

these factors have been taken into consideration while issuing the prospectus of the Thapar Institute of Engineering and Technology, Patiala, where the petitioner sought admission. In our view, he was rightly declined admission. In the return it has been asserted 27 candidates above the petitioner on merit in the combined entrance test have likewise been refused admission.

(6) For the foregoing reasons, we dismiss this petition *in limine*.

P.C.G.

*Before A. L. Bahri, J.*

RAM SARUP AND ANOTHER,—*Petitioners.*

*versus*

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

*Civil Writ Petition No. 3234 of 1986*

February 27, 1989.

*Punjab Civil Service Rules, Volume II—Rl. 6.16(C) and (B)(ii)—Punjab Municipal Services (Recruitment and Conditions of Service) Rules, 1975—Rls. 15, 16, 17—Punjab Municipal Account Code, 1939—Clause XVI(1)(aa)—Rl. 10(b)—Constitution of India, 1950—Art. 226—Release of payment of Provident Fund, Gratuity, Ex-gratia grant and salary of deceased employee—Brothers of deceased employee applying for such release—Municipal Committee asking them to produce succession certificate with regard to estate of deceased—Succession certificate obtained from civil court, supplied—Non-release by the committee on the ground that brothers having attained majority not covered by the definition of family—Entitlement.*

*Held*, that in the absence of nomination of one of the family members as defined in Clause (XVI)(1)(aa) of Punjab Municipal Account Code. Such of the relations as defined could get the provident fund in the said order. In the absence of any family member as defined, the provident fund is payable to the legal heirs of the deceased as provided under Clause 2(i)(b) of Rl. 10 of Chapter XVI of the Municipal Committee was not justified in refusing to pay provident fund of the deceased employee to the brothers of the deceased as legal heirs who had produced succession certificate.

(Para 7)

Ram Sarup and another v. State of Punjab and another  
(A. L. Bahri, J.)

*Held*, that Rule 17 of the Punjab Municipal Services (Recruitment and Conditions of Service) Rules, 1975 provides for the payment of gratuity. In these rules it is not further provided as to who will be entitled to the gratuity on account of the death of the Municipal employee. Thus in view of Rule 15 of the Rules of 1975, rules applicable to Punjab Government employees would be applied. Rule 6.16A of the Punjab Civil Service Rules, Volume II deals with the subject of death-cum-retirement gratuity. Under clause (v) of the Rules of 1975, brothers below the age of 18 years can claim gratuity. There is no corresponding rule dealing with the payment of gratuity that in the absence of any family member, gratuity would be paid to the legal heirs in these rules. (Para 8).

*Held*, further that Rule 6.16(B)(2) provides for making nomination by Government employee to whom gratuity is to be paid after his death. However, such a nomination cannot be made in the name of a person other than covered by the definition of family. This would show that if members of the family as defined were not available, the Government employee could nominate a third person. The petitioner would be entitled to amount of gratuity only if he had been nominated by the deceased. (Para 10)

*Held*, further that *ex gratia* grant can be given to the brothers of the deceased if they were unemployed and entirely dependent upon the deceased employee. For that they were required to produce certificate from the Deputy Commissioner. There is no allegation that the present petitioners were entirely dependent on the deceased or that they are unemployed. Thus they cannot claim *ex gratia* grant under the rules. (Para 12).

*Held*, further that such amount as the petitioners were found entitled to the Court directed the payment of amount of provident fund, gratuity, salary etc. with interest at the rate of 12 per cent per annum from the death of the deceased employee. (Para 15).

Petition Under Article 226/227 of the Constitution of India praying that:

- (a) *a writ in the nature of Certiorari/mandamus or such other appropriate writ, order or direction be issued declaring the action of the respondent Committee in withholding the payments of provident fund, gratuity ex gratia and arrears of salary due to Hans Raj, deceased, as illegal, arbitrary, un-constitutional and mala fide and also further directing the Respondent committee to withdraw the letters, Annexure P-4 and P-5 and to release the aforesaid payments to the petitioners in view of the Succession Certificate, Annexure P-3.*

- (b) such other appropriate writ, order or direction as may be deemed fit in the facts and circumstances of the instant case may also be issued in favour of the petitioners;
- (bb) filing of Annexures P1, P3 & P6 on petition paper be dispensed with.
- (c) condition of issuance of advance notices to the respondents may be dispensed with;
- (d) condition of filing certified copies of Annexure P-1 to P-3 and P-6 may also be dispensed with;
- (e) records of the case may kindly be summoned for the kind perusal of this Hon'ble Court.
- (f) costs of the petition may be awarded to the petitioners.

Arun Jain, Advocate, for the petitioners.

Munishwar Puri, Advocate, for respondent No. 2.

