

HIGH COURT OF TRIPURA

AGARTALA

WP(C) 132 OF 2025

Smt. Ujjala Rani Paul,
D/o Lt. Rash Bihari Paul,
R/o Dhaleswar, Road No.3, P.O. Dhaleswar,
P.S. East Agartala, District-West Tripura.

....**Petitioner.**

Versus

1.Agartala Municipal Corporation,
To be represented by the Municipal Commissioner, AMC, City center,
Paradise Chowmuhani, P.O.- Agartala, Agartala, West Tripura-799001.

2.The Municipal Commissioner,
Agartala Municipal Corporation, City center, Paradise Chowmuhani, P.O-
Agartala, Agartala, West Tripura-799001.

3.The State of Tripura,
To be represented by the Secretary, Urban Development Department,
Govt. of Tripura, Agartala, New Secretariat Building, Kunjaban, P.S - New
Capital Complex, Agartala, West Tripura, PIN-799010.

4.The Secretary,
Finance Department, Govt. of Tripura, Agartala, New Secretariat Building,
Kunjaban, P.S New Capital Complex, Agartala, West Tripura, PIN-
799010.

5.The Director,
Urban Development Department, Govt. of Tripura, Near Rabindra
Satabarsiki Bhavan, P.O- Agartala, Pin-799001, West Tripura.

6.The Principal Accountant General,
O/o the Accountant General (A and E), Tripura, Agartala, P.O- Kunjaban,
West Tripura, PIN-799 006.

7.The Senior Accounts Officer,
O/o the Principal Accountant General (A and E), Tripura, Agartala, P.O-
Kunjaban, West Tripura, PIN-799 006.

....**Respondents.**

BEFORE

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

For the Petitioner : Mr. Mr. P. Roy Barman, Sr. Advocate.
Mr. Samarjit Bhattacharjee, Advocate.

For the Respondent(s) : Mr. Arijit Bhaumik, Advocate.

Date of hearing : 12.02.2026

Date of delivery of
Judgment & Order : 01.04.2026

Whether fit for reporting :

YES	NO
✓	

JUDGMENT & ORDER

One Rash Bihari Paul who was a labourer in Agartala Municipal Corporation, went on superannuation on 01.10.2004. During his lifetime, he was receiving pension as per the rules. He died on 02.12.2018. His wife pre-deceased him.

2. The present petitioner at the time of death of the original deceased pensioner was given marriage to one person, namely Sir Pradip Saha but thereafter the said marital bond could not sustain and ultimately, they got a decree of divorce from the court of learned Judge, Family Court, Agartala on 04.10.2021.

3. Thereafter, the petitioner applied for family pension as per Tripura State Civil Services (Revised Pension) Rules, 2017 (hereinafter referred as the Revised Pension Rules, 2017) on 23.02.2022 [Annexure-11]. She, also sent remainder and legal notice in this regard and in turn, the Municipal Authority rejected her prayer vide communication dated 04.10.2024 [Annexure-16] taking the plea that the notification dated 28.03.2018 of the State Government by which the amended provision of pension rules was adopted entitling the divorcee daughter to get pension, was not adopted by the Municipal Authority. Therefore, the present writ petition has been filed by the writ petitioner.

4. The Municipal Authority, however after appearing in this writ petition contended through their counter affidavit that at the time of death of the original pensioner, Rash Bihari Paul, the present writ petitioner was not a divorced daughter and her such event of divorce took place much later than the date of death of her father and therefore, she was not entitled to any such family pension.

5. Learned senior counsel, Mr. P. Roy Barman argues that just after a few days of the marriage of the petitioner, her husband went missing and she took shelter in her father's house and there she was living for more than 40 years. In support of such fact, he also relies on a decree dated 04.10.2021, passed by learned Judge, Family Court, Agartala, West Tripura which was drawn on the basis of compromise petition submitted by the petitioner and her husband [Part-1 of Annexure-1 to the writ petition] and in said joint compromise petition, above said facts were mentioned and ultimately, when the marriage tie between the parties were irretrievably broken down and there were no relation between them for a long period, they mutually agreed to go for a divorce.

6. According to learned senior counsel, at the time of death of her father, the petitioner was not a divorced daughter, but she was dependent on her father and in the year 2021, she submitted the said petition for divorce which was accordingly allowed. Learned senior counsel, Mr. Roy Barman also contends that in the Revised Pension Rules, 2017 [Annexure-R/1] as applicable to the employees of Agartala Municipal Corporation by virtue of Notification dated 21.12.1991 [Annexure-7] and notification dated 04.01.1992 [Annexure-8], there is no restriction placed in the said Rules that to get such family pension, the divorce shall have to take place during the life time of the original pensioner or the spouse, or that at least such petition shall have to be filed when the original pensioner was alive. According to Mr. Roy Barman, learned senior counsel, when no such differentiation has not been created by the legislature, the respondents cannot deny family pension to the petitioner by creating two different classes of the same homogeneous section of the pensioner.

