

GAHC010031472020



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

Case No. : WP(C)/1048/2020

LASHMI BARMAN AND 2 ORS.
W/O- LATE RABINDRA BARMAN

2: MISS BHASHWATI BARMAN
D/O- LATE RABINDRA BARMAN

3: MISS ARPITA BARMAN
D/O- LATE RABINDRA BARMAN
THE PETITIONER NO. 3 IS MINOR BEING REP. BY HER MOTHER
PETITIONER NO. 1
ALL ARE RESIDENTS OF VILL.- MULSALMAN PARA (BASANTIPUR)
P.O. DINGDINGA
DIST.- DHUBRI
ASSAM
PIN- 783333

VERSUS

THE STATE OF ASSAM AND 5 ORS.
TO BE REP. BY THE COMMISSIONER AND SECRETARY, HOME
DEPARTMENT, ASSAM, DISPUR, GUWAHATI-6.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7.

3:THE SUPERINTENDENT OF POLICE
KOKRAJHAR
DIST.- KOKRAJHAR
ASSAM
PIN- 783370.

4:THE ACCOUNTANT GENERAL (A AND E)

MAIDAMGAON
BELTOLA
GUWAHATI-29.

5:THE TREASURY OFFICER
DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783127.

6:SMT. MALLIKA BARMAN
W/O- LATE RABINDRA BARMAN
VILL.- JORDANGA (BARMAN PARA)
P.O. MANKACHAR
P.S. SOUTH SALMARA
DIST.- SOUTH SALMARA
ASSAM
PIN- 783131

Advocate for the Petitioner : MR. A MANNAF

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

26.04.2024

Heard Mr. A. Mannaf, learned counsel for the petitioners. Also heard Mr. C.S. Hazarika, learned Government Advocate and Mr. R. Borpujari, learned Standing Counsel, Finance.

2. This writ petition has been filed by the petitioners claiming their share of family pension in respect of late Rabindra Barman who was an employee as a Police Constable under the Home Department and superannuated from service on 31.12.2012.

3. It is submitted that the petitioner No. 1 is the second wife and petitioners No. 2 & 3 are the daughters born out of their marriage of petitioner No. 1 and

late Rabindara Barman. The learned counsel for the petitioner has referred to the particulars in the Pension Payment Order wherein the names of petitioners No. 2 & 3 are reflected in the particulars of the family members at Sl. No. 3 & 5. It is submitted that the claim of the petitioners have not been entertained by the authority and the private respondent No. 6, who is the first wife, has been receiving the pension without sharing the same with the writ petitioners. The learned counsel for the petitioners has relied upon to the Judgment of the Apex Court in *Rameshwari Devi Vs. State of Bihar & Ors*, reported in (2000) 2 SCC 431 as well as Judgment of the Gauhati High Court, Agartala Bench in *Nandita Shil & Anr. Vs. State of Tripura and Ors*, reported in 2009 (3) GLT 153 in support of his contentions. The only claim of the petitioners before the Court is that the share of pension in respect of late Rabindra Barman who was the husband of the petitioner No. 1 and father of petitioners No. 2 & 3, has been denied to the petitioners by the private respondent No. 6.

4. Mr. C.S Hazarika, learned Government Advocate for the respondents submits that as per the pension Rules the eldest surviving legal heirs who is eligible to receive the pension is required to distribute the same amount to the other eligible legal heirs and also look after the needs and the said legal heir is duty bound to carry out the responsibility mandated under law.

5. Affidavits have been filed by the respondent No. 3 as well as by the respondent No. 1. These affidavits do not throw any light on the position of law as to how the pension needs to be distributed or divided amongst the legal heirs.

6. A perusal of the relevant Rules of the Assam Services (Pension) Rules, 1969 reveals that an amendment has been brought into Rule 143 by Notification dated 17.08.2022. By the said Notification, the following amendment was

brought to Rule 143:

Amendment of Rule 143: In the principal Rules, in rule 143, in sub-rule (ii), in clause (c), in the proviso-

(i) after sub-clause (ii), the following new sub-clause (iii) shall be inserted, namely:

“(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.”

(ii) in Note 2, after clause (c), the following new clause (d) shall be inserted, namely:-

“(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.”

7. A careful perusal of the extracted Amendments brought into the Assam Service (Pension) Rules reveals that in case of a government pensioner male, pension is to be paid to the eldest surviving widow. A further amendment has been brought into by insertion of a new Clause (d) in note (ii) of the Rule 143 to that effect that if the family pension recipient does not divide the amount amongst 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. This amendment which has been brought in will be squarely applicable to the facts and circumstances on the present case.

8. It is settled law that children born out of second marriages are entitled to pension as has been held by the Apex Court in Rameshwari Devi(Supra). Reference may be made to the relevant paragraphs of the Judgment rendered by the Apex Court:

“9. Now, when the first order was cancelled by the State Government and the

second passed depriving Yogmaya Devi and her children of any right in the pensionary benefits of Narain Lal, she filed writ petition in the High Court, which, as noted above, was allowed by the learned Single Judge and later appeal filed by Rameshwari Devi against that was dismissed by the Division Bench of the High Court which is impugned. Learned Single Judge referred to Section 16 of the Hindu Marriage Act, 1955 holding that even though the marriage of Narain Lal with Yogmaya Devi was void their children would be legitimate and thus would be entitled to claim share in the family pension and death-cum-retirement gratuity of Narain Lal but only till they attained majority. Learned Single Judge accordingly issued direction to the State Government to issue fresh sanction order for payment of arrears of family pension and death-cum-retirement gratuity to the minor children born from the wedlock between Yogmaya Devi and Narain Lal till they attained majority but nothing would be payable to Yogmaya Devi."

9. Where the law is settled that the children born out of the second marriages are entitled to pensionary benefits, there is no question of denial of pensionary benefits especially to the petitioners No. 2 & 3. The petitioner No 1 being the second wife is not entitled to any share of pension as the same is not provided for under the Rules of 1969. In terms of the amendment brought into Note (ii) by way of clause-(d), the competent authority will be required to apportion the pension in respect of the eligible members if the recipient of the pension does not share the pension receivable with the other eligible members.

10. It is seen from the pleadings that a representation has already been filed before the Superintendent of Police, Kokrajhar district on 15.03.2019. Similar representation is also filed before the Treasury Officer on 10.07.2019 by the petitioner No. 1.

11. Under such circumstances, the respondents more particularly respondents No. 1 & 2 will call for the relevant papers pertaining to the pension payable in respect of late Rabindra Barman and pass necessary order in favour of the other eligible members who are entitled to receive pension more particularly petitioners No. 2 & 3 in terms of the clause (d) of note (ii) under Rule 143 of

the pension Rules.

12. Upon such orders being passed, the apportioned pensionary benefits shall released to the petitioners No. 2 & 3 as well as the private respondent and/or any other eligible members.

13. The entire exercise be completed within a period of sixty (60) days from the date of receipt of certified copy of this order.

14. With the above directions, the writ petition stands allowed. No order as to cost.

JUDGE

Comparing Assistant