

GAHC010229812023



2026:GAU-AS:10193

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

WRIT PETITION (CIVIL) No. 6004 of 2023

Smt. Shibani Dutta,
W/o Late Sankar Dutta
R/o Hospital Road, Biswas Lane,
Sudha Niketon, Karimganj, P.O. &
P.S Karimganj, Assam,
Pin- 788710.

.....Petitioner

-Versus-

1. The State of Assam

Represented by the Commissioner and
Secretary, Transformation and
Development Department, Dispur,
Guwahati- 781006.

2. The Deputy Secretary to the Government
of Assam, Transformation and
Development Department, Dispur,
Guwahati- 781006.

3. The Accountant General (A&E),
Assam, Maidamgaon, Beltola,
Guwahati- 781029.

4. Joint Director of Health Services &

Additional District Registrar Birth and
Death, Cachar, Silchar,
Pin- 788001.

5. The Principal Secretary to the
Government of Assam, Finance Department
Janata Bhawan, Dispur,
Guwahati- 781006.

6. Smti, Gayatri Roy Barman
2nd Link Road, Lane No. 7, P.O. Link
Road, Silchar, Cachar, Assam,
Pin- 788006.

..... Respondents

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) :Mr. S. Nath, Advocate.

For the Respondent(s) :Mr. C. K. S. Baruah, learned Government
Advocate for the respondent Nos. 1 and
2.
:Mr. S.K. Medhi, learned counsel for the
respondent No. 3
:Ms. S. Sharma, learned counsel for the
respondent No. 4.

Date on which judgment

is reserved : **N/A**

Date of pronouncement

of judgment : **23.07.2026**

Whether the pronouncement

is of the operative part

of the judgment ? : **No.**

Whether the full judgment
has been pronounced : **Yes.**

JUDGMENT & ORDER (ORAL)

Heard Mr. S. Nath, learned counsel appearing for the petitioner. Also heard Mr. C.K.S. Baruah, learned Govt. Advocate, Assam appearing for the respondent Nos.1 & 2, Mr. S.K. Medhi, learned counsel appearing for the respondent No.3 and Ms. S. Sharma, learned counsel appearing for the respondent No.4. None appears for the respondent No.6, though service in respect of the respondent No.6 stands completed in terms of the office note dated 02.02.2026.

2. By way of the present writ petition under Article 226 of the Constitution of India, the petitioner seeks issuance of an appropriate writ directing the respondents to release in her favour the family pension together with the arrears thereof, as well as the Death-cum-Retirement Gratuity (DCRG) payable consequent upon the death of her husband, late Sankar Dutta, who expired on 04.01.2021. The petitioner has also prayed for payment of interest at the rate of 20% per annum on the delayed release of the said retiral benefits.

3. The facts, in brief, are that the petitioner was married to late Sankar Dutta in accordance with Hindu rites and customs at Karimganj in the month of June, 1970. Out of the said wedlock, two daughters, namely, Anindita Dutta and Madhumita Dutta, were born. Late Sankar Dutta retired from

service on attaining the age of superannuation on 28.02.2002 while serving as the Deputy Director of Economics and Statistics, Haflong, under the Department of Development, Government of Assam. Upon his retirement, he received all admissible retiral benefits except the Death-cum-Retirement Gratuity (DCRG) and continued to draw monthly pension till his demise on 04.01.2021.

4. It is the specific case of the petitioner that while the deceased employee was in service, he had nominated the petitioner, describing her as his wife, for receiving his terminal benefits in the event of his death while in service or in respect of such retiral benefits as remained unpaid after his retirement. According to the petitioner, notwithstanding the said nomination and the subsistence of their lawful marriage, the respondents have illegally withheld the family pension and other consequential retiral benefits after the death of her husband.

5. It is further pleaded that after his retirement, late Sankar Dutta instituted F.C. (Civil) Case No. 10/2007 before the Principal Judge, Family Court, Cachar at Silchar seeking dissolution of his marriage with the petitioner by a decree of divorce. However, both parties remained absent in the said proceeding, whereupon the Family Court, by order dated 02.06.2010, dismissed the divorce petition for default and non-prosecution. Consequently, no decree of divorce was ever passed dissolving the marriage between the petitioner and the deceased employee. The petitioner, therefore, contends

that she continued to remain the legally wedded wife of late Sankar Dutta till his death on 04.01.2021. Since neither the family pension nor the DCRG has been released in her favour despite repeated representations, she has approached this Court by filing the present writ petition.

