



GAHC010273872019

Page No.# 1/11



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

Case No. : WP(C)/8395/2019

HASIBA BEGUM

D/O- LT MEHMUDA BEGUM, C/O- MD. MAMUD HUSSAIN, VILL- POTIA
GAON (AMGURI GHAT), P.O. MELAMATI, P.S. TITABOR, DIST- JORHAT,
ASSAM, PIN- 785632

VERSUS

THE STATE OF ASSAM AND 4 ORS.
THROUGH THE COMM. AND SECY. TO THE GOVT. OF ASSAM, PUBLIC
HEALTH ENGINEERING DEPTT., DISPUR, GHY-6

2:THE CHIEF ENGINEER
PUBLIC HEALTH ENGINEERING
ASSAM
HENDERABARI
GHY-36

3:THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING
JORHAT DIVISION
P.O. AND DIST- JORHAT
PIN- 785001

4:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GHY-29

5:THE DIRECTOR
PENSION AND PUBLIC GRIEVANCE DEPTT.
GOVT. OF ASSAM



HOUSEFED COMPLEX
DISPUR
GHY-6

6:COMMISSIONER AND SECRETARY

TO THE GOVT. OF ASSAM FINANCE DEPARTMENT DISPUR
GHY-6

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : **11.11.2021**

Date of Judgment : **30.11.2021**

JUDGMENT & ORDER

The extraordinary jurisdiction of this Court is sought to be invoked by filing this application under Article 226 of the Constitution of India whereby the petitioner has raised an important question of law in connection with the Assam Services (Pension) Amendment Rules, 2018 (in short, the Rules of 2018) whereby Rule 143 has been amended so as to provide for family pension to unmarried dependent daughters beyond the age of 21 years of age.

2. Before deliberating on the issue raised, it would be convenient if the facts of the case are stated in brief.

3. The mother of the petitioner late Mehmuda Begum was working as a Khalasi against a substantive post under the establishment of the respondent no. 3 i.e. the Executive Engineer, Public Health Engineering Department (hereinafter, PHE). The mother of the petitioner had died-in-harness on 17.10.2018 by which time, the mother had served for 22 (Twenty Two) years, 1(one) month and 8(eight) days, which was the qualifying service, leaving behind the

petitioner, who is the only next of kin (daughter) and was solely dependent on the income of her mother.

4. Though, the petitioner got married on 30.12.2013, she was divorced on 24.09.2014 and had thereafter lived with her mother. Upon the death of her mother on 17.10.2018, the petitioner had applied for family pension, DCRG and other retirement benefits on account of the service rendered by her mother. She had accordingly submitted Form No. 19 and Form No. 3 however, vide communication dated 06.08.2019 such entitlement was declined. It is this action of the respondent authorities declining the family pension to the petitioner is the subject matter of dispute in this writ petition.

5. I have heard Shri I.H. Saikia, learned counsel for the petitioner. I have also heard Shri P.N. Goswami, learned Additional Advocate General, Assam as well as Shri B. Gogoi, learned Standing Counsel, Finance Department and Shri R. Dhar, learned Standing Counsel, AG, Assam.

6. Shri Saikia, the learned counsel for the petitioner submits that the present is a case where the father of the petitioner had passed away long before her mother. A scheme was introduced vide a notification dated 14.09.2017 by the Finance Department on the subject "Scheme for Compassionate Family Pension in lieu of Compassionate Appointment" which in short is also known as Compassionate Family Pension Scheme (CFP). As per the said Scheme, the primary objective of the policy has deemed to support the family of the employee who dies-in-harness, who was the sole winner of the family as a stop-gap arrangement and if the family managed to sustain themselves for three years after the death of the employee, there was no ground for Compassionate Appointment. Hence, to replace the existing policy of the appointment on the Compassionate Ground the present CPF Scheme was introduced. Under Clause 5 of the notification, guidelines have been laid down, the relevant parts of which are extracted hereinbelow-

"5.1. The applicable definition of family of the employee dies-in-harness will be the definition of family that is given in the Assam Services (Pension) Rules, 1969 (as amended from time to time)."

