

GAHC010198632019



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

**Case No. : WP(C)/6073/2019**

TINKU DAS AND 2 ORS.  
WIDOW OF LT. RANJIT DAS, R/O. MONIRAM BORO PATH,  
BHASKARNAGAR, P.O. BINOVANAGAR, GUWAHATI-781018, DIST.  
KAMRUP (M), ASSAM.

2: SATTWALEENA DAS  
D/O. LT. RANJIT DAS  
R/O. MONIRAM BORO PATH  
BHASKARNAGAR  
P.O. BINOVANAGAR  
GUWAHATI-781018  
DIST. KAMRUP (M)  
ASSAM.

3: UPASANA DAS  
D/O. LT. RANJIT DAS  
R/O. MONIRAM BORO PATH  
BHASKARNAGAR  
P.O. BINOVANAGAR  
GUWAHATI-781018  
DIST. KAMRUP (M)  
ASSAM

VERSUS

THE STATE OF ASSAM AND 9 ORS.  
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HEALTH AND  
FAMILY WELFARE DEPTT., DISPUR, GUWAHATI-781006.

2: THE COMMISSIONER AND SECY.  
TO THE GOVT. OF ASSAM  
HEALTH AND FAMILY WELFARE DEPTT.  
DISPUR  
GUWAHATI-781006

ASSAM.

3:THE DIRECTOR OF HEALTH AND FAMILY WELFARE DEPTT.

GOVT. OF ASSAM  
HENGRABARI  
GUWAHATI-781006  
ASSAM.

4:THE JOINT DIRECTOR OF HEALTH AND FAMILY WELFARE DEPTT.

GOVT. OF ASSAM  
KAMRUP (M) DISTRICT  
PANBAZAR  
P.O. GUWAHATI-781001  
ASSAM.

5:THE DIRECTOR OF PENSION

ASSAM  
HOUSEFED COMPLEX (NEW BUILDING)  
DISPUR  
P.O. GUWAHATI-781006  
ASSAM.

6:THE ASSAM PUBLIC SERVICE COMMISSION

REP. BY THE SECRETARY  
ASSAM PUBLIC SERVICE COMMISSION  
JAWAHARNAGAR  
KHANAPARA  
GUWAHATI-781022.

7:THE SECRETARY

ASSAM PUBLIC SERVICE COMMISSION  
JAWAHARNAGAR  
KHANAPARA  
GUWAHATI-781022  
ASSAM.

8:A. K. SARMAH

SUPDT. AND SUB-DIVISIONAL MEDICAL AND HEALTH OFFICER  
MATERNITY AND CHILD HOSPITAL

DHIRENPARA  
GUWAHATI-781025

DIST. KAMRUP (M)  
ASSAM.

9:THE DY. SUPDT.  
I/C.

MATERNITY AND CHILD WELFARE HOSPITAL  
DHIRENPARA  
P.O. GAUWAHATI-781025  
DIST. KAMRUP (M)  
ASSAM.

10:RANI DAS  
C/O. SRI AJIT RANJAN PAUL  
HOUSE NO.9  
DURGABARI LANE  
BHASKARNAGAR  
P.O. BINOVANAGAR  
GUWAHATI-781018  
DIST. KAMRUP (M)  
ASSAM

**Advocate for the Petitioner** : MR. N DHAR, MR. A R SHOME,MR A J GHOSH,PRIYANKA  
DAS,MR. K K NANDI,MR. T U LASKAR,MS. S DASGUPTA

**Advocate for the Respondent** : SC, HEALTH, MR. B CHOUDHURY (R8),SC, APSC,GA,  
ASSAM,MS P SARMAH,MR. D NANDI

**BEFORE**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Advocate for the petitioners : Shri AR Shome

Advocate for the respondents : Shri TJ Mahanta, Sr. Counsel  
Ms. P. Sarma, APSC  
Ms. S. Sarma, SC-Health  
Shri D. Nandi, R-10

