namely, Nur Jahan Begum has prayed for issuing direction to the respondent authorities to release 50% of family pension and other allowances relating to service of her deceased husband and also to release the arrear salaries as well as entire benefits for the service period whatsoever to the petitioner.

3. The background facts, leading to filing of the present petition, are adumbrated herein below:

“The husband of the petitioner was serving as the Headmaster of Garubandha Nadirpar L.P. School in the year 1995 and continued as such till his death on 20.01.2021. Since the death of her husband, the petitioner has been suffering from acute financial hardships with her two minor children as she has no source of income to maintain her family. Her husband had two wives and the petitioner is the second wife and her name was recorded in most of the service related documents of her husband as nominee. After the death of her husband, the petitioner has approached the offices of the Block Elementary Education Officer, Mayong Block and District Elementary Education Officer, Morigaon for releasing the

arrear salary of her husband as well as other allowances of her deceased husband. But, the same failed to evoke any response from the aforesaid offices. Being left with no other option, the petitioner has approached this Court by filing the present petition for granting the aforesaid relief.”

4. Mr. Islam, learned counsel for the petitioner submits that admittedly, the petitioner is the second wife and that in most of the documents of her deceased husband, the name of the petitioner is reflected as nominee, and that the petitioner has two minor children and she has no source of income and as such it becomes difficult for her to maintain the children and herself. Mr. Islam also submits that she has approached the respective offices of the Block Elementary Education Officer, Mayong Block and District Elementary Education Officer, Morigaon, but, she has not received the pensionary benefits as well as other service benefits of her deceased husband. As she has not received any response from the said offices, she has approached this Court by filing the present petition. Mr. Islam, further referring to Rule 137(1) of the Assam Services (Pension) Rules, 1969, submits that though the petitioner is the second wife, yet she is entitled to the pensionary benefits of her deceased husband and also the other service benefits and therefore, it is contended to allow the petition. Mr. Islam has also referred to a decision of this Court in the case of **Musst. Fazila Begum @ Fazliya Begum vs. State of Assam and Ors**, reported in **2009 3 GLR 201**

5. Per contra, Ms. Chutia, learned counsel for the respondent Nos. 1, 2, 6 and 7, submits that the said respondents have not received any documents to initiate the process of granting pension and other benefits to the husband and the petitioner and the same will be processed as soon as they receive the documents filed by the petitioner.

6. On the other hand, Mr. Das, learned counsel for the respondent No. 9, referring to the decision of a Full Bench of this Court in **WA No. 160/2018 (Mustt Junufa Bibi vs. Mustt Padma Begum @ Padma Bibi and 4 Ors.)**, submits that the Full Bench of this Court in the aforesaid judgment, in paragraphs 19, 20, 21 and 22, dealt with the issue and arrived at a finding that as per Note 1 to Rule 143(ii) and Rule 143(iii) of the Assam Services (Pension) Rules, 1969, it is explicit and unambiguous that the family pension would be payable to the eldest of the surviving widow in the event of there being two or more widows and further that even if there are minor children who may also be entitled to the benefits of the family pension, the pension would be paid to only one member of the family at the same time, where at first instance, it would be paid to the eldest of the surviving widow and thereafter, on her death to the next surviving widow, if any and in its absence to the minor children, and that the aforesaid ratio is presently holding the field. Mr. Das also submits that admittedly, the petitioner is the second wife and as such, in view of Rule 143(ii) and Rule 143(iii) of the Assam Services (Pension) Rules, 1969, and in view of the decision of a Full Bench of this Court in the case of **Mustt Junufa Bibi** (supra), the petitioner is not entitled to any family pension and other pensionary benefits and therefore, Mr. Das has contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the relevant Rules and the decisions of the Full Bench of this Court in **Mustt Junufa Bibi** (supra).

8. The relevant paragraphs i.e. paragraphs 19, 20, 21 and 22 of the aforesaid judgment are reproduced herein below for ready reference:

“19. A conjoint reading of Note 1 to Rule 143 (ii) and Rule 143 (iii) of the Pension Rules of 1969 makes it explicit and unambiguous that the family pension would be payable to the eldest of the surviving widow in the event of there being two or more widows and further that even if there are minor children who may also be entitled to the benefits of the family pension, the pension would be paid to only one member of the family at the same time, where at first instance it would be paid to the eldest of the surviving widow and thereafter, on her death to the next surviving widow, if any and in its absence to the minor children.

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.

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.”

9. Now, advertent to the facts of the case in hand, I find that admittedly, the petitioner is the second wife and nowhere in the Rules as discussed herein above, provide for granting of pension and pensionary benefits to the second wife. Further, in view of the observation made by a Full Bench of this Court in **Mustt Junufa Bibi** (supra), especially in paragraphs 19 and 20, only the eldest of the surviving widow in the event of there being two or more widows and further that even if there are minor children who may also be entitled to the benefits of the family pension, the pension would be paid to only one member of the family at the same time, where at first instance it would be paid to the eldest of the surviving widow and thereafter, on her death to the next surviving widow, if any and in its absence, the minor children would be entitled to such benefits.

10. I have also gone through the decision of this Court in the case of **Musst. Fazila Begum** (supra), referred by Mr. Islam, learned counsel for the petitioner, wherein in paragraph 14, it has been observed that under the Assam Services (Pension) Rules, 1969 and the Assam Civil Services (Conduct) Rules, 1965 and the law laid down by this Court, the claim of the writ petitioner is beyond the scope of consideration. This being the position, this Court afraid that the decision referred by Mr. Islam, would not advance his argument.

11. Under the aforesaid facts and circumstances, this Court is of the

considered opinion that the present petitioner is not entitled to any family pension and other allowances in view of Note 1 to Rule 143(ii) and Rule 143(iii) of the Assam Services (Pension) Rules, 1969.

12. In the result, I find no merit in this petition and accordingly, the same stands dismissed. The petitioner has to bear her own cost.

JUDGE

Comparing Assistant