6. The respondents have contested the writ petition by filing their affidavit-in-opposition. Their specific stand is that while submitting his pension papers, the deceased employee had nominated one Smt. Gayatri Dutta, describing her as his wife, for the purpose of family pension and gratuity. It is their contention that on the strength of such nomination, the Pension Payment Order (PPO) and the Gratuity Payment Order (GPO) were issued showing the name of Smt. Gayatri Dutta as the family pensioner and, therefore, the claim of the petitioner could not be processed.

7. Mr. Nath, learned counsel appearing for the petitioner, submits that the petitioner is admittedly the only legally wedded wife of the deceased employee. He submits that the matrimonial proceeding instituted by the deceased employee having been dismissed for non-prosecution, the marriage between the petitioner and the deceased employee continued to subsist till his death. It is argued that mere nomination of another person, who is not the legally wedded wife of the deceased employee, cannot defeat the statutory entitlement of the petitioner to receive family pension under the provisions of the Assam Services (Pension) Rules, 1969 (hereinafter referred to as "the Pension Rules"). According to

the learned counsel, family pension is a statutory right and not a benefit governed merely by nomination. It is further submitted that the deceased employee, being governed by Hindu law, could not have validly conferred the status of a wife upon another woman during the subsistence of his first marriage.

8. In support of the aforesaid submissions, Mr. Nath has placed reliance upon the judgment of this Court in ***Tinku Das and 2 Others vs. State of Assam and 9 Others***, passed in ***WP(C) No. 6073/2019***, wherein this Court held that a woman claiming to be the second wife of a Hindu employee, during the subsistence of the first marriage, is not entitled to family pension merely on the basis of nomination or otherwise, and that such statutory benefit can accrue only to the legally wedded spouse recognized under the Pension Rules.

9. Per contra, Mr. Baruah, learned Government Advocate, Assam, appearing for the respondent Nos. 1 and 2, submits that the competent authorities acted strictly in accordance with the pension records maintained in the office. It is submitted that the deceased employee himself had declared Smt. Gayatri Dutta as his wife in the pension papers and had nominated her to receive the family pension and gratuity. Consequently, the Accountant General issued the PPO and GPO reflecting her name as the family pensioner. According to the learned Government Advocate, the

respondents merely acted upon the records available with them and no arbitrariness can be attributed to their action.

10. I have heard the learned counsel appearing for the parties and have carefully perused the pleadings and the materials available on record. The controversy lies in a narrow compass. The marriage between the petitioner and late Sankar Dutta is not disputed. It is also not disputed that two daughters were born out of the said wedlock. Although the deceased employee had instituted a matrimonial proceeding seeking dissolution of the marriage, the said proceeding admittedly stood dismissed for non-prosecution by order dated 02.06.2010. Consequently, no decree of divorce was ever passed by a competent court dissolving the marriage between the petitioner and the deceased employee. Therefore, in the eye of law, the marriage between them continued to subsist till the death of late Sankar Dutta on 04.01.2021.

11. It is equally undisputed that the deceased employee professed the Hindu religion. Under the provisions of the Hindu Marriage Act, 1955, a marriage solemnized during the subsistence of an earlier valid marriage is void. Therefore, unless the earlier marriage stood dissolved by a decree of divorce passed by a competent court, any subsequent marriage contracted by the deceased employee would have no legal sanctity. The legal consequences flowing from such position cannot be altered merely because the deceased employee described another woman as his wife in

the pension papers or nominated her for receiving pensionary benefits.

12. The principal question that arises for determination in the present writ petition is whether a person merely nominated by a deceased Government employee for the purpose of family pension can claim such benefit despite not answering the description of a “family member” within the meaning of the Pension Rules and whether such nomination can override the statutory entitlement of the legally wedded spouse.

13. For answering the aforesaid question, it would be apposite to refer to Rule 143 of the Pension Rules, which governs the grant of family pension. Rule 143 defines the expression “family” for the purpose of family pension and, in the case of a male Government servant, specifically includes his wife, minor sons and unmarried minor daughters. The Rule further provides that family pension shall first be payable to the widow and thereafter, in the event of her death or remarriage, to the eligible children in the manner prescribed therein. Rule 143 of the Pension Rules reads as under:

“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 sons; and

(d) unmarried minor daughters.

