

GAHC010221142023



2026:GAU-AS:6168-DB

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

WP(C) No.5994 OF 2023

1. Smti. Bharati Saikia,
Wife of Late Amal Saikia,
Railway Quarter No.T/22 (A), Office Colony, Children
Park, PO: Lumding, District: Hojai, PIN - 782447.

2. Mousam Saikia,
Son of Late Amal Saikia,
Railway Quarter No.T/22 (A), Office Colony, Children
Park, PO: Lumding, District: Hojai, PIN - 782447.

.....Petitioners

-Versus-

1. Union of India, represented by General Manager,
N.F. Railway, Maligaon, Guwahati – 781011, Assam.

2. The General Manager, N.F. Railway,
Maligaon – 781011.

3. The Financial Advisor and Chief Accounts Officer,
N.F. Railway, Maligaon – 781011.

4. The Chief Cashier, N.F. Railway, Maligaon,
Guwahati – 781011, Assam.

5. Smt. Malati Saikia,
Wife of Late Amal Saikia,
Village: Uttar Sangchaki, PO: Dakshin Sangchaki,
Singimari, Nagaon, PIN – 782426.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

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

For the Respondent(s) : Ms. A. Gayan, Central Government Counsel for respondent Nos.1 to 4.

: Mr. H.K. Das, Senior Advocate/Amicus Curiae, assisted by Mr. N.K. Sarma, Advocate.

Date of hearing : 05.05.2026.

Date of judgment : **06.05.2026.**

JUDGMENT & ORDER

(Ashutosh Kumar, CJ)

We have heard Mr. S. Nath, learned Advocate for the petitioners; Ms. A. Gayan, learned Central Government Counsel for respondent Nos.1 to 4 and Mr. H.K. Das, learned Senior Advocate/Amicus Curiae, assisted by Mr. N.K. Sarma, learned Advocate.

2. The petitioners, namely, Smti. Bharati Saikia (petitioner No.1), the second wife of the deceased employee (Late Amal Saikia) and Mousum Saikia (petitioner No.2), their minor son, aged about 12 years, through the petitioner No.1, have sought a share of family pension, death gratuity and other retiral benefits, like – Leave Encashment, Group Insurance, Provident Fund, etc., as dependants of the deceased Railway employee, asserting their eligibility under the Railway Services (Pension) Rules, 1993 (*hereinafter to be referred as the “Pension Rules of 1993”*), particularly, Rules 70 and 75(7)(i)(a) and (b), which prayer was denied by

the Central Administrative Tribunal, Guwahati Bench, Guwahati (*hereinafter to be referred as the "Tribunal"*) in Original Application No.040/00264/2020 vide order dated 22.03.2023.

3. The Tribunal was of the view that the balance of convenience stood in favour of the first wife, i.e. Smti. Malati Saikia (respondent No.5) and her children. The respondent/Railway was thus directed to grant family pension and other retiral benefits to her, who is the first and legally married wife of the deceased employee.

4. Hence, this writ petition.

5. Late Amal Saikia, employed as a Jamadar Peon at the Pay Office, Lumding, N.F. Railway since 30.04.1990, was previously married to Smti. Malati Saikia (respondent No.5) in the year 1987, with whom he had a son by the name of Jitumoni Saikia (aged about 24 to 25 years).

6. The claim of the petitioners is that Malati Saikia was separated from the deceased employee in the year 2001, after which he married the petitioner No.1 (Smti. Bharati Saikia) in 2010, and they lived together in a Railway Quarter until his death. The petitioner No.1 was unaware of the first marriage of her late husband until his death. According to her, Rule 75(7)(i)(a) of the Pension Rules of 1993 mandates equal sharing of family pension amongst the widows and Rule 70 includes wives and sons (including from a second marriage) for death gratuity, irrespective of personal law restrictions.

