

GAHC010256862025



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

Case No. : I.A.(Civil)/3775/2025

MRS MAHMUDA PARBIN
W/O- LATE MOFIDUL ISLAM, PERMANENT RESIDENT OF VILLAGE-
HALDHIA GAON, P.O. GHUGUBARI, P.S. KALGACHIA, DIST.- BARPETA,
ASSAM, PIN- 781319 PRESENTLY RESIDING AT VILLAGE KALAHBHANGA,
P.O. AND P.S. BARPETA ROAD, DIST.- BARPETA, ASSAM, PIN- 781315

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PENSION AND PUBLIC GRIEVANCE DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-07

4:THE COMMANDANT
4TH A.P.T.F. BN.
BARPETA AT HOWLY
DIST.- BARPETA
ASSAM
PIN- 781316

5:THE ACCOUNTANT GENERAL
ASSAM

MAIDAMGAON
BELTOLA
GUWAHATI-29

6:THE TREASURY OFFICER
BARPETA TREASURY
DIST.- BARPETA
ASSAM
PIN- 781301

7:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-06

8:SMTI. SUFIA KHATUN
W/O- LATE MOFIDUL ISLAM
PERMANENT RESIDENT OF VILLAGE- HALDHIA GAON
P.O. GHUGUBARI
P.S. KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 78131

Advocate for the Petitioner : MD. S ALOM, MR. M S ALAM,MS. A BEGUM,MR S J SHAMIM

Advocate for the Respondent : GA, ASSAM, SC, FINANCE,SC, AG,MR. A R SIKDAR (R-8),MR. S I TALUKDAR (R-8),MR H A AHMED (R-8),MR K BHUYAN (R-8),MR N ISLAM (R-8),R K TALUKDAR (R-8),MR. Z MAHMUD(R-8)

Linked Case : WP(C)/2159/2024

MAHMUDA PARBIN
W/O- LATE MOFIDUL ISLAM
PERMANENT RESIDENT OF VILLAGE- HALDHIA GAON
P.O. GHUGUBARI
P.S. KALGACHIA
DIST.- BARPETA
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PERMANENT RESIDENT OF VILLAGE- HALDHIA GAON
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P.S. KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

Advocate for : MD. S ALOM
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

30.03.2026

Heard Md. S. Alom, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Standing Counsel, Accountant General.

2. The writ petitioner of this present writ petition is a second wife of late Mofidul Islam, who was serving as an Inspector of Police (UB) and superannuated from his service on 28.02.2022 and granted pension by the PPO No. 901411300819 and he had been receiving pension continuously. The petitioner got married to late Mofidul Islam. Late Mofidul Islam has a first wife who is respondent No.8 in this writ petition. Out of the marriage between the petitioner and late Mofidul Islam one male child was born.

3. It is the submission of the learned counsel for the petitioner that the petitioner is the second wife of late Mofidul Islam and out of their marriage a male child was born and therefore, the male child and the petitioner are legal

heirs of late Mofidul Islam.

4. It is the grievance of the petitioner that the respondent No.8 who claims to be the first wife has also approached the authorities and the authorities have initiated process to release the family pension in respect of her.

5. The learned counsel for the petitioner has also drawn attention of the Court to the legal heir certificate which is issued by the concerned Office of the Deputy Commissioner, Barpeta, wherein the respondent No.8 is shown as Serial No.1 and the petitioner is shown as Serial No.2 and the other sons and daughters are also listed there. Under such circumstances, the petitioner is before the Court being aggrieved that the respondent authorities have declined to release the share of family pension payable to the writ petitioner.

6. Pursuant to issuance of notice, the respondents have filed their affidavits contesting the claims of the writ petitioner.

7. The learned counsel appearing for the private respondent disputes the claims of the writ petitioner. It is submitted that under the Rules, a person is prohibited from entering into second marriage during the lifetime of the spouse. He therefore, submits that where the conduct Rules prohibits second marriage, there cannot be any claim of the second wife for family pension.

8. The learned counsel appearing for the respondent Accountant General on the other hand submits that in the PPO which was issued to the retired Government Officer, namely late Mofidul Islam the name of the respondent No.8

was clearly mentioned to be the person who will receive the family pension. Accordingly, pursuant to the proposal received from the Administrative Department the pension has been released to the respondent No.8.

9. The learned State Counsel on the other hand submits that under the Pension Rules it is the respondent No.8 whose name is reflected in the pension proposal as well as the service book and who is shown to be the nominee by the Government Officer. Accordingly, the pension proposals have been forwarded.

10. Heard the learned counsel for parties and perused the pleadings available on record and also the judgments and orders pressed into service.

11. It is no longer *res integra* that the second wife is not entitled to pension as have been held in *Rameshwari Devi vs. State of Bihar and Others* reported in *2000 (2) SCC 431* following which this Court in *Suraiya Sultana –vs- State of Assam*, reported in *2006 Suppl GLT 533* has also held that second wife is not entitled to pension as per the Assam Services Pension Rules, 1969. Under the Pension Rules, the family pension is to be received in terms of the list which is specified under Rule 143 as amended upto date. The relevant portion of the Rule 143 is extracted 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 son; and

(d) Unmarried minor daughters.

Note 2: Marriage after retirement will not be recognized for purposes of rules in this Section.

(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.

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

(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."

12. From the careful perusal of the Rules as amended up to date, it is seen that in case of a male government servant it is the wife who will be entitled to receive the family pension and thereafter, the other listed legal heirs. The Rules are very categorical and does not contemplate to release of family pension to more than one wife or husband as the case may be. Although under Mohammedan Personal Law, it may be permissible for a government servant to have more than one wife during the lifetime of the existing spouse subject to the provisions of the Conduct Rules but no such provision is seen in terms of the Pension Rules.

13. Pension is not a part of the estate of the government servant, it is a disbursement by the government in recognition of the services rendered by the government servant pursuant to his retirement and to his legal heirs in the event of his death. Therefore, disbursement of pension has to be strictly followed as per the Rules prescribed. Unless the Rules, there can be no variation for disbursement of pension by the department.

14. In *Mustt Junufa Bibi v. Mustt Padma Begum @ Padma Bibi & Others (Writ*

Appeal No. 160/2018), this question was also considered. This Court in paragraph No. 23 held as under:

“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.”

15. It is clear from the findings rendered in *Mustt. Junufa Bibi (supra)* that although under the Mohammedan Personal Law, it may be permissible for a government servant to have more than one spouse during the lifetime of the existing spouse. However, any such claims or benefits can only be available to the aggrieved spouse by way of maintenance, by filing appropriate proceedings before an appropriate forum. The claim of the petitioner that the direction be issued to the respondent authorities to segregate the pension amount cannot be accepted and the same is rejected for more than one reason as it has already been held that a second wife is not entitled to pension and further, the Rules under the Assam Services Pension Rules, 1969 more particularly Rule 143 does not make any provision for segregation of the pension or disbursement of the family pension between the spouses of a deceased government servant.

16. Under such circumstances, there is no merit in the present writ petition. The same accordingly stands dismissed. The dismissal of the writ petition however, shall not be construed to be a bar for the petitioner to pursue her claims before an appropriate forum, if so advised.

17. This writ petition is accordingly dismissed. No order as to cost.

18. Pending IA's, if any are also dismissed.

19. Interim order, if any stands vacated

JUDGE

Comparing Assistant