
Before M. M. Kumar, J

PHOOL KUMARI,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondent*

C.W.P. No. 20234 of 2002

The 18th May, 2005

Constitution of India, 1950—Arts.226—Indian Succession Act, 1925—Punjab Civil Services Rules, Vol. II—Rules, 2.7, 6.16—B(vii)—Death of a Government employee in harness—Claim for release of retiral and pensionary benefits by his parents—Succession certificate obtained by the competent Court empowers the mother of deceased to collect the amount of retiral benefits—Department making payments to the petitioner in respect of G.P. Fund, DLI and leave encashment—Denial of claims of gratuity, ex-gratia grant and pension—Challenge thereto—Deceased in a will nominating his parents to claim all the benefits—Rl. 6.16—B(vii) entitles the parents for payment of death-cum-retirement gratuity—Under Rl. 2.7 mother is also entitled to claim ex-gratia grant—In the absence of a claim made by the widow of deceased, claim made by the mother cannot be considered as illegal—Refusal to grant the payments to the petitioner not justified—Petition allowed.

Held, that a perusal of Rl. 6.16-B(vii) of the Punjab Civil Service Rules, Volume II shows that death-cum-retirement gratuity can be claimed by the parents, father as well as mother. It is true that right of the widow to claim such a benefit has been given priority but in the absence of a claim made by the widow, the claim made by the mother cannot be considered as illegal.

(Para 7)

Further held, that the claim with regard to *ex-gratia* grant is also meritorious. According to Rule 2.7 of the Rules, the *ex-gratia* grant has been allowed to the member of a family of the Government employee and in the list appended to Rule 2.7 by way of annexure, mother is one of the members of the family who is entitled to claim *ex-gratia* grant.

(Para 9)

Further held, that a succession certificate is a conclusive proof of the right of the holder to recover the amount in respect of which it has been issued. There is another aspect of the matter, the respondent-Department has already made payment to the petitioner in respect of G.P. Fund, D.L.I. and leave encashment. No justification for refusing the amount claimed has been given. If the aforementioned amount has been paid to the petitioner, then there is no reason to deny her the payment of death-cum-retirement gratuity and the amount of *ex-gratia*.

(Paras 10 & 11)

I.D. Singla, Advocate and Mr. Vivek Singla, Advocate, *for the petitioner*.

Mansur Ali, DAG, Punjab, *for the respondents*.

JUDGMENT

M.M. KUMAR, J.

(1) The instant petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of *certiorari* quashing order, dated 24th September, 2002, Annexure P-4 passed by the Accountant General, Punjab-respondent No. 3 declining the claim of the petitioner for death-cum-retirement gratuity, *ex-gratia* grant and family pension alongwith interest thereon. The aforementioned claim is based on the fact that her son died in harness.

(2) Brief facts of the case necessary for disposal of the instant petition are that one Onkar Singh who was son of the petitioner had died in harness on 18th April, 2000. He was working as Packer in the Department of Printing and Stationery, Government of Punjab. He had joined service in February, 1969. It is claimed that the petitioner who is mother of Onkar Singh had approached the respondent-Department for release of retiral and pensionary benefits to her as well as to her husband being father of Onkar Singh on the ground that Onkar Singh had died with a status as unmarried. The respondent-Department issued a letter Annexure P-1 to the petitioner that succession certificate has to be obtained from a competent court and the same be submitted to the department. A total amount of Rs. 3,94,054 being D.C.R.G., G.P. Fund, Leave encashment, D.L.I. and *ex-gratia* was admittedly payable to Onkar Singh. On 25th February, 2002, the petitioner obtained a succession certificate with a specific direction that a sum of Rs. 3,94,054 is lying with the

respondent-Department which is due to Onkar Singh and the certificate empowers the petitioner being the mother of Onkar Singh to collect that amount. However, the petitioner also submitted her claim for family pension alongwith the succession certificate. The respondents have paid to the petitioner a sum of Rs. 31,574 on account of Leave encashment on 2nd August, 2002, G.P. Fund amount of Rs. 1,14,248 on 26th July, 2002 and D.L.I. amount of Rs. 10,000 on 3rd September, 2002. In respect of claims of death-cum-retirement gratuity, *ex-gratia* grant and death-cum-family pension, the matter was referred to the Accountant General who raised the objection,—*vide* letter, dated 15th December, 2000 expressed the view that the succession certificate is altogether a separate thing and would not apply to the retiral benefits which are governed by statutory rules framed under Article 309 of the Constitution and the Punjab Civil Service Rules, Volume II (for brevity) the Rules. The aforementioned rejection of claim has been made subject matter of challenge in the instant petition.