7. The Railway Authorities had contended before the Tribunal as also before this Court that the deceased employee had never disclosed

his second marriage or son during his service and Malati Saikia (respondent No.5) was the officially declared wife as per his family declarations. It was further argued that the second marriage was void under the Hindu Marriage Act, 1955, as the deceased employee had not divorced the respondent No.5 and thus, the petitioners were not entitled to the benefits. On the other hand, respondent No.5 claimed to be the legally married wife, asserting her marriage in the year 1988 and birth of 3(three) children out of their wedlock and separation in 2001 due to her being driven out. She also claimed that the marriage of the deceased employee with the petitioner No.1 was void as it was during the subsistence of her marriage with him.

8. Rule 70 of the 1993 Rules provides for grant of death gratuity. For the purpose of the said Rule 70, “family” under sub-clause (5) thereof, *inter alia*, includes wife or wives including judicially separated wife or wives in the case of a male Railway servant and sons including step-sons and adopted sons. Rule 75 deals with Family Pension Scheme for Railway Servants, 1964, which was applicable in case of the deceased employee.

Rule 75(7)(i)(a) and (b) provide that where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares and on the death of a widow, her share of the family pension shall become payable to her eligible child.

9. Based on these provisions under the Pension Rules of 1993, the petitioners have staked their claim on the family pension, which, as noted above, was disallowed by the Tribunal.

10. The contention on behalf of the petitioner No.1, therefore, is that notwithstanding her marriage with the deceased employee during the subsistence of his marriage with respondent No.5, of which she was not in the know of, she was entitled to the proportionate share in the family pension and other death benefits.

11. The claim of the petitioner No.1 is not based on sound reasons.

12. Regardless of the usage of the words “wives”/“widows” in the Rules in question, what is to be noted is that under Rule 21 of the Railway Services (Conduct) Rules, 1966, there is a restriction regarding marriage which prescribes that no Railway servant shall enter into a marriage with any person having a living spouse, unless requisite permission is sought by the Railway servant on satisfying that such marriage is permissible under the personal law applicable to him and other party to the marriage.

13. The provisions of the Pension Rules of 1993 would refer to only such claims of employees or their dependants, where second marriage during the subsistence of the first marriage, is permissible and not otherwise. In the case of the petitioner No.1 and the deceased employee, the provisions of the Hindu Marriage Act apply *proprio vigore* making such marriage of the deceased employee with the petitioner No.1 void.

14. In a Full Bench decision of Bombay High Court in ***Kamalbai -Vs- State of Maharashtra & Ors. :: (2019) 3 Mh. L.J (FB) 921***, where the prime question for consideration was whether the second wife would be entitled for pensionary benefits, it was held that the family pension

cannot be claimed by a second wife if she is not a legally wedded wife, and if the second wife is a legally wedded wife, then she would be entitled for family pension, especially if the provisions of the Hindu Marriage Act would apply to the parties. Any marriage solemnized in contravention to the conditions specified in Clauses (i), (iv) and (v) of Section 5 would be void marriage within the meaning of Section 11 of the Hindu Marriage Act. In that context, a second wife cannot be called a legally wedded wife and, therefore, she cannot claim her entitlement to family pension.

15. The provisions of the Pension Rules of 1993 have to be read harmoniously and the expression “wives” or “widows” have to be read as referable to such persons on whom the provisions of Hindu Marriage Act do not apply and where personal law permits of second marriage during the subsistence of the first marriage. Even in such cases, the consent of the subsisting partner and of the Railways have to be obtained.

16. In the case of the petitioners, the marriage of petitioner No.1 with the deceased employee is a void marriage, disentitling her to any pensionary benefits. However, the minor son (petitioner No.2) would be entitled to the proportionate share in the family pension according to the Pension Rules of 1993.

17. For the reasons, referred to above, the order passed by the Tribunal is not interfered with, except to the extent of the claim of petitioner No.2 (the minor son of the deceased employee) regarding his proportionate share in the family pension in accordance with the Pension Rules of 1993, which shall be payable to him.

18. The impugned order dated 22.03.2023 passed by the Tribunal in Original Application No.040/ 00264/2020 is modified to the extent indicated above.

19. This writ petition is thus partially allowed.

JUDGE

CHIEF JUSTICE

Comparing Assistant