

GAHC010230932024



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

Case No. : WA/412/2024

NUR JAHAN BEGUM
W/O- LATE MOTLEB ALI @ ABDUL MOTALEB @ ABDUL MUTALIP, R/O-
VILL. GARUBANDHA, P.O.- SANDAHKHAITI, P.S.- MAYONG, DIST.
MORIGAON (ASSAM).

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT, DISPUR,
GUWAHATI- 06.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 29.

4:THE DIRECTOR OF PENSIONS
HOUSEFED COMPLEX
DISPUR
GUWAHATI-06.

5:THE DEPUTY INSPECTOR OF SCHOOL
MORIGAON
RAJAGAON
DISTRICT- MORIGAON
ASSAM. PIN- 782105.

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
MORIGAON
RAJAGAON
DIST.- MORIGAON
ASSAM
PIN- 782105.

7:THE BLOCK ELEMENTARY EDUCATION OFFICER
MAYONG BLOCK
JAGI-BHAKATGAON
DIST.- MORIGAON
ASSAM
PIN- 782411.

8:THE TREASURY OFFICER
MORIGAON
RAJAGAON
DIST.- MORIGAON
ASSAM, PIN- 781025.

9:MORIYAM BEGUM
W/O. LATE MOTLEB ALI @ ABDUL MOTALEB @ ABDUL MUTALIP
R/O- VILL. GARUBANDHA
P.O- SANDAHKHAITI
P.S.- MAYONG, DIST.- MORIGAON (ASSAM)

For the appellant/petitioner(s) : Mr. J. Abedin, Advocate
Mr. A. Alam, Advocate

For the Respondent(s) : Mr. B. Sharma, SC, AG
Mr. S. K. Talukdar, SC, Edn.
Mr. Ditul Das, Advocate

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

21.04.2026

(Ashutosh Kumar, CJ)

We have heard Mr. J. Abedin, learned Advocate for the appellant; Mr. B. Sharma, learned Standing Counsel, Accountant General, Assam; Mr. S. K. Talukdar, learned Standing Counsel, Education Department, and Mr. Ditul Das, learned Advocate for respondent No. 9.

The challenge in this writ appeal is to the judgment dated 30.09.2024,

passed by a learned Single Judge of this Court in WP(C) No. 5963/2022, whereby the claim of the appellant, as the second widow, to receive pension on the death of the employee, has been rejected.

The appellant claims herself to be the second wife of the deceased government school teacher, who had approached the learned Single Judge claiming 50% of the family pension of her late husband, along with arrears and other benefits, under the Assam Services (Pension) Rules, 1969 (hereinafter to be referred as "Pension Rules").

The contention raised on behalf of the appellant before the learned Single Judge was on the strength of the nomination in her favour in the service records of the employee, despite her being the second wife. The appellant, who got married to the employee in the year 2012, gave birth to two children, who are still minor. The first wife of the employee, it is claimed, has an independent income source, namely, her pension as an Anganwadi worker. The first widow has six children, one of whom is employed as a teacher.

Mr. Abedin, learned Advocate for the appellant submits that there is extensive evidence of the marriage of the appellant with the deceased employee being legitimate. The other evidences, on which the claim is raised, are the documents relating to their conjugal life; birth certificates of her children; the entries in the Service Book of the employee apart from the Employee Data Capture Form under various schemes; her inclusion in the NRC; a passport and, most importantly, a pre-death affidavit by the husband declaring equal pension shares for both the wives.

It has further been brought to the notice of this Court that post the

death of the employee, the first wife evicted the appellant from the matrimonial home, forcing her to live with her parents under great financial hardship.

The learned Single Judge, relying on a judgment of the Full Bench of this Court in **Mustf. Junufa Bibi vs. Mustf. Padma Begum @ Padma Bibi and others (WA 160/2018)**, has held that under the Pension Rules of 1969, the only person entitled to receive family pension would be the first widow, regardless of the nomination of the appellant and the pre-death affidavit of the late employee.

The contention of the appellant is that though the relevant paragraphs of the Full Bench judgment have been extracted by the learned Single Judge in the impugned judgment, but a succeeding paragraph (Paragraph 23) was left out, which would have given the right to the appellant to pursue her claim for 50% of the family pension amount.