7. To support his contention, Mr. Roy Barman also relies on a decision of Hon'ble Supreme Court in case of **All Manipur Pensioners Association vs. State of Manipur & Ors., AIR 2019 SC 3338**. In the said case, State of Manipur adopted the Central Civil Service Pension Rules, 1972 as amended from time to time and as per Rule 49 of the said Rules, a govt. employee retired in accordance with the provision of the Rules after completing qualifying service of not less than 30 years, would be entitled to 50% of the average emoluments as monthly pension subject to

maximum of Rs.4500/- per month. However, considering the increase in the cost of living, the Govt. of Manipur decided to increase the quantum of pension as well as the pay of the employees and accordingly, they issued an Office Memo. dated 21.04.1999 revising the quantum of pension with stipulation that the employees who had gone on retirement on or after 01.01.1996 would be entitled to the revised pension at the higher rate whereas those who had retired before 01.01.1996 would be entitled to a lower percentage as was existing. Matter was finally challenged before the Hon'ble Supreme Court. The Apex Court in that case while observing that there cannot be two classes in a homogeneous group, holds that such differentiation created by the State govt. of Manipur was arbitrary.

8. Learned counsel, Mr. A. Bhaumik for the respondent-Municipal Corporation submits that for getting family pension, the divorced daughter should be a family member of the original pensioner having dependency on him/her and such divorce proceeding should commence at least when the original pensioner was alive. He also submits that the eligibility to receive the pension should accrue immediately on the date of death of the original pensioner and not subsequently and in the instant case, the eligibility of the present petitioner to receive such family pension arose only in the year 2021 when she was granted decree of divorce, and therefore, it is clear that when the original pensioner died, she was not a divorced daughter and therefore, she was not entitled to get any family pension. He however did not dispute that said Revised Pension Rules of 2017 is applicable in case of employees of the municipal corporation. Learned counsel also relies on two Office Memos. issued by the Govt. of India, dated 11.09.2013 and 19.07.2017 wherein some clarificatory notes were issued by the Central Govt. regarding claim of family pension by divorced daughters. He also relies on a decision of a Division Bench of Calcutta High Court in case of **Union of India & Ors. vs. Mita Saha Karmakar, WP.CT 36 of 2025**, decided on 09.12.2025 to gain support of his submissions.

9. Mr. Bhaumik, learned counsel further contends that the writ petition is bereft of necessary particulars such as when divorce petition was filed or when she was deserted by her husband or whether at the time of death of original pensioner she was dependant on him or not etc.

Moreover, at paragraph nos. 16 and 29 of the writ petition, it is mentioned that she is claiming pension from the date of death of her father, whereas, she obtained decree of divorce in the year 2021.

10. Mr. Bhaumik also submits that though the Central Govt. notifications are not adopted in the State of Tripura, but for the purpose of interpretation of *pari materia* provisions, assistance thereof can be taken to. He also submits that the decree of divorce was a compromise decree and no formal adjudication of dispute between the parties was there. According to him, the required Form No.14 in terms of Finance Department Memo. dated 28.03.2018 was also not complied with by the petitioner and even, the income certificate as submitted was also not issued by the competent authority.

11. Learned senior counsel, Mr. Roy Barman in reply submits that the Central Govt. notifications were never adopted in the State of Tripura and therefore, the same cannot be applied in the State.

12. As it appears from the rival contention of both sides, the core issue involved in this case for decision is whether the petitioner who has filed the petition for divorce long after the death of her father and has later on obtained the decree of divorce can claim family pension. The Revised Pension Rules, 2017 was notified on 11.07.2017 giving its force with effect from 01.04.2017. The said Rules were framed exercising power under Article 309 of the Constitution of India by the State Govt. and these Rules are made in supersession or modification of the relevant provisions contained in the Central Civil Services (Pension) Rules, 1972 as adopted and made applicable to the State pensioners earlier with amendments made by the State Govt. from time to time. It is also mentioned therein that all other provisions in the adopted Rules which are not repugnant to the provision of these Rules, shall continue to apply till amended or repealed.

