

GAHC010271832023



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

Case No. : WP(C)/7285/2023

FUL JAN NESSA
1ST WIFE OF LATE ABDUL HAMID SHEIKH,
R/O- DAMRIBHASA,
P.O- KATARIHARA,
P.S- LAKHIPUR,
DIST- GOALPARA, ASSAM, PIN-783132

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF ELEMENTARY EDUCATION, ASSAM

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19

3:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-06

4:THE TREASURY OFFICER

P.O
P.S AND DIST- GOALPARA
ASSAM
PIN-783101

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
GOALPARA
P.O
P.S AND DIST- GOALPARA
ASSAM
PIN-783101

6:THE INSPECTOR OF SCHOOLS

GOALPARA DISTRICT CIRCLE
GOALPARA
P.O
P.S AND DIST- GOALPARA
ASSAM
PIN-783101

7:ASIA KHATUN
2ND WIFE OF LATE ABDUL HAMID SHEIKH

R/O- DAMRIBHASA

P.O- KATARIHARA

P.S- LAKHIPUR

DIST- GOALPARA
ASSAM
PIN-78313

Advocate for the Petitioner : MR. A RAHMAN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 13.06.2024

Heard Mr. A. Rahman, learned counsel for the petitioner. Also heard Mr. M.Z. Shah, learned counsel for the respondent No.7.

2. The petitioner in the present proceeding has claimed that being the first wife of late

Abdul Hamid Sheikh, who retired as an Assistant Teacher at Katarihara Girls M.E. Madrassa, she is entitled to the family pension. However, the family pension has been authorized by the respondent authorities to the respondent No.7, who claims to be second wife of late Abdul Hamid Sheikh. It is to be noted that the husband of the petitioner as well as the respondent No.7, had retired from service on 27.11.2011 and thereafter died on 13.02.2023. It is contended that the husband of the petitioner as well as the respondent No.7 during his lifetime had nominated the respondent No.7 as his nominee for receiving family pension for the service rendered by him.

3. Accordingly, basing on the said nomination, the respondent authority on the demise of the husband of the petitioner and the respondent No.7, herein had authorized the family pension to the respondent No.7 herein. The petitioner submits that she being the first wife, she could not have been excluded from the benefits of family pension as flowing to the family of the deceased government employee.

4. Per-contra, learned counsel for the respondent No.7 contends that the petitioner herein was divorced by her husband i.e. the deceased employee. However, the learned counsel for the respondent No.7 has fairly submitted that the formalities as required to be followed for the purpose of the divorce to come into force was not followed in the matter and it cannot be said that the petitioner was divorced by her husband.

5. In view of the above, the petitioner being the first wife of the deceased government employee, she has a vested right to receive the family pension in her name under Rule 143 of the Assam Services (Pension) Rules, 1969 being the eldest surviving widow of the deceased Government employee and such right cannot be denied to her.

6. Learned counsel for the respondent No.7 has submitted that in terms of the pension payment order, already issued, the family pension is being drawn by the respondent No.7 herein.

7. In view of the above position, the petitioner herein shall approach the Director of Secondary Education, Assam by way of filing a representation along with a certified copy of this order, staking a claim for receiving the family pension in respect of service rendered by her

deceased husband.

8. On receipt of such representation, the Director of Secondary Education shall upon hearing the petitioner as well as the respondent No.7 herein, proceed to ascertain the right of the petitioner as well as the respondent No.7 to receive the family pension and on such determination being made apportion the family pension between them, proceed to submit a proposal in the matter to the Director of Pension, Assam for disbursal of the family pension in the manner as decided to be so disbursed between the petitioner and the respondent No.7 herein.

9. The Director of Secondary Education, Assam shall complete the aforesaid exercise within a period of three months from the date of receipt of the certified copy of this order.

10. With the above observation and direction, the writ petition stands disposed of.

JUDGE

Comparing Assistant