For the sake of completeness, we deem it appropriate to extract below the paragraph Nos. 19, 20, 21, 22 and 23 (which paragraph has not been extracted in the impugned judgment):

“19. A conjoint reading of Note 1 to Rule 143 (ii) and Rule 143 (iii) of the Pension Rules of 1969 makes it explicit and unambiguous that the family pension would be payable to the eldest of the surviving widow in the event of there being two or more widows and further that even if there are minor children who may also be entitled to the benefits of the family pension, the pension would be paid to only one member of the family at the same time, where at first instance it would be paid to the eldest of the surviving widow and thereafter, on her death to the next surviving widow, if any and in its absence to the minor children.

20. As a corollary to the provisions of the Rule 143 (iii) of the Pension Rules of 1969, Note 1 to Rule 143 (ii) would have to be read to mean that the family pension would be payable to the eldest of the surviving widows in the event there are two or more widows, and thereafter, on her death it would be payable to the next surviving widow, if any and thereafter, to the minor children if the occasion arises.

21. In the circumstance, the concept of a validity and acceptability of a second marriage where the parties are governed by the Mohammedan Law and the

consequential entitlement to the benefits of a family pension and the concept to whom the family pension would be payable under the Pension Rules of 1969 are held to be two separate and unrelated concepts and the implication of the concept of a validity and acceptability of a second marriage or further marriages where the parties are governed by the Mohammedan Law would have no bearing on the concept to whom the family pension is payable under the Pension Rules of 1969. It is held that irrespective of the validity and acceptability of a second marriage or further marriages where the parties are governed by the Mohammedan Law, the family pension under Rule 143 of the Pension Rules of 1969 would be payable to the eldest of the surviving widow, which would also be applicable for a family pension where the parties are governed by the principles of Mohammedan Law, and where there may be a validity and acceptability of the second wife or further wives in respect of a deceased Mohammedan employee.

22. *We further hold that the family pension being payable to the eldest of the surviving widow or wife would not mean that the entire family pension so payable would be the personal property of the eldest of the surviving widow or wife and the family pension so payable would be held by the eldest of the surviving widow or wife as a trustee for all such other persons who are entitled to the benefits of the family pension in terms of Rule 143 of the Pension Rules of 1969.*

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."*

The entire Full Bench judgment is based on Note-1 appended to Rule 143 of the Pension Rules of 1969, which clearly reads that in cases where there are two or more widows, pension will be payable to the eldest surviving widow. On her death, it will be payable to the next surviving widow, if any. It further specifies that the term "eldest" would mean seniority with reference to the date of marriage. The pension awarded under Rule 143 of the Pension Rules

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. In the event of re-marriage or death of the widow/widower, the pension will be payable to the minor children through their natural guardian. In disputed cases, however, payments will be made through the legal guardian.

While expatiating on the reach and the extent of the Note-1 appended to Rule 143 of the Pension Rules of 1969, the Full Bench, referred to above, was of the view that in case of more than one widow, and the eldest receiving the family pension, would, in fact, be the custodian of the amount of the family pension for the benefit of the entire family, which would include the second widow and her children, if they are otherwise entitled to be maintained out of the pension. That way, if it is the first widow, she would only be treated as a trustee of the amount received as family pension for all such other persons, who would be entitled to the family pension in terms of Rule 143 of the Pension Rules of 1969.

However, what the learned Single Judge, it has been argued by Mr. Abedin, completely ignored is the further observation of the Full Bench that in case the first wife receiving the family pension in a Muslim family, which is governed by Mohammedan Law, does not properly maintain the other family members, which may include the second widow and her children, the remedy for the claimant would lie for seeking maintenance in an appropriate forum under the law, and not a claim for payment of the family pension by the State authorities directly to such persons.

The observation further indicates that the Full Bench intended to give that passage to the departmental authorities/State authorities to, of their own volition, allocate shares to the legally entitled recipients of family pension under such circumstances, and Note-1 appended to Rule 143 would not come

in the way or would pose a complete bar to such separate allocation.

With the learned Single Judge ruling that the claim of the first widow is undoubted, the appellant, i.e. the second widow, has been left absolutely remediless except by way of approaching the pension giving authority for allocation of her respective share of the family pension.

This Court has requested Mr. Talukdar to take clear instructions as to the stand of the pension giving authority in the circumstances when the first widow/respondent No. 9 refuses to part with the pensionary amount for the subsistence of the family of the second widow, especially when the first widow has her own sources of income, whereas the appellant/second widow is solely dependent on her parents for maintenance of her two minor children.

This Court would also like to have the written response of respondent No. 9/first widow before we finally decide the issue.

Let the respective affidavits on behalf of the State, the respondent No. 9 as also the affidavit of respondent No. 3 be filed positively by the next date.

Re-notify on **22.07.2026**.

JUDGE

CHIEF JUSTICE

Comparing Assistant