GAHC010203472024

2026:GAU-AS:16180

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

Case No. : WP(C)/5097/2024

RIPU KATAKI
W/O- LATE RAMESH KATAKI, R/O- MONUJULI, P.O. AND P.S. DHEKIAJULI, DIST. SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, DEPARTMENT OF HOME, DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCE DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
FINANCE DEPARTMENT
PIN- 781006.

4:THE DIRECTOR GENERAL OF POLICE

ULUBARI
GUWAHATI-781007.

5:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BRLTOLA
GUWAHATI-781029.

6:THE TREASURY OFFICER
TEZPUR
DIST. SONITPUR
ASSAM

7:PRANATI KATAKI
1ST WIFE OF LATE RAMESH KATAKI
R/O- VILL.- KATAKI CHUBURI
P.O. BESERIA
DIST. SONITPUR
ASSAM

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s) : Mr. S. Biswas

Advocate for the respondent(s): Mr. B. Sarma, SC, AG
Ms. S Baruah, R-1
Mr. A Chaliha, R-6

Date on which judgment was reserved :**NA**

Date of pronouncement of judgment :**04.11.2026**

Whether the pronouncement is of the operative part of the judgment? :**NA**

Whether the full judgment has been pronounced? :**Yes**

JUDGMENT AND ORDER (ORAL)

This is an application preferred under Article 226 of the Constitution of India, by which the petitioner has raised her grievance for non-payment of the

share of death-cum-retirement benefits as well as family pension in favour of petitioner's minor son.

2. The case of the petitioner is that during the subsistence of the first marriage of her late husband, Sri Ramesh Kataki, the said deceased married the petitioner and out of their wedlock, two daughters and two sons were born and amongst the said two sons, one is a minor being 13 years of age. She also stated that at the time of the death of her late husband, her husband was survived by his first wife, who had three sons and the second wife, i.e., the petitioner who had four children. It is also stated by the petitioner that during the lifetime of her late husband, an affidavit was executed by him declaring his desire to apportion the family pension amongst the first wife, the petitioner and himself in three equal parts. There was also a declaration made in the said affidavit that the authority should deposit the share of pension in the bank accounts of the respective parties and also that after his death, the family pension and other service benefits is to be divided into two parts, distributed between his two wives.

3. It is the further case of the petitioner that her husband died on 02.11.2023 and since then, she has been facing acute financial hardship as she was not given any share of the family pension and other retirement benefits. She stated that after the death of her husband, the first wife of her late husband has been receiving the entire pension and that although the first wife knew about the contents of the affidavit, sworn in by her late husband, she did not give the share of the family pension to the petitioner or her minor son. The petitioner, thereafter, stated that she, on numerous occasions, requested the authorities to give the share, but no action was taken to her request. She then filed a representation before the Accountant General on 20.06.2024, but the same also

was not paid any heed by the said authority. She, thereafter, submitted that as per Section 16 of the Hindu Marriage Act, 1955, the children born out of void marriage, is termed as legitimate and that they also have a share in the family pension and other retiral benefits of their father.

4. The learned counsel, Mr. S. Biswas, submits that the youngest son of the petitioner is minor and as such, he is entitled for a share in the family pension and to substantiate the fact, he referred to the birth certificate of the son of the petitioner, wherein it was reflected that he was born on 12.10.2011 and his mother's name is Ripu Kataki and his father's name is Ramesh Kataki. He relied on Rule 143 of the Assam Service (Pension) Rules, 1969 (shortly, hereinafter referred to as 'the Pension Rules'), wherein it is provided that minor sons of the Government Servant is entitled for the family pension and although he submitted that after the death of the Government servant, the family pension would be given to only one member, but by relying upon the second **Note-2,** appended to Rule 143 of the Rules, he submitted that the recipient of the family pension has to sign and submit an indemnity bond to the competent authority, showing that the recipient had divided the said pension amount equally amongst the beneficiaries. He submits that although the petitioner is not entitled to receive any share of the family pension during the survival of the first wife, but the minor son of the second wife is eligible and that the first wife should give the share of the pension to the minor son of the second wife. He also relied on a judgment, delivered by the Hon'ble Apex Court in ***Rameswari Devi vs. State of Bihar and Others;*** reported in **(2000) 2 SCC 431**, by which the Apex Court had held that children born out of a void marriage are legitimate children and they are entitled to the property of the deceased employee in equal shares along with that of first wife and the sons born from

the first wife.

