
(2020) 10 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition (C) No. 6536 Of 2017

Nikita Sutar Minor

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 07-10-2020

Acts Referred:

Citation : (2020) 10 GAU CK 0005

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P Banerjee

Final Decision : Disposed Off

Judgement

1. Heard Mr. RP Sarmah, learned senior counsel for the petitioner, Mr. M Nath, learned counsel for the P&RD, Mr. AR Tahbildar, learned counsel for the respondent No.6 namely, Smti Kalpana Sutar as well as Mr. UK Nair, learned senior counsel who was requested to be an Amicus Curiae in this matter on the question of law that is involved.

2. The petitioner is the minor daughter of late Chandra Chetry (Sutar) @ Chandra Bahadur Sutar who was serving as a Senior Assistant in the Sonitpur Zilla Parishad, Tezpur, Sonitpur and he died on 09.03.2016. On his death, his wife Smti Kalpana Sutar is the beneficiary of the family pension that is applicable to late Chandra Chetry (Sutar) @ Chandra Bahadur Sutar. In the circumstance, the petitioner who is a minor daughter of the deceased instituted this writ petition making a claim of a share of the family pension benefits on the ground that she is a minor daughter of the deceased.

3. The petitioner happens to be the daughter of the second wife of the deceased Chandra Chetry (Sutar) @ Chandra Bahadur Sutar namely Smti Manju Devi @ Manju Sutar, who is stated to have been married on 13.05.2004 after the first wife being the respondent No.6 Kalpana Sutar had left the deceased. Be that as it may, we are not much concerned with the factual aspect of the matter.

4. The entitlement of a minor offspring of a deceased employee as regards the family pension has been settled by the Supreme Court in its pronouncement in *Rameshwari Devi -vs- State of Bihar and others*, reported in (2000) 2 SCC 431. The dispute before the Supreme Court was between two wives namely Rameshwari Devi and Yogmaya Devi and the pensionary benefits were being paid to Rameshwari Devi. Yogmaya Devi and her children instituted a writ petition before the High Court, which was allowed by the learned Single Judge by providing that the minor children of Yogmaya Devi would also be entitled to a share of the family pensionary benefit. The appeal filed against the judgment of the learned Single Judge failed and accordingly, a further appeal was carried before the Supreme Court.

5. In paragraph-14 of the judgment in *Rameshwari Devi (supra)*, the Supreme Court arrived at its conclusion that although Yogmaya Devi cannot be described as a widow of the deceased Narain Lal as her marriage with Narain Lal was void, but the sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal share along with the wife Rameshwari Devi and the other children of Rameshwari Devi.

6. From the said principle of law as laid down by the Supreme Court in paragraph-14 of *Rameshwari Devi (supra)*, it is discernible that even the offspring of a wife of a deceased, whose marriage may not be legitimate, would also be entitled to the family pensionary benefit pertaining to such deceased. The Supreme Court in paragraph 13 of the said judgment in *Rameshwari Devi (supra)* was also took a view that although it is a claim on the share of the properties left behind by a deceased, which would ordinarily required to be decided in a civil suit, but considering the aspect that civil proceeding may be a long drawn affair, it would be appropriate for the authority concerned of the State Government to take a decision as to whether the claim of the offspring of a wife of the deceased whose marriage may not be legitimate is otherwise a bona-fide claim or not, meaning thereby whether the claimant is actually an offspring of the deceased or not and thereafter a decision is to be arrived by the concerned authority of the State Government.

7. Mr. RP Sarmah, learned senior counsel for the petitioner states that in the instant case, the respondent No.6 being the wife of the deceased Chandra Chetry (Sutar) @ Chandra Bahadur Sutar is the only other claimant for the family pensionary benefit apart from the petitioner, who is a minor inasmuch as, the son of the respondent No.6 is already a major in the meantime.

8. The learned counsel for the respondent No.6 on the other hand states that the respondent No.6 Smti Kalpana Sutar has another minor daughter fathered by the deceased Chandra Chetry (Sutar) @ Chandra Bahadur Sutar and therefore, she would also be entitled to her share of the family pensionary benefits.

9. The said aspect is disputed by Mr. RP Sarmah, learned senior counsel by

stating that the respondent No.6 Smti Kalpana Sutar had left the deceased Chandra Chetry (Sutar) @ Chandra Bahadur Sutar in the year 2002 and therefore, in the year 2020 any offspring of Smti Kalpana Sutar fathered by the deceased Chandra Chetry (Sutar) @ Chandra Bahadur Sutar cannot remain a minor.

10. The concerned authority in the department where the deceased worked i.e. the P&RD, shall also look into the aforesaid aspect and arrive at its own conclusion regarding existence of another minor daughter of Smti Kalpana Sutar, who had been fathered by the deceased Chandra Chetry (Sutar) @ Chandra Bahadur Sutar. The decision thereof be taken by the concerned authority in the P&RD and for the purpose, we provide that the Commissioner, P&RD would be the appropriate authority in the department to consider the matter and pass a reasoned order.

11. The Commissioner shall also decide the share of the petitioner to the family pensionary benefits viz-a-viz the respondent No.6 as well as the claim of Mr. AR Tahbildar, learned counsel for the respondent No.6 that the respondent No.6 has another minor offspring and once the Commissioner, P&RD Department decides the share of the respective parties including the respondent No.6, the respondent No.6 shall be directed by the Commissioner to comply with it and to act accordingly and any violation of such direction shall also be construed to be a violation of the order of the Commissioner. The duration of the entitlement of the minor offsprings of the deceased shall be subjected to the prevailing Rules.

12. The requirement be done by the Commissioner of P&RD within a period of six weeks from the date of receipt of the certified copy of this order.

13. We appreciate the valuable service of Mr. UK Nair, learned senior counsel who assisted the Court as an Amicus Curiae.

In terms of the above, the writ petition stands disposed of.