13. Rule 8 of the said Rules makes provision for payment of family pension to the **unmarried/widow daughter/divorced/disabled child** in the following manner:

8. PAYMENT OF FAMILY PENSION FOR UNMARRIED/ WIDOW DAUGHTER/ DIVORCEE/DIVORCEE DAUGHTER/ DISABLED CHILD:

Family pension shall be admissible to non-earning unmarried daughter (until her marriage)/widow daughter (until her re-marriage)/divorcee daughter (until restoration of her conjugal life) and disabled children in the event of death of the pensioner and his/her spouse. Criteria for non-earning unmarried daughter/widow daughter/divorcee daughter will be determined on the basis of monthly income upto Rs.3000/-. This benefit shall be effective from 1st day of April, 2017 and shall be extended only in genuine cases after proper verification of the records.

14. On plain reading of the said clause, it appears that the divorced daughter of the original pensioner, government employee, is entitled to get family pension on his or his spouse's death as the case may be. Therefore, the condition precedent for entitlement to family pension is that the daughter should be a divorced daughter when the original pensioner died as the right to receive such pension accrues on the death of the original pensioner or on the death of his/her spouse who was receiving the pension. There are many cases where divorce petition though filed during the life time of the original pensioner or of his/her spouse, could not be disposed of by granting a decree of divorce by the concerned court before the death of the concerned parent of the applicant. Therefore, with a holistic approach, the Govt. of India, Ministry of Personnel, P.G. & Pension, Department of Pension & Pensioners' Welfare by their Office Memos. dated 11.09.2013 and 19.07.2017 as relied on by learned counsel, Mr. A. Bhaumik, has also extended the benefit to these cases declaring them to be entitled to the family pension.

15. In the Office Memo. dated 11.09.2013 it clarified that the family pension is payable to the children as they are considered to be dependent on the Govt. servant/pensioner or his/her spouse, and therefore, only those children who are dependent and meet other conditions of eligibility for family pension at the time of death of the Govt. servant or his/her spouse, whichever is later, are eligible for family pension and similarly family pension to a widowed/divorced daughter is payable provided she fulfils all eligibility conditions at the time of

death/ineligibility of her parents and on the date her turn to receive the family pension comes.

16. In the Office Memo. dated 19.07.2017, it is further clarified that benefit of family pension shall be extended to a divorced daughter in such cases where the divorce proceeding has been initiated in a competent Court during the life time of the employee/pensioner or his/her spouse, but divorce took place after their death, provided that the claimant fulfills all other conditions for grant of family pension.

17. In the case of **Mita Saha Karmakar** (supra), the petitioner was guided by the Central Civil Services (Pension) Rules, 1972 and petition for divorce was filed by her prior to the death of her father, the original pensioner. In the said case, the High Court after taking into consideration of the Office Memo. dated 19.07.2017, held that she was covered by the said Office Memo. and was entitled to the family pension.

18. According to the Court, at the time of death of original pensioner and/or her spouse, the divorced daughter should have her dependency on her parent being separated from her husband. In the case in hand, it appears that the present petitioner had her dependency on her father at the time of his death. From the contents of her application submitted on 23.02.2022 to the Municipal Commissioner [Annexure-11], it appears that after a few days of her marriage, her husband left her in her father's house and did not take her back again. She thus became dependent on her father but such dependency ceased to exist immediately on the death of her father and at that time, her status was of a 'married daughter separated from her husband' and not a divorced daughter. The Rules do not permit grant of family pension to said category of married daughters.

19. The date of institution of said divorce proceeding is not divulged by her in her writ petition. But from the order of the learned Judge, Family Court it appears that she instituted the said suit for divorce in the year 2021 as can be gathered from the registration number of said proceeding. Vide order dated 04.10.2021, the Court granted her the decree of divorce on compromise arrived at between the parties.

20. Already it is discussed in the earlier paragraph that at the time of death of the father of the petitioner, her status was not of a divorced daughter rather of a married daughter separated from her husband and dependant on her father. The Revised Pension Rules, 2017 does not cover the case of the petitioner to extend the benefit of family pension in her favour and there is no challenge regarding said Rules on the ground of arbitrariness or discrimination. The Court under Art.226 cannot rewrite a Rule by stretch of interpretation. This also cannot be treated as a case of discrimination amongst one homogenous class of people as only some specified categories of married daughters are entitled to get benefit of family pension and not all.

21. In ***Union of India v. Deoki Nandan Aggarwal*, 1992 Supp (1) SCC 323**, Hon'ble Supreme Court has held as under:

“ 14. It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself.....”

22. In view of above discussions, it is held that the reliefs as sought by the petitioner claiming family pension on the ground of death of her father cannot be allowed.

23. Accordingly, the writ petition is dismissed. No order as to costs. Interim application(s), if any, shall also stand disposed.

JUDGE