

GAHC010029012017



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

Case No. : WP(C)/3932/2017

HAMEN BORDOLOI and 5 ORS.
S/O LT BHABA KANTA BORDOLOI

2: SRI CHANDAN BORDOLOI

3: SRI KONGKAN BORDOLOI
BOTH ARE S/O SRI HAMEN BORDOLOI

4: SMTI. KAKOLI BORDOLOI

5: SMTI. GITALI BORDOLOI

6: SMTI. BORNALI BORDOLOI
ALL ARE D/O SRI HAMEN BORDOLOI R/O VILL- KATH KATIA GAON
P.O. JAMUNAMUKH P.S. JAMUNAMUKH DIST. NAGAON
ASSAM
PIN - 786171

VERSUS

THE STATE OF ASSAM and 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, EDUCATION
ELEMENTARY DEPARTMENT, DISPUR, GUWAHATI - 781006.

2: THE DIRECTOR OF PENSION

HOUSEFED COMPLEX
GUWAHATI - 781006

3: THE DEPUTY INSPECTOR OF SCHOOLS

HOJAI
DIST. AT NAGAON

4:THE BLOCK ELEMENTARY EDUCATION OFFICER

JOGIJAN BLOCK
C/O D.I. SCHOOLS
HOJAI AT NAGAON

5:THE STATE BANK OF INDIA

REP. BY THE REGIONAL MANAGER
BHANGAGARH
G.S. ROAD
GUWAHATI-5

6:THE SR. BRANCH MANAGER

SBI HOJAI BRANCH
J.K. KEDIA ROAD
P.O.
P.S. and DIST. HOJAI
PIN - 782435.

7:THE LIFE INSURANCE CORPORATION OF INDIA
REPRESENTED BY ITS BRANCH MANAGER
HOJAI BRANCH AT HOJAI.

8:MD. RABIL HUSSAIN
S/O ALKAS ALI R/O VILL- MUBARAK BASTI MOUZA- NAMATI
P.O. and P.S. MOURAJHAR DIST. HOJAI
ASSAM PIN - 78246

Advocate for the Petitioner : MR.S CHAUHAN

Advocate for the Respondent : MR.S GHOSH

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 02.02.2024

Heard Mr. R. S. Chauhan, learned counsel for the petitioners. Also heard Mr.

K.K. Nandi, learned counsel for the respondent nos. 5 and 6; Mr. P. N. Sharma, learned standing counsel, Elementary Education and Mr. P. Saikia, learned Government Advocate.

2. This writ petition is filed by the petitioners, who claim to be the legal heirs of late Binu Bala Bora. Late Binu Bala Bora was appointed as L.P School Teacher by the order dated 06.10.1990 and was posted at Nagya Pam L.P. School, Jamunamukh. Subsequently, she was posted at Kandhulimari L. P. School, where she joined on 09.10.1990. The services of late Binu Bala Bora was confirmed by orders of the Deputy Inspector of Schools, Hojai vide order dated 19.09.2005. Had she continued in her service, she would have superannuated on 31.01.2018. However, during her tenure as an L.P. School Teacher she expired on 05.09.2013, leaving behind the writ petitioners as legal heirs.

3. While the petitioner was serving at Kandhulimari L. P. School, she was again transferred to Sadar Gaon Muktab at Nilbagan. While she was transferred to Sadar Gaon Muktab at Nilbagan, it became difficult for her to commute between her residence and the school, which is about 25 kms away. As such, she purchased a plot of land in Nilbagan and constructed dwelling rooms and started to reside therein with her youngest son, namely, the writ petitioner No.3. Initially, the writ petitioner No.3 started dwelling in the said house with his late mother. Subsequently, he returned back to Jamunamukh to pursue his studies, leaving his mother alone.

4. The petitioner No.1, namely, the husband of late Binu Bala Bora, owns cultivable land and dwelling houses at Kathiatoli Gaon, Jamunamukh and he has been living in the village Kathiatoli Gaon along with his sons and daughters and undertaking cultivation. It is submitted that pursuant to the demise of Binu Bala Bora, petitioner No.1 raised his claim of family pension and retirement benefits.

A legal heir certificate was also submitted along with next of kin certificate from the Sarkari Gaonburah of Jamunamukh village. The petitioners thereafter represented before the Elementary Education department for claiming the pensionary benefits of late Binu Bala Bora. Since the pensionary benefits were not granted, the petitioner No.1 approached this court by filing WP(C) No. 1595 of 2015 and which was disposed of directing the Deputy Inspector of Schools for passing a speaking order within a period of 2 (two) months. The Deputy Inspector of Schools thereafter, by order dated 30.05.2015, held that he was unable to settle the claim of family pension as the Block Elementary Education Officer, Jogijan did not send the requisite reports. The petitioner No.1, thereafter, filed contempt petition being Cont.Cas No. 551 of 2015 against the D.I of the Schools. Pursuant to insurance of notice, the D.I of the Schools preferred a review petition being Review Petition No. 67 of 2016 for review of the order dated 23.03.2015 disposing of WP (C) No.1595 of 2015.

5. The grounds urged in the review petition are that one Md. Rabil Hussain (respondent No.8 hererin) also claimed to be the husband of late Binu Bala Bora and therefore, the pension payable to the petitioner No.1 could not be settled. This court by order dated 08.08.2017 passed in Review Petition No. 67/2016 reviewed the earlier order recalling the same and WP (C) 1595/2016 was restored to file. Further direction was issued to implead the said Md. Rabil Hussain as a respondent.