#### JUDGMENT

A. L. Bahri, J.

(1) The petitioners, Ram Sarup and Shiv Parshad, are brothers of Hans Raj who was employed as Moharrir in the Municipal Committee, Kharar. On his death, the petitioners applied to the Municipal Committee for payment of provident fund, gratuity, *ex gratia* amount as well as salary of Hans Raj deceased. A copy of the application filed by the petitioners dated June 3, 1985, is Annexure P-1. In response to the same, reply was received from the Municipal Committee on June 18, 1985, asking them to produce succession certificate with regard to the estate of Hans Raj deceased. Copy of the said letter is Annexure P-2. The petitioners obtained the succession certificate from the civil Court, copy of which is Annexure P-3. They again approached the Municipal Committee with a representation dated April 30, 1986, copy Annexure P-4. In spite of their best efforts, the amount due was not paid to them. Instead they were asked to produce age certificates. Both the petitioners in this writ petition pray for issuing writ of *mandamus* directing the State of Punjab as well as the Municipal Committee, Kharar, to release payments covered by provident fund, gratuity, *ex gratia* grant and salary.

**Ram Sarup and another v. State of Punjab and another**  
(A. L. Bahri, J.)

(2) Written-statement on behalf of the respondent-Municipal Committee was filed by Shri R. L. Kalsia, P.C.S., Administrator of the Committee. The claim of the petitioners was refuted on the ground that they were not covered under the definition of "family" as defined in clause XVI(1) (aa) of the Punjab Municipal Account Code, 1930, as well as defined in Rule 6.16 (C)-B(1) of the Punjab Civil Services Rules. With respect to the salary, it was stated that a sum of Rs. 812 was due, which the petitioners could collect from the office of the Municipal Committee.

(3) At the time of arguments it was represented on behalf of the Municipal Committee that the amount of salary due has already been disbursed to the petitioners. However, counsel for the petitioners was not in a position to admit or deny this fact. That being the position, the only direction that can be given in the circumstances is that if the amount of salary has not so far been disbursed to the petitioners, it will be done now.

(4) Extract of Rules 15, 16 and 17 of the Punjab Municipal Services (Recruitment and Conditions of Service) Rules, 1975, reads as under :—

"15. *Leave, travelling allowance joining time, suspension, medical facilities, fees and honoraria and other matters.*— In respect of leave, travelling allowance, joining time, suspension, medical facilities, fees, honoraria, house-rent allowance, dearness allowance, fixation of pay, grant of increment, crossing of efficiency bar, deputation and other matters not expressly provided in these rules, members shall be governed by the corresponding provisions contained in the rules applicable to Punjab Government employees. The authority competent to sanction casual leave, earned leave, increment, efficiency bar will be as indicated against each category of Service in Appendix 'D'.

16. *Contributory Provident Fund.*—(1) Member shall be entitled to contribute to the Provident Fund of the Municipal Committee where they are employed for the time being like other subscribers of the committee and shall be governed by the rules contained in Chapter XVI of the Municipal Account Code, 1930.

17. *Gratuity*.—(1) The members shall at their option be entitled to gratuity at such rates as may, from time to time, be notified by the Government or to the amount of gratuity to which they may be entitled under the conditions of service applicable to them immediately before becoming member of a Service, whichever is more beneficial to them.”

(5) For the matters referred, these rules would be applicable and for other matters not expressly provided in these rules, members shall be governed by the corresponding provisions contained in the rules applicable to Punjab Government employees. I will first of all take up the question of payment of provident fund as per Rule 16 mentioned above. For the payment of such a fund, the procedure is prescribed in Chapter XVI of the Municipal Account Code, 1930. Rule 1(aa) of Chapter XVI of the Code defines family as under :—

“Family” means a subscriber’s husband and wife, legitimate children, and step-children, parents, sisters and minor brothers residing with the wholly dependent on the subscriber, and the widow and children of a deceased son of the subscriber.”

(6) The contention of counsel for the Municipal Committee is that since the petitioners are not minor brothers of the deceased, they do not fall under the category of family as defined above and, therefore, they are not entitled to the payment of provident fund. This contention cannot be accepted. Chapter XVI, Rule 10(b) reads as under :

(b) *When the subscriber leaves no family*.—(i) If a nomination made by him in accordance with the provisions of rule XVI, 9-A in favour of any person or persons subsists the amounts standing to his credit or the part thereof to which the nomination relates shall become payable to his nominee or nominees in the proportion specified in the nomination.

(ii) Or if no nomination is made by him in accordance with the provisions of Rule XVI 9-A subsists, or if such nomination relates only to a part of the amount standing to his credit in the fund, the whole amount or the part thereof which the nomination does not relate, shall be payable to his legal heirs”

Ram Sarup and another v. State of Punjab and another

(... ..)

(7) The deceased could have nominated one of the family members as defined under clause (aa) as referred to above to be entitled to be paid the provident fund. In the absence, such of the relations as defined could get the provident fund in the said order. In the absence of any family member as defined, the provident fund is payable to the legal heirs of the deceased as provided under clause 2(i) (b) of Rule 10 of Chapter XVI as reproduced above. The Municipal Committee-respondent thus was not justified in refusing to pay the provident fund of Hans Raj deceased to the present petitioners as legal heirs who had produced succession certificate before it.