7. Shri Saikia, the learned counsel for the petitioner had reiterated that the petitioner got

divorce much prior to introduction of the Scheme vide the notification dated 14.09.2017. The learned counsel has also drawn the attention of this Court to the Assam Services (Pension) Rules, 1969 (in short, Rules of 1969), more specifically Rule 143 (i) (d) as per which, family pension for the purpose of the Rules will include unmarried minor daughters. Attention of this Court has also been drawn to the amendment of the same vide notification dated 09.08.2018 whereby the words “unmarried minor daughters” have been replaced by “unmarried dependent daughters.” Further, a Proviso has also been inserted which is as follows:

“Provided that Family Pension shall be allowed to continue beyond 21 years of age to an unmarried dependent daughter of a Government Servant / Pensioner subject to fulfillment of the following conditions:”

8. It is the submission of the petitioner that the Legislature in its wisdom has replaced “unmarried minor daughter” by “unmarried dependent daughter.” As regards the meaning of unmarried, Shri Saikia, the learned counsel for the petitioner by referring to the **Black’s Law Dictionary** as contended that the said expression would also include a divorcee. For ready reference, the same is extracted hereinbelow-

*“**Unmarried.** Its primary meaning is never having married; but it is a word of flexible meaning and it may be construed as not having a husband or wife at the time in question; e.g. widow or widower or divorcee.”*

9. Shri Saikia, the learned counsel for the petitioner submits that similar issue had also come up for consideration in various Courts. The following decisions are relied upon in support his submission-

- i. ***Kushum Devi Vs. State of U.P. and Anr. [2001 (3) AWC 2374]***
- ii. ***Khajani Devi Vs. Union of India and Ors. [2016 (4) RCR (Civil) 158]***
- iii. ***Nandini Kalita Vs. State of Assam and 4 ors. [2016 (2) GLR 429]***
- iv. ***Gudiya Awasthi Vs. State of U.P. and Ors. [2019 (133) ALR 563]***
- v. ***State of U.P. Thru. Prin. Secy. Basic Education Dept. & ors. Vs. Noopur Srivastava [2019 (133) ALR 648]***

vi. ***The State of Rajasthan & Ors. Vs. Deepika Sharma,*** reportable on ***05.09.2021.***

10. In the case of ***Kushum Devi (Supra)***, the Hon'ble Allahabad High Court has held that a divorced daughter, if dependent on her father cannot be excluded and has to be included within the meaning of the word family and has to be treated at par with an unmarried daughter.

11. In the case of ***Khajani Devi (Supra)***, the Hon'ble Punjab & Haryana High Court was dealing with a similar situation concerning the pension of a freedom fighter. A learned Single Bench of the Hon'ble Court had initially held that the main thrust was towards the monthly income of the daughter of the deceased freedom fighter who would not be entitled to pension even if she is unmarried and widowed in case she is employed. The petitioner could have explored the source of income by seeking maintenance under Section 25 of the Act as the law provides that she can move an application at any subsequent time to the passing of the decree of the divorce, the claim was accordingly rejected. The matter was taken up in appeal before the Hon'ble Division Bench which however reversed the decision of the learned Single Judge. The relevant observation is extracted hereinbelow-

"The underlying object in the clause of the Scheme listing eligible dependents is that only one be granted the pension. Therefore, the authorities have to construe the admissibility of benefit from that angle. It is not the case that the daughters are excluded altogether. An unmarried daughter finds mention in the list of eligible dependents. It would, thus, be a travesty to exclude a divorced daughter. There would be no rationality to the reason that the unmarried daughter can be included in the list of eligible dependents and a divorced daughter would stand excluded, particularly when she is the sole eligible dependent and thus qualifies of the benefit, which is concededly made admissible only to one dependent. Even otherwise, we are of the opinion that a beneficial Scheme such as the one in hand should not be fettered or constructed by a rigorous interpretation which tends to deprive the claimants of the benefit to result in virtual frustration or negation of the laudable motive of the Scheme itself. We also noticed that the Ministry of Defence has issued instructions dated 14.12.2012 (on record

as Annexure P8) which included a divorced daughter in the category of eligible dependents for grant of liberalized / special family pension beyond 25 years."

It may be mentioned that the Union of India had carried the appeal to the Hon'ble Supreme Court in SLP (Civil) Diary No. 17706/2017 and the Hon'ble Supreme Court vide the Judgment and Order dated 27.09.2019 had observed that the order of the Hon'ble Division Bench adopts a progressive and socially constructive approach to give benefits to a daughter who was divorced treating her at parity with an unmarried daughter and accordingly agreed with the same. The SLP was accordingly dismissed.

12. This Court in the case of **Nandini Kalita (Supra)** was dealing with a situation where an office memorandum dated 02.03.2009 had excluded a married daughter of a deceased Government Servant from Compassionate Appointment. This Court had held that for a son, no distinction was made with regard to the marital status which was done in a case of her daughter. Such artificial distinction was held to be unacceptable.

13. The Hon'ble Allahabad High Court in the case of **Gudiya Awasthi (Supra)** was dealing with an identical issue concerning the Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness Rules 1974, after noticing the definition of family in Rule 2(c) which included unmarried daughters, unmarried adopted daughters, widow daughters and widow daughter-in-law came to the conclusion that a divorced daughter is covered under the aforesaid Scheme.