5. On the other hand, Mr. B. Sarma, learned counsel appearing for the Accountant General, submits that although the children of the void marriage are legitimate children, but under the Pension Rules, there is no provision allowing them to have a share in the family pension as it has been specifically provided that in case, the Government Servant had two or more wives, pension will be payable to the eldest surviving widow and on her death, the same will be payable to the next surviving widow and that it is also specifically provided that the family pension will be given to only one person at a time. To substantiate his argument, he relied on a Full-Bench judgment of this Court, rendered in ***Musstt. Junufa Bibi vs. Mustt. Padma Begum @ Padma Bibi and 4 others*** *(Writ Appeal No. 160/2018),* wherein it was decided that if the Government Servant leaves more than one wife and since the pension is payable to only one member of an Officer's family at a time, the second wife, if not maintained by the first wife, the remedy would be to make a claim for maintenance before the appropriate forum. The learned counsel submits that although the said judgment was delivered while dealing with Mohammedan Law, but he stated that the same analogy will be applicable in other personal law. He further submits that the petitioner, in the instant petition had neither stated the name of her minor son in the cause title nor in the pleadings. However, he submits that in case, petitioner has a minor son, she can take recourse for maintaining her child by filing an application for maintenance before the Family court under Section 125 of the CrPC. He further submits that second **Note 2** appended to Rule 143 of the Pension Rules, was added in the provision by an amendment brought about in the year 2018 and since the present case relates to a period much before, he submits that the argument of

the Learned Counsel for the petitioner is not sustainable in law.

6. In reply to the submission made by Mr. Sarma, Mr. Biswas, Learned Counsel for the petitioner, submits that although in the pleadings or in the cause tile, the name of the minor child of the petitioner or other children of the petitioner were not mentioned, but the representation to the Accountant General, annexed to the present writ petition, shows that petitioner has four children, two daughters and two sons and the youngest son is named as Nisad Kataki, who was minor and for whom, the share in the family pension has been sought for.

7. I have heard the learned counsels appearing for the parties and I have also carefully gone through records of the case along with the law applicable therein.

8. It is an admitted fact that the petitioner is the second wife of the deceased Government Servant and that she has four children and out of them, the youngest one is minor and as has been held by the Apex Court in ***Rameswari Devi (supra)*** that second wife taken by the deceased Government employee, during the subsistence of his first marriage, although cannot be described as a widow of the deceased employee, as their marriage would be void, but the children out of the wedlock of the deceased employee and his second wife would be legitimate children, who will have a share in their father's property. The same has also been provided under Section 16 of the Hindu Marriage Act, 1955, 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, 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."

9. Now, the question that needs to be adjudicated is as to whether the minor son of the second wife, would be entitled to the family pension, after the death

of his father according to the prevailing Rules. It is now imperative to examine Rule 143 of the Pension Rules. Rule 143 is quoted here-in-below: -

"***143 . (i) "Family" for the purpose of rules in this Section will include the following relatives of the officer :***

a) wife, in the case of a male officer ;

b) husband, in the case of a female officer ;

(c) minor sons ; and

d) unmarried dependent daughters].

Note 1. (c) and (d) will include children adopted legally before retirement.

Note 2. (a) "Marriage" for the purpose of admissibility of pensionary benefits to the spouse of a retired official shall mean marriage before or after retirement.

(b) "Child/children" for the purpose of pensionary benefits of a retired official shall mean child/children born before or after retirement.

(ii) The pension will be admissible—

(a) in the case of widow/widower up to the date of her/his death or re-marriage whichever is earlier ;

(b) in the case of a minor son, until he attains the age of 18 years;

(c) in the case of an unmarried daughter, until she attains the age of 21 years or marriage whichever is earlier.

[Provided that family pension shall be allowed to continue beyond 21 years of age to an unmarried dependent daughter of a Government Servant/Pensioner, subject to the fulfilment of the following conditions:-

(i) That there is no disabled child eligible for life time family pension;

(ii) That a certificate of non-marriage and non-employment in the prescribed format duly certified by the C.O./B.D.O. concerned (Annexure-III) shall be furnished by the unmarried dependent daughters to the Treasury or Bank once in a year.

(iii) That an Application Form given in Annexure-III(A) along with Checklist of Documents as mentioned at Annexure-III(B) shall be furnished by the unmarried daughter at the time of submission of claim for family pension.]

Note 1. In cases where there are two or more widows, pension will be payable to the eldest surviving widow. On her death, it will be payable to the next surviving widow, if any. The term 'eldest' would mean seniority with reference to the date of marriage.

Note 2: In cases where there are two or more family members (minor son/unmarried dependent daughters) present at the time of death of the widow/widower, the family pension as admissible shall be divided to all of them in equal shares till their eligibility ceases as per sub-rule (ii) (b) or (c) of Rule 143 (as amended). If all members are minors, the family pension shall be paid through legal/natural guardian, otherwise family pension shall be paid in the following manner:-

(a) the family pension shall be paid to the eldest eligible member of the family who shall divide it equally among other eligible members;

(b) if the eldest eligible member becomes ineligible to receive the family pension, it shall be paid to the next eligible member of the family who shall divide it equally among other eligible members and so on;

(c) in every case, the family pension recipient has to sign and submit an indemnity bond to the competent authority so that the recipient divides the amount amongst the beneficiaries in equal share.