(8) Rule 17 of the Rules of 1975 as reproduced above provides for the payment of gratuity. In these rules, it is not further provided as to who will be entitled to the gratuity on account of the death of the Municipal employee. Thus in view of Rule 15 of the Rules of 1975 as referred to above, rules applicable to Punjab Government employees would be applied. Rule 6.16-A of the Punjab Civil Services Rules Volume II deals with the subject of death-cum-retirement gratuity. Rule 6.16-B(1) (a) defines family as under :—

“family shall include the following relatives of the officer :—

- (i) wife or wives including judicially separated wife or wives, in the case of male officer;
- (ii) husband including judicially separated husband, in the case of female officer;
- (iii) sons:
- (iv) unmarried and widowed daughters
- (v) brothers below the age of 18 years and unmarried and widowed sisters, including step brothers and sisters;
- (vi) father;
- (vii) mother;
- (viii) married daughters; and
- (ix) children of a predeceased son.”

(including  
step-children  
and adopted  
children).

} including adopted parents  
} in case of individuals whose personal law  
} permits adoption.

(9) Under clause (v) as referred to above, brothers below the age of 18 years can claim gratuity. There is no corresponding rule dealing with the payment of gratuity that in the absence of any family member, gratuity would be paid to the legal heirs in these rules.

(10) Rule 6.16-B(2) provides for making nomination by the Government employee to whom gratuity is to be paid after his death. However, such a nomination cannot be made in the name of a person other than covered by the definition of family as referred to above. This would show that if members of the family as defined were not available, the Government employee could nominate a third person. As to whether Hans Raj deceased had nominated the present petitioners or not is apparent from the file of the case. On behalf of the Municipal Committee it has not been shown as to whether Hans Raj had nominated either the petitioners or any third person to receive the gratuity. In such circumstances, the only direction that can be given in this writ petition is that in case Hans Raj had nominated the present petitioners, the amount of gratuity due may be given to them.

(11) The petitioners also claim *ex-gratia* grant on account of the death of Hans Raj. Rule 2.7 of the Punjab Civil Services Rules Volume II is on the subject. This provides that Government may allow *ex-gratia* to members of the family of the Government employee who dies while in service as indicated in the Annexure to this chapter. Sub-rule 3 of Annexure referred to provides that this *ex-gratia* grant is payable to the following members of the family of the deceased employee and in the order mentioned below :

- |  |                       |  |
|--|-----------------------|--|
| <ul style="list-style-type: none"> <li>“1. Widow or husband, as<br/>the case may be</li> <li>2. sons and daughters</li> <li>3. father</li> <li>4. mother</li> <li>5. brothers and sisters</li> </ul> | }<br>-<br>}<br>}<br>} | If they are unemployed and<br>were entirely dependent on the<br>deceased employee as certified<br>by the Deputy Commissioner.” |
|--|-----------------------|--|

(12) The above rule is quite clear that brothers can get the *ex-gratia* grant only if they were unemployed and entirely dependent on the deceased employee. For that they were required to produce certificate from the Deputy Commissioner. There is no allegation that the present petitioners were entirely dependent on the deceased, Hans Raj, or that they are unemployed. Thus they cannot claim *ex-gratia* grant under the rules.

(13) Annexure P-3 is copy of the succession certificate obtained by the petitioners under Section 372 of the Indian Succession Act from the Court of Sub Judge 1st Class, Kharar. It refers to provident fund, salary, gratuity and *ex-gratia* grant payable on account

Ram Sarup and another v. State of Punjab and another  
(A. L. Bahri, J.)

of the death of Hans Raj, an employee of the Municipal Committee, Kharar, to Ram Sarup and Shiv Parshad, to the extent of 4/5th and 1/5th share respectively with interest. Thus the present petitioners would be entitled to the amount as discussed above in that proportion.

(14) Since the Municipal Committee did not pay to the petitioners the amount due after the death of Hans Raj, the petitioners would be entitled to the interest on such amount as they were deprived of the same illegally by the Municipal Committee.

(15) For the reasons recorded above, this writ petition is partly allowed. Respondent No. 2, the Municipal Committee, is directed to pay the amount of provident fund, gratuity, if any, and salary, if due, as observed above, to the petitioners, Ram Sarup and Shiv Parshad, 4/5th and 1/5th respectively with interest at the rate of 12 per cent per annum from the date of death of Hans Raj till payment. The petitioners would get costs of this petition. Counsel fee Rs. 500.

R.N.R.

Before A. L. Bahri, J.

KARNAIL SINGH,—*Petitioner.*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 3237 of 1984*

March 7, 1989.

*Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rls. 12.1, 13.3(2), 13.9 and 13.10—Compulsory retirement—Petitioner confirmed as A.S.I. and promoted as S.I. by D.I.G.—S.P. not competent to pass order of compulsory retirement—Adverse remarks in A.C.R. communicated—Order of compulsory retirement cannot be passed before decision on representation against adverse remarks.*

**Held, that for all intents and purposes the appointing authority of the petitioner to the post of Assistant Sub Inspector and Sub Inspector was Deputy Inspector General of Police and not the**