

GAHC010271562023



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

Case No. : WP(C)/7114/2023

PREMALATA SAIKIA BORA
W/O- LATE MOHI RAM BORA, R/O- VILL.- KACHALUKHOWA (SANKAR
NAGAR), P.O. SOTO HAIBA, DIST. NAGAON, ASSAM, PIN- 782003.

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF
ASSAM, FINANCE DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-781029.

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM

PUBLIC WORKS DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE EXECUTIVE ENGINEER
P.W.D.

N.H. DIVISION
NAGAON
P.O. AND DIST. NAGAON
ASSAM

5:THE TREASURY OFFICER

NAGAON
P.O. AND DIST. NAGAON
ASSAM
PIN- 782001

Advocate for the Petitioner : MD B ISLAM

Advocate for the Respondent : SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

24.01.2024

Heard Mr. B. Islam, learned counsel for the petitioner. Also heard Mr. R. Borpujari, learned Standing Counsel, Finance for the respondents No. 1 & 5; Ms. M Das, learned Standing Counsel, PWD for the respondents No. 3 & 4 and Ms. A Lala, learned Standing Counsel, Accountant General for the respondent No. 2.

2. This writ petition has been filed by the petitioner aggrieved by the order dated 22.12.2022 passed by the Executive Engineer, PWD, Nagaon, N.H. Division, Nagaon rejecting the claim of the petitioner of family pension of her late husband, namely Late Mohiram Bora who retired as Sub-Engineer Grade-II from service on 30.06.1986.

3. It is submitted by the learned counsel for the petitioner that her late husband after his superannuation enjoyed the pension upto his death i.e. on 10.09.2021. Thereafter, the petitioner approached the authority claiming her family pension. However, because her name was not inserted in the Pension Payment Order (PPO) of her late husband, she was being denied for her claim of family pension. She approached this Court earlier by filing W.P(C) No. 6387/2022. This writ petition was disposed of on 27.09.2022 directing the

respondent authorities to examine the claim of the petitioner whether there was a valid marriage between the petitioner and after marriage, whether the petitioner was the sole surviving wife of the deceased and thereafter pass a reasoned order. The said order was directed to be passed within a period of three months from the date of receipt of certified copy of the order.

4. Pursuant to the orders passed by the Court, the petitioner approached the authorities and the authorities duly conducted the hearing and thereafter passed the impugned order dated 22.12.2022. Besides the fact that the succession certificate directed to be filed by the office concerned having not been filed by the petitioner, the authorities rejected the claim of the petitioner on the following grounds:

“(1) Your husband late Mohiram Borah, Sub Engineer Gr-II had declared and nominated his 1st wife Premeswari Borah in the event of his death as a family pensioner at the time of settlement of his pension in the year 1986 as per records on P.P.O Book No. 37175 issued by the Accountant General, Assam. It is also informed to you that it could not be understand why your late husband had not proposed your name at the time of settlement of his pension in the event if you were the only survived legitimate wife & even through his 1st wife Mrs. Premeswari Borah would had been died earlier in the year 1978 as claimed by yourself in the writ petition.

(2) You have failed to submit the Death Certificate of Premeswari Borah, 1st wife of Late Mohiram Borah, issued by the competent authority i.e. issued by Registrar Death & Birth, instead of that you have submitted death declaration certificate issued by Gaon Pradhan which is not considered as a valid legal documents.

(3) Your have also failed to submit valid Marriage certificate of yourself with Mohiram Borah, Sub-Engineer Gr-II , issued by the competent authority, rather you have submitted marriage certificate issued by Gaon Pradhan which is not considered as a valid legal documents.

(4) If you were only legitimate survived wife of Mohiram Borah during the alive pension period of Late Mohiram Borah i.e. from period 1986 to 10.09.2021, they why you had not objected in the nomination of Premeswari Borah, as a wife, for the family pension in the event of death of Late Mohiram Borah, during the survival period of late Mohiram Borah."

