

GAHC010252262022



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

Case No. : WP(C)/7982/2022

HASINA BEGUM
W/O LATE JAMSHED ALI, R/O VILL- NONOI SALMARI MUSLIM GAON, P.O.-
NONOI, P.S.-NAGAON SADAR, DIST- NAGAON, ASSAM, PIN-781351

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HOME DEPARTMENT, DISPUR, GUWAHATI-
781006

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-781007

3:THE DIRECOR OF PENSION
ASSAM
HOUSEFED COMPLEX
CENTRAL BLOCK
6TH FLOOR
BELTOLA ROAD
GUWAHATI-781006

4:THE PRINCIPAL ACCOUNTNAT GENERAL (A AND E) ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI
ASSAM-781029

5:THE COMMANDANT
13 AP BN

LILABARI
UJJAL NAGAR
LAKHIMPUR
ASSAM-787051

6:THE TREASURY OFFICER
DERGAON SUB TREASURY OFFICE
DERGAON
DIST-GOLAGHAT
ASSAM
PIN-785703

7:THE TREASURY OFFICER
NAGAON TREASURY OFFICE
CHRISTIAN PATTY
NAGAON
DIST-NAGAON
ASSAM
PIN-782001

8:ANWARA BEGUM
W/O JAMSHED ALI
R/O VILL- PAKHIMORIA
P.O.-NAGAON SADAR
P.S.-NAGAON SADAR
DIST- NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

29.07.2024.

Heard Shri AI Uddin, learned counsel for the petitioner and Shri A Chakraborty, learned State Counsel, Assam. Also heard Shri A Chaliha, learned Standing Counsel, Finance Department, Assam as well as Ms. T Begum, learned counsel for the respondent no. 8.

2. The matter pertains to a claim for family pension.
3. It is submitted that the husband of the petitioner, Jamshed Ali was serving as a Sub-Inspector, Armed Branch in the 13th Assam Police Battalion and had retired from service on 30.09.1995. On 15.07.2009, the husband of the petitioner had passed away. It is, however, the admitted case of the petitioner that she is the second wife of the deceased government servant and the first wife has been impleaded as the respondent no. 8. It is contended that before the death of the husband of the petitioner, he had divorced the first wife and therefore, the petitioner would be entitled to the family pension. It is also submitted that the respondent no. 8 had concealed the fact of divorce and was claiming the family pension.
4. *Per contra*, Ms. Begum, learned counsel for the respondent no. 8 has disputed the aspect of any divorce. She has also pointed out that in the entire writ petition, not a single document relating to such divorce has been able to be annexed.
5. Shri Uddin, learned counsel for the petitioner has, however, fairly placed before this Court a decision passed by the Hon'ble Full Bench of this Court on the aforesaid issue. The said decision which has been passed in **WA/160/2018 (Mustt. Junufa Bibi Vs. Mustt. Padma Begum @ Padma Bibi)** on **22.12.2022** has laid down that the second or further wives of the deceased government servant for whom such marriage was permissible under the Personal Law would approach for appropriate orders for maintenance. For ready reference, the relevant observations made in the aforesaid judgment are extracted hereinbelow:

“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.”

6. The learned counsel for the respondents have also submitted that in terms of the aforesaid judgment, the writ petition can be disposed of.

7. In view of the above and in terms of the aforesaid judgment of Hon’ble Full Bench, more particularly, the observations made in paragraph 23 quoted above, the writ petition is disposed of. The directions of the Hon’ble Full Bench would also be applicable and followed in the present case.

JUDGE

Comparing Assistant