14. In the case of **Noopur Srivastava (Supra)**, the Hon'ble Allahabad High Court has taken into consideration the meaning of "unmarried" from various sources including *Merriam Webster's Collegiate Dictionary*, *Stroud's Judicial Dictionary*, *Black's Law Dictionary* has come to a conclusion that there is no substantial difference between unmarried and divorced so far as the context is concerned. The learned Court has also observed that while widow remains to be a part of the husband family even after the death of her husband, upon a marriage be dissolved a divorced daughter does not continue to be part of the family of the divorced husband. The conclusive part of the aforesaid Judgment is extracted hereinbelow-

"On the basis of aforesaid discussion in the context of Rules of 1974, we hold that the expression "divorced daughter" is included / implicit in the expression "Unmarried

daughter". Accordingly we hold that a "divorced daughter" is entitled to compassionate appointment if she was dependant, on the date of death of her father / mother (the employee) and the marriage was dissolved legally either prior to or after the date of death of bread earner of the family and she remains "not married" at the time of appointment."

15. The Hon'ble Rajasthan High Court in the case of **Deepika Sharma (Supra)** was dealing with a similar provision namely entitlement for Compassionate Appointment by a divorced daughter. Reliance was put upon the case of **Noopur Srivastava (Supra)** and the finding of the Court is as follows:

"This Court is of the view that having regard to the reasoning adopted by the Allahabad High Court that the term "unmarried daughter" is synonymous to a "single daughter", the previous marital status or lack of it, cannot be determinative to the writ (6 of 6) [SAW-983/2019] petitioner's claim. In other words, the mere circumstance that the applicant has previously been married, cannot be a relevant ground for the State to reject the application for compassionate appointment if on the date of such application, the claimant was unmarried as in the present case. Unmarried means one who is not married; not, as the State contends, one who was never unmarried. Resultantly if on the date of claim for compassionate appointment, the daughter is not married, she could fulfill the eligibility criteria. Any other interpretation would be contrary to Article 14 of the Constitution of India.

16. Though the writ petition is opposed by the contesting Public Health Engineering Department by means of oral argument, no affidavit-in-opposition has been filed. Shri P.N. Goswami, learned Additional Advocate General, Assam representing the said Department has submitted that the relief claimed would amount to amending the provisions of the Rules. The notification dated 14.09.2017 introducing the Scheme and the subsequent amendment dated 09.08.2018 are within the Legislative competence which are the result of a policy decision and therefore this Court would be circumspect to interfere the same unless it can be demonstrated that the policy is blatantly illegal. The learned State Counsel submits that there is no challenge to the Rules and the petitioner not having fulfilled the requirement of the

Rules, no relief is entitled to by her. It is further submitted that the petitioner cannot claim the relief as a matter of right since as per the existing law, no right has been accrued upon the petitioner. On the facts of the case, it is argued that the question of dependency would be difficult to be properly assessed.

17. In support of his submission, Shri Goswami, the learned AAG places reliance upon the following decisions-

i. **(1998) 4 SCC 117 : [State of Punjab and Ors. Vs. Ram Lubhaya Bagga and ors.]**

ii. **(2006) 4 SCC 1 : [Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors.]**

iii. **(2007) 4 SCC 737 : [Directorate of Film Festivals and Ors. Vs. Gaurav Ashwin Jain and Ors.]**

iv. **(2015) 9 SCC 657 : [Parisons Agrotech Private Limited and Ors. Vs. Union of India and Ors.]**

v. **Tulsi Devi Vs. Union of India and Ors.,** reported on **18.07.2019 [CWP No. 1504 of 2019]**

vi. **(2020) 7 SCC 617 : [N.C. Santosh Vs. State of Karnataka and Ors.]**

vii. **The Director of Treasuries in Karnataka & Anr. Vs. v. Somyashree,** reported on **13.09.2021 [Civil Appeal No. 5122/2021]**

18. The cases of **Ram Lubhaya Bagga (Supra)** and **Gaurav Ashwin Jain (Supra)** have been cited to bring home the first contention that a Court would normally dissuade itself from interfering with a policy decision as that may amount to entering into a realm which belongs to the executive.

19. The case of **Uma Devi (Supra)** has been cited to bring in the aspect of the financial implication upon the State by any public employment and wherein it has been laid down that the Court should not impose on the State such financial burden by insisting upon something which is not strict in accordance with law.