5. It is submitted by the learned counsel for the petitioner that pursuant to the impugned order passed by the respondent No. 4/ Executive Engineer, PWD, NH Division Nagaon, the petitioner applied for the Succession Certificate on 23.12.2022 under Section 372 of the Indian Succession Act, 1925. The Competent Court of Civil Jurisdiction by order dated 10.10.2023 issued a Succession Certificate in favour of the petitioner to receive all pensionary benefits left by the deceased Mohiram Borah vide P.P.O No. 37175. The said Certificate empowers her to collect his debts/securities and to receive interest or dividends, negotiate or transfer and to both receive interest or dividends on, to negotiate or transfer the securities or any of them for self and on behalf of the other successor. It is submitted by the learned counsel for the petitioner that besides the succession certificate, petitioner also applied for and was issued a legal heir certificate by the Circle Officer on 30.03.2022. In terms of the said certificate, the petitioner was shown as a wife along with her daughter are shown as the legal heirs of late Mohiram Borah.

6. The learned Standing Counsel for the PWD and Finance Department submit that the impugned order 22.12.2022 was passed in view of the fact that the petitioner did not submit the Succession Certificate as required and it appears that the Succession Certificate was applied for and granted well after the impugned order was passed by the competent authority. He submits that this order was passed in view of the non-furnishing of the relevant documents

required to be supplied by the petitioner.

7. Having heard the learned counsel for the parties and upon carefully perusal of the pleadings on record, it is seen that the impugned order was passed by the competent authority in compliance of the directions by the Co-ordinate Bench of this Court on 27.09.2022 passed in W.P(C) No. 6387/2022. The notices for appearing before the competent authority were duly served on the petitioner. The petitioner was asked to submit the following documents:

“(1) Death Certificate in respect of Late Mahi Ram Bora issued by Joint Director of Health Services, Nagaon (Registrar Birth & Death) (Photo Copy enclosed)

(2) Death declaration certificate of first wife Late Premeswari Borah 1st W/O late Mohiram Borah issued by Gaon Pradhar (Photo Copy enclosed)

(3) Mariage declaration certificate of both Late Mohi Ram Borah and 2nd wife Smti Premalata Saikia Borah issued by Gaon Pradhan (Photo Copy enclosed)

(4) Xerox copy of P.P.O No. 37175 issued by the Accountant General, Assam, Maidamgaon, Beltola, Guwahati-29 in respect of Late Mohiram Bora. (Photo Copy enclosed)

(5) Next of Kin Certificate (Photo Copy enclosed)”

8. Thereafter, legal opinion was sought for from the legal advisor of the department who suggested that succession certificate is necessary to decide this issue. However, in the impugned order, it was recorded that the petitioner had failed to submit the succession certificate.

9. Such finding in the impugned order is not disputed and from the

pleadings, it is evident that the succession certificate was applied only after the impugned order was passed. The succession certificate was applied for on 23.12.2022 and was issued on 10.10.2023 by the competent Court of Civil Jurisdiction.

10. Under such circumstances, this Court is of the view that the Competent Civil Jurisdiction having issued a succession certificate to receive the pensionary benefits of left behind by her deceased husband, Mohiram Borah vide P.P.O No. 37175, the department is now required to re-decide this issue afresh and pass necessary orders.

11. Accordingly, this writ petition is disposed of directing the respondent authorities, more particularly, respondents No. 3 & 4 to re-decide this issue afresh by taking into consideration the relevant documents including the succession certificate issued in favour of the petitioner by a Court of Competent Civil Jurisdiction.

12. The impugned order dated 22.12.2022 although not interfered with, will not operate as a bar to the respondent authority to re-decide this issue as directed by this Court.

13. In terms of the above direction, the writ petition stands closed. The authorities concerned will pass a speaking order on the basis of the documents furnished by the petitioner including the succession certificate and thereafter serve a copy thereof on the petitioner. The petitioner is directed to furnish a certified copy of this order along with the copy of the writ petition and enclosures before the authorities concerned which will be treated to be a

representation for re-deciding the issue afresh. The speaking order is to be passed within a period of thirty (30) days from the date of receipt of certified copy of this order.

14. In terms of the above, the writ petition stands disposed of and allowed.

JUDGE

Comparing Assistant