

GAHC010048482021



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

Case No. : WP(C)/1712/2021

ANKITA LAHAN
D/O. LT. DIMBESWAR LAHAN (FATHER) AND SMT. KHIRAPRABHA DAS
LAHAN (MOTHER) R/O. HOUSE NO.13, BROJANATH SARMA PATH, NEAR
SANKARDEV FLIM STUDIO, HENGARABARI, P.S. DISPUR, PIN-781006,
DIST. KAMRUP (M), ASSAM.

VERSUS

THE SECRETARY AND 4 ORS.
ASSAM LEGISLATIVE ASSEMBLY SECRETARIAT, DISPUR, GUWAHATI-
781006, ASSAM.

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

3:THE ACCOUNTANT GENERAL

ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-29.

4:THE TREASURY OFFICER

SIVASAGAR
DIST. SIVASAGAR
PIN-785640
ASSAM.

5:SMT. JIN LAHAN
W/O. LT. DIMBESWAR LAHAN
VILL. BHADHARA NIGAM
MOUZA- BETBARI
P.O. BHADHARA
DIST. AND P.S. SIVASAGAR
PIN-785640

Advocate for the Petitioner : MR. K R BORA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

13.05.2024

Heard Mr. D. Chutia, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Addl. Sr. Government Advocate; Mr. D. Bhattacharyya, learned Standing Counsel, Accountant General and Mr. K. Baruah, learned for the respondent No. 5.

2. This writ petition has been filed by the petitioner who claims to be the daughter of one late Dimbeswar Lahan and Smti. Khiraprabha Das Lahan. The mother of the petitioner is the second wife of late Dimbeswar Lahan. The first wife is respondent No. 5 Smti Jina Lahan. The petitioner's late father was employed as a Grade-IV employee of Nazir Branch (Establishment) under the Assam Legislative Assembly Secretariat and died in harness on 22.02.2017 leaving behind the respondent No. 5, two sons who are born out of the marriage of her late father and the first wife. Besides the first wife and her children, the second wife namely the mother of the petitioner and the petitioner are also legal heirs of Late Dimbeswar Lahar. Pursuant to the demise of the father of the petitioner, the petitioner came to be informed that the respondent

No. 5 received an amount of Rs. 7,00,000/- (Rupees Seven Lakh Only) as arrear salary and gratuity. After repeated demands and requests, only an amount of Rs. 70,000/- (Rupees Seventy Thousand Only) was paid to the petitioner and her mother by the respondent No. 5 and they were also warned not to press for any further share of the service benefits of late Dimbeswar Lahan. Although attempts were by the petitioner and her mother to settle the matter amicably, such attempts did not yield any positive result. The petitioner had also been informed that an amount of Rs.5,41,233/- (Rupees Five Lakh Forty One Thousand Two Hundred Thirty Three Only) as a final pension payment was released along with DCRG in respect of the late father. The amount was received by the respondent No. 5. However, the share of the petitioner as per her entitlement under the provisions of law was never released. The petitioner is about 25 years old and she is unmarried and unemployed. It is submitted that although the mother of the petitioner may not be entitled to any share of the pensionary benefits, the petitioner being the daughter of the late Dimbeswar Lahan and his second wife Smti. Khiraprabha Das Lahan, namely the mother of the petitioner, her rights are protected under the provisions of Assam Services (Pension) Rules for grant of pension. It is under these circumstances, the writ petitioner is before this Court.