Date of hearing : **01.08.2024**

Date of Judgment : **01.08.2024**

**JUDGMENT & ORDER**

The claim for family pension is the subject matter of dispute in this petition filed under Article 226 of the Constitution of India. As per the facts projected, the petitioner no. 1 is the wife of one Ranjit Das, who was working as Superintendent in the Assam Public Service Commission (APSC). The petitioner nos. 2 and 3 are the daughters. The husband of the petitioner no. 1 had taken voluntary retirement in the year 1992 and was getting the pension. The said Ranjit Das expired on 02.05.2019 and accordingly, the petitioners had submitted a representation for payment of family pension and other benefits. However, such family pension and other retirement benefits were not released to the petitioners and therefore the present writ petition has been filed.

2. I have heard Shri AR Shome, learned counsel for the petitioners. I have also heard Shri TJ Mahanta, learned Senior Counsel assisted by Ms. P. Sarma, learned counsel for the APSC; Ms. S. Sarma, learned Standing Counsel, Health & Family Welfare Department and Shri D. Nandi, learned counsel for the private respondent no. 10.

3. Shri Shome, learned counsel for the petitioners has submitted that there was an issue regarding the marriage with the petitioner no. 1. It is submitted that the respondent no. 10 was the earlier wife. However, there was a divorce proceeding and in the meantime, the deceased had married the petitioner no. 1 and out of the said marriage, the petitioner nos. 2 and 3 were born. He has also informed that the petitioner no. 2 – daughter has been married in the meantime. However, the petitioner no. 3 is an unmarried daughter, who was dependent on the deceased father. It is submitted that even if some issue arises

on the validity of the marriage with the petitioner no. 1, the rights of the petitioner no. 3 cannot be denied. In this connection, he has referred to Section 16 of the Hindu Marriage Act wherein legitimacy of children born from marriage which are void and voidable has been laid down. Shri Shome has also submitted that in the nomination of the deceased, it is the names of the petitioners which were given and therefore, there should not arise any question regarding their entitlements. The learned counsel has also relied on the following case laws-

- i. *Deokinandan Prasad Vs. the State of Bihar and Ors. [1971(2) SCC 330];***
- ii. *Rameswari Devi Vs. State of Bihar and Ors. [(2000) 2 SCC 431] and***
- iii. *Anjali Sharma Dutta Vs. the State of Assam [WP(C)/4724/2017 decided on 17.09.2018]***

4. In the case of ***Deokinandan Prasad*** (supra), the Hon'ble Supreme Court has laid down that pension is a property which an incumbent has a right and such right cannot be withheld as it comes under Article 19(1)(f) of the Constitution of India. In the case of ***Rameswari Devi*** (supra), right of the children of a second marriage of an employee who is a Hindu has been recognized.

5. *Per contra*, Shri Nandi, learned counsel appearing for the respondent no. 10 has submitted that apart from the serious suppression of materials facts in the writ petition, the claim itself is not maintainable. It is submitted that the respondent no. 10 is the wife of the deceased. He has also contended that though the deceased had instituted a divorce proceeding, the same was rejected and the subsequent appeals including the appeal before the Hon'ble

Supreme Court were dismissed. In this connection, the respondent no. 10 has drawn the attention of this Court to the orders dated 30.10.2013 passed by the Hon'ble Division Bench of this Court in Mat.App./2/2009 and also the one dated 07.05.2013 passed by the Hon'ble Supreme Court in SLP No. 16256-16257/2013. It is submitted that the respondent no. 10 continued in the status of the wife of the deceased and under the personal laws governing the parties, second marriage is not permissible. As regards the nomination issue, the learned counsel for the respondent no. 10 has clarified that all along it was the name of the respondent no. 10 which was there in the nomination in the Service Book of the deceased employee which appears to be subsequently replaced. He however contends that by mere insertion of their names, no rights accrue upon the petitioners. It is submitted that the rights would have to be ultimately traced out from the relationship recognized by law.