(3) Two separate written statements have been filed. Respondents 1 and 2 in their written statement have admitted the facts with regard to service rendered by Onkar Singh. However, it has been disputed that Onkar Singh was unmarried. In this regard, reference has been made in the will, dated 19th February, 1998 (Annexure R-29) showing that Onkar Singh was married twice. The first wife had divorced him and the second wife deserted him and started living with some one else. A perusal of the will also shows that Onkar Singh has nominated his parents to claim all the benefits like G.P.F., gratuity and *ex-gratia* etc. He has disqualified and disentitled everyone else. Various other documents have also been placed on record showing that he has taken leave on account of illness of his wife or the children.

(4) Respondent No. 3 in its written statement has taken the stand that deceased Onkar Singh had two wives and when the pension papers submitted by the petitioner his mother, were examined by the Accountant General, the same were returned to the Administrative department with the objection that family pension is first admissible to the wives in equal shares. it has further been asserted that pensionary benefits cannot be released on the basis of a succession certificate as these are governed by the Rules which are framed under Article 309 of the Constitution. It has further been pointed out that office of Accountant General has no concern with the payment of *ex-gratia* amount.

(5) Mr. I.D. Singla, learned counsel for the petitioner has argued that mother is included in the list of beneficiary in Rule 6.16-B(vii) of the Rules. Learned counsel has also argued that succession certificate issued by the District Judge guarantees the payment of various amounts and cannot be discarded by the respondents as per the provisions of Section 381 of the Indian Succession Act, 1925. According to the learned counsel, the will Annexure R-29 goes in favour of the petitioner and she would in any case be entitled to claim the death-cum-retirement gratuity of her son. In respect of *ex-gratia* payment, learned counsel has drawn my attention to Rule 2.7 of the Rules and the annexure appended thereto. By referring to paragraph 3 of the annexure appended to Rule 2.7 of the Rules, learned counsel has submitted that *ex-gratia* grant is payable to the mother also besides widow, sons, daughters and father. Therefore, there is no impediment in the claim made by the petitioner with regard to *ex-gratia* payment of Rs. 50,000 also. Mr. Singla has not pressed for the claim of family pension.

(6) Mr. Mansur Ali, learned State counsel has referred to the will and argued that second wife of Onkar Singh has not been divorced and she was alive at the time of his death. According to the learned counsel, in the presence of widow of Onkar Singh, the mother or father cannot make a claim in respect of death-cum-retirement gratuity and *ex gratia* payment. Learned counsel has referred to the stand taken by the Accountant General to argue that the succession certificate issued by the District Judge would not govern the payment relating to retiral benefits including the death-cum-retirement gratuity and *ex gratia*.

(7) After hearing learned counsel for the parties and perusing the record, I am of the considered view that this petition deserves to succeed. A perusal of Rule 6.16-B(vii) of the Rules would show that for the purposes of death-cum-retirement gratuity, a number of persons with their status have been mentioned who are entitled to that payment. The mother is also included as is evident from sub-rule (vii) of the Rules. The aforementioned rule reads as under :—

“B. Death-cum-Retirement Gratuity

6.16-A. xx xx xx xx
 xx

6.16-B.(1)(i) to (vi), xx xx xx

(vii) mother including adopted parents in case of individuals
 whose personal law permits adoption.”

