

GAHC010028932024



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

Case No. : Review.Pet./39/2024

MUSSTT HASINA BEGUM
W/O- LT. JOYMAL ABEDIN SHEIKH, R/O- HARAPUTA, P.O. HARAPUTA, P.S.
GOSAIGAON, DISTRICT- KOKRAJHAR, BTR, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
PRESENTED BY THE COMMISSIONER AND SECRETARY, TO THE
DEPARTMENT OF HOME AND POLITICAL, ASSAM, DISPUR, GUWAHATI-6

2:THE DIRECTOR GENERAL OF POLICE
HEADQUARTER- ULUBARI
GUWAHATI-7

3:THE ADDITIONAL DIRECTOR GENERAL OF POLICE
APRO
HEADQUARTER- ULUBARI
GUWAHATI-7

4:INSPECTOR GENERAL OF POLICE (COMMUNICATION)
ASSAM
HEADQUARTER- ULUBARI
GUWAHATI-7

5:THE ACCOUNTANT GENERAL
MAIDAM GOAN
BELTOLA
GUWAHATI-21

6:MUSSTT ANOWARA KHATUN
S/O LATE SUBAL CHANDRA RAY
RESIDENT OF VILLAGE LALKURA

PO SAHEBGANJ
PS GAURIPUR
DIST DHUBRI
ASSAM 78333

Advocate for the Petitioner : MR. J KALITA, DIKSHITA DEKA

Advocate for the Respondent : GA, ASSAM, MR P KATAKI (r-6), MS. A LALA (r-6), MRS R BEGUM (r-6), SC, AG

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

04.12.2024

Heard Mr. J. Kalita, learned counsel for the petitioner. Also heard Mr. P. Kataki, learned counsel for the respondent No. 6; Ms. A. Sharma, learned counsel appears on behalf of Mr. B. Chakravarty, learned counsel for the respondent No. 5 and Ms S Baruah, learned counsel for the respondents No. 1 to 4.

2. This review petition is directed against the order dated 09.01.2024 passed in W.P.(C) No. 7022/2023. By the said petition, the respondent No. 6 as the writ petitioner approached this Court claiming to be the second wife of an employee of the respondents No. 1 to 4 namely Late Joynal Abedin Sheikh who was working as an ASI (Opr) of APPRO (Communication). The late husband of the writ petitioner as well as the present review petitioner died on 25.05.2021. The present review petitioner is the respondent No. 6 in the writ petition and on making necessary application, all pensionary benefits have been released to her. In so far as the writ petitioner who claims to be the second wife is concerned, she has approached this Court claiming for a part of the pension as second wife of late Joynal Abedin Sheikh.

3. This Court by order dated 09.01.2024 disposed of the writ petition by placing reliance on the Judgment of the Full Bench of this Court rendered in *Musstt Junufa Bibi Vs. Mustt Padma Begum @ Padma Bibi & Ors*, reported in (2023) 5 GLR 824 (Writ Appeal No. 160/2018). The Full Bench of this Court has held that pension will be governed by the Pension Rules of 1969. The Court also held that second marriages where the parties are governed by Mohammedan law and their consequential entitlement to the benefits of a family pension as well as the concept of family pension as payable under pension Rules of 1969 are two separate and unrelated concepts. The Court held that second marriages or further marriages of parties are governed by Mohammedan law will have no bearing on the concept to whom the family pension is payable under the pension Rules of 1969. The persons eligible to be granted the family pension under Rule 143 of the Pension Rules 1969 will be entitled to grant of family pension. However, the Court further held that the family pension received by the eldest of the surviving widow will receive the pension as a trustee for all other persons who are entitled to the benefits of family pension in terms of Rule 143 of the Pension Rule 1969. It was held that parties who are governed by Mohammedan law and claimed that they are not appropriately maintained by eldest of the surviving widow who has been paid the family pension will have a remedy for a claim of maintenance before the appropriate forum under the law and not a claim for payment of the family pension by the State authorities directly to such persons. However, if State authorities on their own violation are of the view that under an acceptable circumstances the authorities are agreeable or required to pay the pension separately to any such member of a family of a deceased employee, this Judgment (Judgment of the Full Bench) will not be construed to be an absolute bar on such separate payment.

On these facts, the writ petition was disposed of on the motion stage without issuing notice.

4. The review petitioner has urged before this Court that she is the first wife and therefore entitled to get pension under the provision. The directions given by the Court to the authorities to consider the representation of the writ petitioner (private respondent No. 6 in the review petition) was done without hearing.

5. It is further submitted that the private respondent is a Contractual employee and this statements were not disclosed in the writ petition.

6. Under such circumstances, however, the review petition has been filed seeking recall of the order dated 09.01.2024 whereby the writ petition came to be disposed of. The matter was heard and taken up on several dates.

7. The learned counsel for the review petitioner upon proper instruction from the review petitioner to submit that the review petition can be disposed of permitting the review petitioner to file necessary application/objection before the competent authority with regard to the claim of the writ petitioner (private respondent in the review petition) regarding the claim of share of pension

8. The learned counsel for the respondents does not object to the submissions made y the learned counsel for the petitioner.

9. In view of such submissions made by the review petitioner as well as by the respondent authority, this review petition stands closed directing the authorities namely the respondent. No. 4 to examine the claim of the private respondent No. 6 (the writ petitioner) towards her claim or the share of family pension paid to the present review petitioner which she claims as the second wife of Late Joyanal Abedin Sheikh. While considering such an application, proper

notice should be issued to the present review petitioner and any such objection or documents as may be filed by the review petitioner shall be taken into consideration before any such order is passed.

10. With the above observations, the review petition stands closed.

JUDGE

Comparing Assistant