6. Shri Nandi, learned counsel for the respondent no. 10 has referred to an order dated 18.05.2022 of this Court passed in WP(C)/849/2019 ***[Pratima Deka Vs. State of Assam]*** in which the aspect that there is no concept of bigamy in the Hindu Marriage Act and rather the same is an offence under the Indian Penal Code was highlighted.

7. Shri Mahanta, learned Senior Counsel for the APSC has submitted that the change in the names was as per the application of the deceased employee during his lifetime and the Commission, as such did not have any role. He clarifies that such change in the nomination was done in the year 2018. He has also submitted that APSC has filed its affidavit-in-opposition in this regard.

8. Ms. Sarma, learned Standing Counsel, Health & Family Welfare Department has submitted that the issue with regard to the death certificate has been resolved in the meantime as, pursuant to earlier direction, such

certificate has been issued. This aspect is also endorsed by the learned counsel for the petitioners as well as by the respondent no. 10.

9. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

10. Though an issue had arisen regarding the subsistence of the marriage of the deceased employee with the respondent no. 10, such issue has been dispelled by the orders placed on record whereby the divorce proceeding instituted by the deceased employee was dismissed and further appeals have also been rejected including the SLP by the Hon'ble Supreme Court, as mentioned above. Therefore, the status of the respondent no. 10 as the wife / widow of the deceased cannot be disputed. The personal laws governing the parties, who are Hindus do not permit a second marriage as there is no concept of bigamy and rather the same is an offence under the Indian Penal Code. Since there is no concept of any second marriage, the petitioner no. 1, who claims to be the wife, will not have any rights upon the estate of the deceased employee. This brings us the consideration of the rights of the petitioner nos. 2 and 3. In this regard, Section 16 of the Hindu Marriage Act may be referred which reads as follows:

***“16. Legitimacy of children of void and voidable marriages.—***

*(1) Notwithstanding that a marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a*

*petition under this Act.*

*(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.*

*(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."*

11. The aforesaid provision makes it clear that any child born out of a marriage which is void and voidable would be legitimate and would have a right upon the family pension which is a property accruing to the parent (father). The claim for pension is therefore, required to be examined for the petitioner nos. 2 and 3. The Assam Service (Pension) Rules, 1969 lays down the provision for payment of family pension. Such family pension is also entitled for dependent unmarried daughter as per the latest notification.

12. Shri Shome, learned counsel for the petitioners has however fairly informed this Court that the petitioner no. 2 – daughter, is married. However, the petitioner no. 3 – daughter, is not married. As regards the question of dependency, it is submitted that the petitioner no. 3 was fully dependent on her

father. On the aspect of her employment, it is however submitted that the petitioner no. 3 is an Advocate who has however joined the profession very recently and is not earning sufficiently.

13. Considering the aforesaid facts and circumstances, this Court is of the opinion that the interest of justice would be served and the equities would be balanced, if the family pension and other retirement benefits are directed to be released however, with a further direction for apportionment of the same. It is submitted by Shri Nandi, learned counsel that the respondent no. 10 has no source of income at all and is dependent on her relative and living hand to mouth.

14. Considering the above aspect, the family pension and other retirement benefits are to be disbursed by apportioning that  $2/3^{\text{rd}}$  of the same be released to the respondent no. 10 and  $1/3^{\text{rd}}$  to the petitioner no. 3 as she is the dependent and unmarried daughter. The aforesaid grant of  $1/3^{\text{rd}}$  to the petitioner no. 3 would however be till such date when she gets married and after her marriage, the entire family pension has to be given to the respondent no. 10.

15. This Court has noticed that in this proceeding, the pension authority namely, the Accountant General, Assam has not made a party. Therefore, this Court directs the APSC to send all the relevant documents to the Office of the Accountant General, Assam, so that the family pension and other retirement benefits can be released expeditiously and in any case, within an outer limit of 60 days from the date of receipt of certified copy of this order. The parties are directed to submit certified copy of this order to the respective authorities to do the needful.

16. The writ petition accordingly stands disposed of.
17. No order as to costs.

**JUDGE**

**Comparing Assistant**