20. The case of ***Parison Agrotech Private Limited (Supra)*** is again pertaining to the restrictions to be maintained while exercising the powers of judicial review with a policy decision.
21. The case of ***Tulsi Devi (Supra)*** has been cited wherein the High Court of Himachal Pradesh had denied the benefit of the pension for freedom fighter to a divorcee daughter holding that the same is not bounty.
22. The case of ***N.C. Santosh (Supra)*** has been cited to support the submission that to be eligible for any benefit which accrues to the dependents of a deceased Government Servant, they must fulfill the norms laid down by the policy decisions.
23. In the case of ***V. Somyashree (Supra)***, the Hon'ble Supreme Court interfered with the order of the High Court of Karnataka which had allowed the writ petition claiming grant of Compassionate Appointment. However in the said case, the Court noticed that the divorce of the claimant was on 20.03.2013 and on the very next date i.e. 21.03.2013 the respondent had applied for appointment on Compassionate Ground. The further fact remains that the divorce was on mutual consent.
24. Shri R. Dhar, learned Standing Counsel, AG, Assam by referring to the affidavit-in-opposition filed on 24.02.2020, while adopting the submissions made by the learned Additional Advocate General, Assam has additionally submitted that the decision is based strictly in accordance with the Rules namely Rule 143 of the Pension Rules. Shri B. Gogoi, learned Standing Counsel representing the Finance Department which was subsequently impleaded as the respondent no. 6 has also adopted the stand of the parent Department.
25. In his rejoinder, Shri Saikia, the learned counsel for the petitioner submits that the contention of the State Counsel are not liable for any acceptance and none of the case laws cited would be applicable to the facts of the case. It is submitted that there was no requirement to challenge the Rules *inasmuch as* there was no dispute that a dependent daughter was included and the only issue is whether there would be any difference between an unmarried daughter and a divorced daughter. It is further submitted that the case laws regarding challenge to any policy decision would not be applicable as there was no such challenge made in the present case. In the case of ***V. Somyashree (Supra)***, the conduct of

the party which was a paramount importance was taken into consideration by the Hon'ble Supreme Court. On the other hand, Shri Saikia, learned counsel submits that the observation of the Hon'ble Supreme Court would rather cover the instant case.

26. The rival contentions of the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

27. The issue in hand has to be dealt with by going back to the amendment whereby "unmarried minor daughter" has been replaced by "unmarried dependent daughter." Whereas the criterion of being "minor" is an objective one, the criterion of "dependent" cannot strictly be construed to be an objective one. In common understanding, dependent means having no independent source of income and who is living is dependent on the income of someone else.

28. The intention of the Legislature for introducing the said amendment appears to be one to give the benefit of the Legislation to a larger section where the entitlement to the family pension would not be confined and determine upon the age of the beneficiary alone. Since minor has been replaced by dependent, it becomes clear that the determining factor would be the dependency of the beneficiary daughter upon the deceased Government Servant. This Court has also noticed that since as per law, marriage of a minor is an offence, the earlier expression unmarried minor daughter would not have made any legal sense. The only issue in this case is whether unmarried would also include a daughter who has undergone a divorce.

29. The question whether a divorced daughter is still dependent upon the Government Servant during his / her lifetime is essential question of fact which would depend on various factors, some of those being (not exhaustive) receipt of a reasonable permanent alimony, monthly permanent alimony / monthly maintenance, movable or immovable property received as a part of the conditions for divorce from which an income can be generated etc.

30. As per the **Black's Law Dictionary** "dependent" has been described as follows:

"Someone who relies on another for support; one not able to exist or sustain herself without the power or aid of someone else"

31. This Court is of the view that since the intention of the Legislature is to support a

dependent daughter who is unmarried and the emphasis is on the **dependency** of such daughter upon the deceased Government Servant, the same benefit may be extended to a divorced dependent daughter. This Court is of the view that there will not be a major difference between an unmarried or a divorced daughter as the pivotal ground is the ground of dependency. This Court has also noticed that being an unmarried daughter, *per se* shall not make such a daughter eligible for the family pension and it would be incumbent upon such unmarried daughter to establish her dependency on the deceased Government Servant, juxtaposition a divorced daughter, such obligation would still remain and may be perhaps with some additional conditions connected to receipt of alimony etc. which has been indicated above. In the instant case, This Court has also noticed that the divorce was on 24.09.2014 and the Scheme had undergone the amendment on 14.09.2017 and the death of the mother was on 17.10.2018. Therefore, there is no manner of doubt regarding the applicability of the amended Scheme in the context of the various dates of the present case.

32. This Court is also guided by the observations of the Hon'ble Supreme Court while dismissing the SLP filed by the Union of India in the case of ***Khajani Devi (Supra)*** which records that the order recognizing the right of the divorcee dependent daughter to receive the benefit adopts a progressive and socially constructive approach to a daughter who was divorced treating her at parity with the unmarried daughter.

33. In that view of the matter, this Court is of the view that the petitioner, who is a divorced daughter and was dependent on her deceased mother is entitled to the family pension subject to the condition that the authorities may be satisfied on the dependency factor by incorporating additional queries, as may deem fit and appropriate.

34. The writ petition stands accordingly allowed.

35. No order, as to cost.

JUDGE

Comparing Assistant