A perusal of the above rule shows that death-cum-retirement gratuity can be claimed by the parents, father as well as the mother. It is true that right of the widow to claim such a benefit has been given priority but in the absence of a claim made by the widow, the claim made by the mother cannot be considered as illegal. The aforementioned claim deserves to be considered in light of the fact that will dated 19th February, 1998 categorically grants the benefits to the petitioner as well as to her husband to make claim with regard to gratuity, G.P.F., *ex gratia* etc. and has excluded everybody else. Moreover, when the petitioner filed the application before the District Judge for the issuance of succession certificate, notice to the General Public had been issued. No one from the general public including the wife appears to have come forward to raise the objection against issuance of such a certificate in favour of the petitioner. Had there been the wife interested in making the claim, she would have certainly come forward with such a claim. It may be that she is not interested in making a claim as she might be happily settled with the man where she started living after deserting Onkar Singh. Therefore, the plea taken by the respondents that there is a woman with status of wife of Onkar Singh does not deserve to be accepted.

(9) Similarly, the claim with regard to *ex gratia* grant is also meritorious. According to Rule 2.7 of the Rules, the *ex gratia* grant has been allowed to the member of family of the Government employee and in the list appended to Rule 2.7 by way of annexure, mother is one of the members of the family who is entitled to claim *ex gratia* grant. The aforementioned Rule 2.7 of the Rules alongwith relevant extract of the annexure appended thereto reads as under :—

“2.7. Government may allow *ex gratia* grant to the members of the family of a Government employee, including a member of All India Service serving under the Punjab Government who dies while in service as indicated in the Annexure to this Chapter.

Annexure

(Referred to in rule 2.7)

1. The *ex gratia* grant is intended for providing relief to the family of a Government employee, paid monthly from the State revenues whether the rates of pay are fixed on a daily or a monthly basis, who dies while in service.
2. The *ex gratia* grant will be equivalent to twenty times the emoluments which the deceased employee was receiving immediately before his death, subject to a minimum of ten thousand rupees and maximum of thirty thousand rupees. The admissible amount has been raised to Rs. 50,000 on a uniform rate,—*vide* Government Letter No. 1/7/98-1FP3/8709, dated 16th July, 1998.
3. The term emoluments for this purpose shall mean the pay an employee would have drawn had he not been absent from duty or under suspension as defined in rule 2.44 of the Punjab Civil Service Rules, Vol. I, Part I and will also include Dearness Pay. The *ex gratia* grant will be payable to the following members of the family of the deceased employee and in the order mentioned below :—

- | | |
|---|--|
| 1. Widow or husband, as the case may be | .. If they are unemployed & were entirely dependent on the deceased employee |
| 2. Sons and Daughter | .. |
| 3. Father | .. |
| 4. Mother | .. |
| 5. Brothers and Sisters | .. as certified by the Deputy Commissioner.” |

(10) It is further appropriate to mention that a succession certificate is a conclusive proof of the right of the holder to recover the amount in respect of which it has been issued. The aforementioned view has been taken by a Division Bench of Madras High Court in the case of **Muthiah Chettiar and others versus M.P.M.R.M.N. Ramanatham Chettiar and others**, (1). Similar view has been taken in the cases of **Charan Das versus Nathu Mal Doonger Mal**, (2) and **Shev Shetty versus Jamna Bai**, (3).

(11) There is another aspect of the matter, the respondent-Department has already made payments to the petitioner in respect of G.P. Fund, D.L.I. and leave encashment. No justification for refusing the amount claimed has been given. If the aforementioned amount has been paid to the petitioner, then there is no reason to deny her the payment of death-cum-retirement gratuity and the amount of *ex gratia*.

(12) For the reasons stated above, this petition succeeds and consequently order Annexure P-4 issued by respondent No. 3 is quashed. The petitioner is held entitled to the payment of death-cum-retirement gratuity and *ex gratia* amount of Rs. 50,000. A direction is issued to respondents 1 and 2 to release the payment of death-cum-retirement gratuity as well as *ex gratia* payment within a period of three months from today. The petitioner shall also be entitled to interest at the rate of 6% per annum. The petitioner shall furnish an indemnity bond to the respondent-Department so as to secure the interest of widow who might appear to make a claim of death-cum-retirement gratuity and *ex gratia* amount of Rs. 50,000.

R.N.R.

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- (1) AIR 1917 Madras 1
(2) AIR 1934 Lahore 79
(3) AIR 1956 Hyderabad 59