6. During the pendency of W.P.(C) No.1595/2015 after the same was restored, the respondent No.8/ Md. Rabil Hussain, filed the title suit being T.S. 71/2015 on 02.03.2015. The said respondent no.8 did not contest the writ petition being W.P. (C) No. 1595/2015 and instead preferred the T.S. 71/2015, which, however was not contested by the petitioner No.1. The Court of Munsiff,

Hojai by Judgment and Decree dated 06.04.2017, passed an ex-parte decree that the plaintiff/ respondent No.8 herein, Md. Rabil Hussain was the lawful husband of late Binu Bala Bora.

7. Upon the Judgment pronounced by the learned Munsiff, Hojai came to be served on the petitioner, an appeal was preferred being of Title Appeal No. 07/2021. The Court of Civil Judge, Senior Division, Hojai by Judgment dated 10.01.2024 in the Title Appeal No. 7/2021 set aside the order under appeal passed by the learned Munsiff and declined to answer the questions raised in the appeal in affirmative. The questions before the appellate forum are as under:-

“13. After careful perusal of the judgment and order passed by the learned Munsiff, Hojai, this Court shall try to decide the following pertinent questions in the forthcoming discussions:

A. Whether the learned Munsiff, Hojai rightly declared the plaintiff/respondent to be the lawful husband of Late Binubala Bora alias Raktima Begum?

B. Whether the findings of the learned Munsiff, Hojai are based upon lawful consideration and settled provisions of law?”.

8. The said judgment of the appellate authority is brought on record by way of the additional affidavit filed by the petitioner on 18.01.2024.

9. The learned counsel for the parties are heard. Perusal of the case record reveals that notices have been served on all the respondents, including the private respondent no.8, and he is shown to be represented by a counsel executing proper Vakalatnama.

10. Mr. K. K. Nandi, representing respondent Nos. 5 and 6, submits that there

is no claim against the respondent Nos. 5 and 6. The claim of the petitioner in the writ petition is with respect to the SBI life Policy No. 35017249801 and for releasing of that amount along with the LIC Policies No. 483328379 and 485504707. In respect of either of these claims, the SBI is not at all connected. Therefore, he submits that respondent No. 5 and 6 are not necessary parties at all.

11. Mr. R. S. Chauhan, learned counsel for the petitioner submits that the names of respondents No. 5 & 6 may be struck off and liberty may be granted to proceed against the appropriate authority for release of the claim in respect of SBI life Policy No. 35017249801 and LIC Policies No. 483328379 and 485504707, before any appropriate forum.

12. Mr. P. Saikia, learned Government Advocate representing Director of Pension has raised an objection with regard to the legal heirs certificate saying that the said certificate dated 13.11.2014 does not contain the name of the petitioner No.1.

13. Mr. P.N.Sharma, learned Standing counsel, Elementary Education submits that the petitioner can approach the authorities who in turn will examine the claim of the petitioner and pass necessary orders as per provisions of law.

14. Having heard the learned counsels for the parties and upon a careful perusal of the pleadings on record, including the order dated 10.01.2024 passed by Civil Judge Senior Division, Hojai in Title Appeal No. 07/2021, it is seen that the competent court of civil jurisdiction has in no uncertain terms authoritatively rejected the claim of the private respondent No.8 that he is the lawful husband of late Binu Bala Bora.

15. As discussed above, although the respondent No.8 is represented by a

counsel, who represents the respondent No.8 by filing duly executed power at the time of hearing; none has represented the respondent No.8. No affidavit whatsoever has been filed by the respondent No.8 in response to the additional affidavit filed by the petitioner bringing on record the order of the appellate authority. No counter affidavit otherwise also has been filed by the respondent No.8 as well as the other respondents although notices in the matter was issued as far back as 10.07.2017.

16. It is submitted at the bar that at present the pensionary benefits payable in respect of late Binu Bala Bora has not been decided or released by the competent authority as disputes had arisen regarding the *interse* claims of the petitioner versus the private respondent No.8.

17. Under such circumstances, in view of the order dated 10.01.2024 passed by the Court of Civil Judge Senior Division, Hojai in Title Appeal No. 07/2021, the finding by the Court of Munsiff, Hojai that the respondent no.8 being the husband of late Binu Bala Bora has been overturned and negated. Under such circumstances, the respondent authority, more particularly, the Deputy Inspector of Schools, Hojai will now be required to examine the matter and pass appropriate orders on the basis of the finding of the competent court of civil jurisdiction and release such pensionary and other retiral benefits in favour of the legal heirs of late Binu Bala Bora.

18. In view of the judgment and order dated 10.01.2024, the Elementary Education department will process the claims of the petitioners in respect of the grant of family pension upon making due verification in the matter as per the procedure laid down under Rule 143 of the Assam Services Pension Rules, 1969. The department will process the claims of the petitioners in terms of the provisions of Assam Services Pension Rules, 1969 read with the amendments

made up to date.

19. Writ petition accordingly stands disposed of. The exercise be carried out by the department within a period of 60 (sixty) days from the date of receipt of a certificate copy of this order. Any order that is passed by the competent authority in the department, copies thereof must be furnished to the petitioners.

JUDGE

Comparing Assistant