

GAHC010171692023



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

**Case No. : I.A.(Civil)/2242/2023**

ON THE DEATH OF GAJENDRA PATHAK HIS LEGAL HEIRS PRIYAM  
PATHAK  
S/O LATE NARAYAN CH. PATHAK,  
R/O HOUSE NO. 9, BYE LANE 1, ANANDA NAGAR,  
P.O.- DISPUR,  
P.S.- BHANGAGARH,  
GUWAHATI- 781,  
DIST.- KAMRUP (M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM,  
REVENUE AND DISASTER MANAGEMENT DEPTT., DISPUR, GUWAHATI- 6.

**Advocate for the Petitioner : MR. U J SAIKIA**

**Advocate for the Respondent : GA, ASSAM**

Linked Case : WP(C)/5343/2022

GAJENDRA PATHAK  
S/O LATE NARAYAN CH. PATHAK

R/O HOUSE NO. 9  
BYE LANE 1

ANANDA NAGAR

P.O.- DISPUR

P.S.- BHANGAGARH

GUWAHATI- 781

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VERSUS

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REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM  
REVENUE AND DISASTER MANAGEMENT DEPTT.  
DISPUR  
GUWAHATI- 6.

2:THE DISCIPLINARY AUTHORITY  
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM  
REVENUE AND DISASTER MANAGEMENT DEPTT.  
DISPUR  
GUWAHATI.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
REVENUE AND DISASTER MANAGEMENT DEPTT.  
DISPUR  
GUWAHATI- 6.

4:THE JOINT SECRETARY TO THE GOVT. OF ASSAM  
REVENUE AND DISASTER MANAGEMENT DEPTT.  
DISPUR  
GUWAHATI- 6.

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Advocate for : MR. U J SAIKIA

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 3 ORS

Linked Case : I.A.(Civil)/2241/2023

ON THE DEATH OF GAJENDRA PATHAK HIS LEGAL HEIRS PRIYAM PATHAK  
S/O LATE NARAYAN CH. PATHAK

R/O HOUSE NO. 9  
BYE LANE 1  
ANANDA NAGAR

P.O.- DISPUR

P.S.- BHANGAGARH

GUWAHATI- 781

DIST.- KAMRUP (M)  
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VERSUS

THE STATE OF ASSAM AND 3 ORS  
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM  
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REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM  
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GUWAHATI- 6.

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Advocate for : MR. U J SAIKIA  
Advocate for : GA  
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS

**BEFORE**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**Date : 13/09/2023**

Heard Ms. M. Das, learned counsel for the petitioner. Also heard Mr. J. Handique, learned standing counsel, Revenue department.

2. This Interlocutory Application has been filed seeking condonation of delay of 56 days in substituting legal-heirs. It is submitted that the petitioner in W.P.(C)/5343/2022 expired on 20.09.2022. The present applicant is the wife of late Gajendra Pathak, who is the petitioner in W.P.(C)/5343/2022. It is submitted that the writ petitioner was removed from service and therefore consequently no pensionary benefits are payable.

3. Learned counsel for the petitioner submits that the applicant being the spouse and legal-heir of the late petitioner right to sue survives and therefore, this Interlocutory Application has been filed seeking substitution of the applicant in place of the petitioner. However, prior to filing this application, because of reasons beyond her control, there was a delay of 56 days in filing the substitution application. The application could not be filed within the statutory period of limitation.

4. It is submitted by the learned counsel for the petitioner that pursuant to the expiry of the petitioner, the applicant herself required medical treatment and had to proceed to Delhi for her medical treatment. It is only pursuant to her return back from Delhi that she could pursue the matter for filing the application. Consequently, there was a delay of 56 days.

5. Mr. J. Handique, learned standing counsel, Revenue department fairly submits that there is no objection for the application praying for condonation of delay of 56 days.

6. Having heard the learned counsels for the parties and upon due perusal the grounds urged, this Court is of the view that the delay in filing the substitution petition has been sufficiently explained by the applicant. Consequently, the Interlocutory Application stands allowed. The delay of 56

days in filing the substitution petition stands condoned.

7. This Interlocutory Application is accordingly disposed of and allowed.

**JUDGE**

**Comparing Assistant**