Note 1: (c) and (d) will include children adopted legally before retirement.

[Note 2: (a) Marriage for the purpose of admissibility of pensionary benefits to the spouse of a retired official shall mean marriage before or after retirement.

(b) Child/Children for the purpose of pensionary benefits of a retired official shall mean child/children born before or after retirement.]

(ii) The pension will be admissible-

(a) In the case of a widow/widower upto 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 1: 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. 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."

14. A plain reading of Rule 143 leaves no manner of doubt that the entitlement to family pension does not arise on the basis of nomination but flows directly from the statutory provisions governing pension. The Rule identifies the class of persons who are entitled to receive family pension. Therefore,

unless a person falls within the definition of “family” as contemplated under the Pension Rules, such person cannot claim family pension merely because his or her name has been incorporated in the nomination form submitted by the deceased employee.

15. In the present case, the marriage between the petitioner and the deceased employee has never been dissolved by a decree of a competent court. The divorce proceeding instituted by the deceased employee admittedly stood dismissed for non-prosecution on 02.06.2010. Consequently, the marital relationship between the petitioner and the deceased employee continued uninterrupted till his demise on 04.01.2021.

16. It further appears from the materials brought on record that while the deceased employee was in service, he had originally nominated the petitioner, describing her as his wife, in respect of his service benefits. The records further disclose that under Form VII dated 13.06.1994 submitted under the State Government Employees Group Insurance Scheme, 1982, the petitioner was shown as the wife of the deceased employee and was nominated to receive the benefits thereunder, with the two daughters being shown as the alternate beneficiaries. These documents unmistakably demonstrate that the petitioner was throughout recognized as the legally wedded wife of the deceased employee.

17. The only circumstance relied upon by the respondents for denying family pension to the petitioner is

that subsequently, while processing his pension papers, the deceased employee nominated one Smt. Gayatri Dutta, describing her as his wife, for the purpose of family pension and gratuity. On the strength of such nomination, the Pension Payment Order (PPO) and the Gratuity Payment Order (GPO) came to be issued showing her name as the family pensioner.

18. However, this Court is unable to accept the contention that such nomination can confer any legal right upon Smt. Gayatri Dutta in derogation of the statutory provisions contained in Rule 143 of the Pension Rules. Nomination does not determine succession nor does it confer title to the amount payable unless the governing statute specifically provides otherwise. The purpose of nomination is merely to facilitate payment by the employer. A nominee does not acquire a better or superior right than that conferred by the statute.

19. The Apex Court has consistently held that a nomination does not have the effect of displacing the lawful beneficiary entitled under the governing statute or the applicable law of succession. A nominee merely receives the amount for and on behalf of the person legally entitled thereto unless the statute expressly provides that the nominee shall become the beneficial owner of the amount. [Refer: ***Smt. Sarbati Devi and Anr. Vs. Smt. Usha Devi***, reported in ***(1984) 1 SCC 424*** and ***Shipra Sengupta Vs. Mridul Sengupta and Ors.***, reported in ***(2009) 10 SCC 680***]. Therefore, where the governing Pension Rules

specifically identify the person entitled to receive family pension, such statutory entitlement cannot be defeated by a unilateral nomination made by the deceased employee.

20. Family pension stands on a different footing from other retiral dues. It is neither a bounty nor a matter of grace. It is a statutory benefit intended to provide financial security to the surviving members of the family of the deceased Government servant. The eligibility to receive family pension is determined exclusively by the Pension Rules and not by the personal wishes of the employee expressed through a nomination. Consequently, where the Rules recognize only the legally wedded wife as the primary beneficiary, such statutory right cannot be divested by describing another person as wife in the pension records.

21. This Court also finds considerable force in the submission advanced on behalf of the petitioner that under the Hindu Marriage Act, 1955, a second marriage contracted during the subsistence of a valid first marriage is void. Therefore, assuming that Smt. Gayatri Dutta had been living with the deceased employee, such circumstance by itself would not clothe her with the legal status of a wife so as to claim family pension under Rule 143 of the Pension Rules, particularly when the petitioner's marriage with the deceased employee admittedly subsisted till his death.