2[(d) If the family pension recipient does not divide the amount among the other beneficiaries in equal share and on receipt of such complaint from the eligible family members, the competent authority shall issue orders apportioning the family pension among the other eligible family members.

Note 3: If at the time of submission of family pension claim, there are no minor children in the family, the family pension shall be paid from the date of filing application by the claimant or from the date of coming into force of this notification whichever is later. No claim for arrear benefit under this clause shall be entertained. Otherwise, the family pension shall be paid from the date following the date of death of the widow/widower as the case may be.

Note 4: In cases where family pension is already being drawn on the date of publication of this notification, it shall be allowed to continue by the current recipient till his/her eligibility ceases as per normal rules and thereafter the family pension shall be paid as per the procedure mentioned above at Note 2 under Rule 143(ii)(c).

Note 5: The eligibility of dependent father, mother, brother (up to 18 years) and unmarried sister (up to 21 years) for family pension under the notification No. PPG(G) 10/2013/38 dated 20/08/2015 issued by this department is applicable only if there is no unmarried dependent daughters or disabled child eligible for life time family pension present in the family of the deceased Government Servant. The above-mentioned notification is also applicable in cases where the Government Servant dies unmarried.

The provisions of this notification shall cover all cases of family pension irrespective of the date of death of the

Government Servant/Pensioner]

(iii) Pension awarded under the rules in this Section will not be payable to more than one member of an officer's family at the same time. It will first be admissible to the widow/widower and thereafter to the minor children.

(iv) In the event of re-marriage or death of the widow/widower, the pension will be granted to the minor children through their natural guardian. In disputed cases, however, payments will be made through a legal guardian.

(v) The temporary increases granted on pension will not be admissible on the Family Pension granted under the Scheme in this Section."

10. A simple reading of the aforesaid Section makes it clear that in case the Government employee on his death, leaves two or more wives, the pension would be payable to the eldest surviving widow and on her death, it will be paid to the next surviving widow, which is explained in the second **Note-1** of the Rules. It is further provided in second **Note-2** of the Rules that in case, there are two or more family members, i.e., minor son or unmarried dependent daughters, at the time of death of widow/widower, the family pension shall be divided to all of them in equal shares till they are no longer eligible. Under Clause- (a) appended to Note-2, it is further provided that the said family pension shall be paid to the eldest eligible member of the family and he or she will have to divide it equally amongst the eligible members and under Clause- (b), it is further provided that if the eldest eligible member, becomes ineligible

like in cases, where the daughter gets married or the boy becomes major, then in that case, the pension will be paid to the next eligible member of the family, who will have to again divide it equally amongst other eligible members. Further under Clause- (c) it is provided that in every case, the recipient of the family pension, has to sign and submit an indemnity bond and give it to the competent authority, showing that he has divided the pension amount amongst the eligible members, and it further provide under Clause (d) that in case, the same is not done and a complaint is filed by one of the eligible member, the competent authority is directed to issue orders distributing the family pension amongst other eligible members.

11. Seeing the aforesaid provision, it is, therefore, deduced that till the widow is alive, the family pension will not be given to the other family members of the deceased Government Employee. It is only after her death that the family pension will be given to the eldest eligible member of the family and the indemnity bond that is stated in the said provision will be executed by such family member. It is further provided under Sub-Rule (iii) of Rule 143 of the Pension Rules that pension will not be payable to more than one member of an officer's family at the same time and that it will be paid to the widow/widower first, and thereafter, to the minor children.

12. In the instant case, it is an admitted position that first wife of the deceased employee being respondent No. 7, is receiving the family pension and as per the rules, she is eligible to receive it and only on her death, it will be payable to the petitioner as she will be the next surviving widow, if she survives or does not predecease the first widow. It is nowhere provided in the Rules that the first widow will have to apportion the pension amount amongst her children

or other legitimate children. It is also not provided that the first widow has to submit an indemnity bond to the competent authority showing apportionment of the pension amount between her children and other legitimate children. The submission of indemnity bond was meant for only the other family members of the deceased family after the death of their mother or the father, who was the wife or the husband of the Government Employee, respectively. As such, this Court will have no alternative, but to hold that since pension can be paid only to one member at one time, it will be paid to the first wife of the deceased Government Employee who is Respondent No. 7 herein. It is therefore, held by this Court in ***Musstt. Junufa Bibi (supra)*** that in case, the second wife is not properly maintained by the surviving widow or the first wife to whom, the pension would be paid, the remedy would, therefore, be to claim a maintenance in the appropriate forum. In the said judgment, it was also held that in such a situation, a claim for payment of the family pension by the State authorities directly to such persons will not lie. The observations made in the aforesaid judgment is reproduced 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."*

Accordingly, this Court observes that the petitioner can make an application for maintenance to be provided to her minor child under the relevant provisions of law, as has been held by the Hon'ble Full Bench.

13. With this observation, this writ petition stands dismissed and disposed of.

JUDGE

Comparing Assistant