3. Notices in the matter were issued as far back as 17.03.2021. Although all the parties are represented by the counsel, none of the parties have responded by filing any counter affidavit contesting the case of the writ petitioner. Family pension is provided for under Rule 143 of the Assam Services (Pension) Rules. Subsequent amendments made to the Rules brought in by the Government of Assam categorically provides that an unmarried daughter till she is employed would be entitled to her share of family pension. The amendment of 17th

August 2022 further states that if the family pension recipient does not divide the amount of the other beneficiaries in equal share and on receipt of such complaint from the other eligible family members, competent authority shall issue the order apportioning family pension. The question now to be determined by the Court is whether the petitioner is indeed the daughter of late Dimbeswar Lahan by his second marriage with Smti. Khiraprabha Das Lahan. The claim of the petitioner is supported by a birth certificate issued by the Registrar Births and Deaths, Gauhati Municipal Corporation vide certificate dated 20.10.2020. The birth certificate reflects that the petitioner was born on 25.10.1999 to Late Dimbeswar Lahan and Smti. Khiraprabha Das Lahan. This birth certificate is not questioned by any of the respondents. That apart, the Secretary of Shri Shri Janardan Devalaya, Pan Bazar has also issued a certificate certifying the marriage of Dimbeswar Lahan with Smti. Khiraprabha Das Lahan on 21.09.1998 as per Prajapati norms. These documents are not put to challenge by the respondents. The question of whether children born out of second marriages are entitled to their share of pension is an issue which has been settled by the Apex Court in its celebrated Judgment of Rameshwari Devi Vs. State of Bihar, reported in (2000) 2 SCC 431. The Apex Court held that children of second marriage are entitled to their share of pension. The relevant paragraphs of the said judgment are extracted below:

“14. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described a widow of Narain Lal, her

marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, legal position when Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement Gratuity payments which is governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment”

4. That being the position, the claim of the petitioner that she is the daughter of late Dimbeswar Lahar out of the second marriage with Smti. Khiraprabha Das Lahan is not disputed by respondent No. 5, then the petitioner indeed is entitled to her share of pension as per provisions of law. The claim of the petitioner that she is the daughter out of the second marriage of Late Dimbeswar Lahan is also supported by an averment made in the writ petition that the respondent No. 5 paid an amount of Rs. 70,000/- to the petitioner and her mother. This averment is not disputed by filing any counter affidavit and the learned counsel appearing for the respondent No. 5 has fairly submitted that this amount indeed was paid to the writ petitioner and her mother by the respondent No. 5 from the pensionary benefits received by the respondent No. 5.

5. Under such circumstances, this Court is of the considered view that the respondent namely the Secretary Assam Legislative Assembly Secretariat, Dispur will examine the matter in respect of the claim of the writ petitioner towards her claim of equal share of pension as a daughter of late Dimbeswar Lahan out of the second marriage with Smti. Khiraprabha Das Lahan. If the authorities on the basis of their examination come to a finding that the claim of

the petitioner are correct and genuine and in the event it is found that the pensionary benefits are not released by the respondent No. 5 then as per the amended provisions of Rule 143 of the Assam Pension Rules 1969, the department will pass appropriate orders apportioning in equal amount the share and claim of pension payable to the petitioner. Since no counter affidavit has been filed by the Department contesting the claims of the writ petitioner, the Department will accept the birth certificate enclosed to the writ petition as well as the averments made in the writ petition that the respondent No. 5 had parted with Rs. 70,000/- as a share of the claim to the petitioner towards pension to be basis of the claims of the writ petitioner that she is the daughter of late Dimberwr Lahan arising out of the second marriage with Smti. Khiraprabha Das Lahan. The department however is entitled to make proper verification of birth certificate as well as the other certificate that may be placed before the department in support of the claim of the writ petitioner. If upon due examination of the relevant documents and materials placed before the Department, it is found that that no adverse inference can be drawn from the documents placed in support of her claim that she is the daughter of late Dimbeswar Lahan and Smti. Khiraprabha Das Lahan, then the claims of the writ petitioner in respect of her share of pension and other retirement benefits in respect of her late father of late Dimbeswar Lahan be released without any further delay.

6. It is made clear that the mother of the writ petitioner namely Smti. Khiraprabha Das Lahan is not entitled to any share of pension or retiral benefits.

7. In terms of the above, the writ petition stands disposed of. The directions are to be carried out by the department including all the other respondents within a period of 90 days from the date of receipt of certified copy of this order.

8. Any interim order that may be passed by the Court stands merged with this order.

JUDGE

Comparing Assistant