22. The issue is no longer res integra. A Coordinate Bench of this Court in ***Tinku Das (supra)***, while considering an identical issue, held that where the first marriage of a

Hindu employee subsists, the woman claiming to be the second wife is not entitled to family pension notwithstanding any nomination made in her favour. Relevant paragraph of the aforesaid judgment reads as under:

“10. Though an issue had arisen regarding the subsistence of the marriage of the deceased employee with the respondent no. 10, such issue has been dispelled by the orders placed on record whereby the divorce proceeding instituted by the deceased employee was dismissed and further appeals have also been rejected including the SLP by the Hon’ble Supreme Court, as mentioned above. Therefore, the status of the respondent no. 10 as the wife / widow of the deceased cannot be disputed. The personal laws governing the parties, who are Hindus do not permit a second marriage as there is no concept of bigamy and rather the same is an offence under the Indian Penal Code. Since there is no concept of any second marriage, the petitioner no. 1, who claims to be the wife, will not have any rights upon the estate of the deceased employee.....”

23. It is apparent from the above quoted extracts from the aforesaid judgment that the Coordinate Bench had clearly observed therein that the legally wedded wife alone is entitled to the benefit of family pension under the Pension Rules. This Court respectfully agrees with and follows the aforesaid view.

24. Applying the aforesaid principles to the facts of the present case, this Court is of the considered opinion that the nomination of Smt. Gayatri Dutta by the deceased employee describing her as his wife cannot override the statutory entitlement of the petitioner, who admittedly

continued to be the legally wedded wife of late Sankar Dutta till his death. The mere issuance of the PPO and GPO showing the name of Smt. Gayatri Dutta does not confer upon her any legal entitlement if such issuance is contrary to the provisions of the Pension Rules.

25. In view of the foregoing discussion, this Court has no hesitation in holding that the petitioner continued to be the legally wedded wife of late Sankar Dutta till his death, there being no decree of divorce dissolving their marriage. Consequently, she squarely falls within the definition of “family” as contemplated under Rule 143 of the Pension Rules and is, therefore, entitled to have her claim for family pension considered in accordance with the said Rules.

26. The nomination made by the deceased employee in favour of Smt. Gayatri Dutta, describing her as his wife, cannot override or defeat the statutory entitlement flowing from Rule 143 of the Pension Rules. A nomination is only an administrative arrangement facilitating payment and cannot enlarge or create substantive rights in favour of a person who is otherwise not entitled under the governing statutory provisions. Therefore, the mere fact that the Pension Payment Order (PPO) and the Gratuity Payment Order (GPO) were issued reflecting the name of Smt. Gayatri Dutta cannot be a valid ground for denying the petitioner’s lawful claim.

27. At this stage, however, this Court deems it appropriate to clarify that the respondents have declined the petitioner’s claim solely on account of the nomination made

by the deceased employee and not on the basis of any independent determination regarding her legal status or entitlement under the Pension Rules. Consequently, while this Court has held that such nomination cannot by itself defeat the petitioner's statutory claim, the actual release of pensionary benefits must necessarily follow due verification by the competent authority in accordance with the applicable Rules and records.

28. Accordingly, the present writ petition stands disposed of by directing the respondent authorities, particularly the Commissioner and Secretary to the Government of Assam, Department concerned, together with the Director of Economics and Statistics and the Accountant General (A&E), Assam, to examine the petitioner's claim afresh in the light of the observations made hereinabove.

29. If, upon such verification, the petitioner is found to be the legally wedded wife of late Sankar Dutta and otherwise eligible under the Pension Rules, the respondents shall:

(i) recognize the petitioner as the lawful beneficiary for the purpose of family pension;

(ii) take immediate steps for correction of the Pension Payment Order (PPO) and the Gratuity Payment Order (GPO), wherever such correction is found necessary;

(iii) release the family pension together with all consequential arrears payable from the date the same became due;

(iv) release the admissible Death-cum-Retirement Gratuity (DCRG), if not already paid to any person legally entitled thereto, along with any other retiral benefits lawfully payable to the petitioner.

30. The entire exercise, including verification, issuance of revised PPO/GPO, and release of the admissible benefits, shall be completed within a period of two months from the date of receipt of a certified copy of this order.

31. With the aforesaid observations and directions, the writ petition stands disposed of. No order as to costs.

JUDGE

Comparing Assistant