

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

OWP No.80/2007, CMA No.102/2007

Date of Judgment: 06/08/2014

Ravinder Kour and anr.

Vs.

UOI and ors.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat-Judge

Appearing counsel:

For Petitioner(s) : Mr.V.R.Wazir, Sr. Advocate with
Mr. Manish, Advocate.

For Respondents (s) : Mr.P.S.Chandel, CGSC

Whether approved for reporting in law journals? : **Yes/No**

Whether approved for publishing Press/Media ? : **Yes/No/Optional**

1. Petitioners happen to be the parents of one Balbir Singh who was serving as constable NO.911325971 in CRPF and died in harness in an IED blast triggered by militants on national highway at Ramsoo Tehsil Banihal when, on 11.11.2002, he alongwith other constables was travelling in a bus forming part of a convoy from Srinagar to Jammu. The tragic blast consumed lives of three CRPF Jawans including Balbir Singh while some others sustained injuries. Case for offence under Section 302/307 RPC and 7/27 Arms Act came to be registered in this regard. Body of deceased was brought to his home village for cremation and the same was consigned to flames at Shastri Nagar Crematorium with

full Military Honours. The deceased was the eldest son of petitioners. It is claimed by petitioners that the deceased had, at the time of joining service, nominated his mother Ravinder Kour- petitioner No.1 as nominee in the official records which continued to operate till his death. The deceased was married to respondent no.4 – Kamaljit Kour. However, respondent no.4 left the house of petitioners after the death of Balbir Singh and started living with her parents. It is alleged that respondent no.4 received maximum monetary benefits from Central Government at the back of petitioners and was also pursuing her case for grant of family pension.

2. It is the further case of petitioners that respondent no.4 has obtained a succession certificate from Court of Civil Judge Batala in regard to service benefits of deceased and in view of the same respondent no.3 has asked petitioner no.1 to get the matter regarding payment of death cum retirement gratuity settled. Petitioners claim to have replied the communication stating that respondent No.4 has obtained succession certificate by misrepresentation of facts without arraying petitioners as a party before the Civil Court. Petitioners also claimed that petitioner no.1 being the nominee of deceased was entitled to receive the death cum retirement gratuity of deceased. That respondent no.3

again sent a communication to petitioners stating that respondent no.4 had filed an affidavit for disbursement of pension as well as DCRG in her favour; therefore, petitioner no.1 was directed to get the matter settled from the Court of law.

3. According to petitioners, the deceased suffered fatal injuries at Ramsoo Tehsil Banihal and he was cremated at Shastri Nagar Jammu. He was not a resident of Batala. Thus the Civil Court at Batala had no jurisdiction to issue the succession certificate. It is further claimed that in terms of Rule 50 of Central Civil Services Pension Rules of 1972 death cum retirement gratuity of a deceased employee is payable only to a nominee and since petitioner no.1 was a nominee, she was the only person entitled to receive the same.
4. Respondents 1 to 3 have filed objections pleading that it was learnt after the death of deceased that the deceased, despite being married, had not submitted any nomination in favour of his wife but nomination was available in favour of his Mother – Ravinder Kour – petitioner no.1. Therefore, respondent no.4 – the wife of deceased was directed to submit succession certificate and she submitted the succession certificate issued by Sub Judge, Junior Division Batala exercising powers of District Judge Gurdaspur under Indian Succession Act.

Accordingly payment of all pensionary benefits of deceased Balbir Singh was made to respondent no.4 except DCRG as nomination form for payment of DCRG was held in favour of petitioner no.1 who did not furnish willingness for payment of DCRG to respondent no.4. That it was for the petitioners to agitate their claim before a Competent Appellate Forum or seek revocation of the Succession Certificate if the same had been obtained by misrepresentation of facts.

5. Respondent no.4, despite notice, did not appear to contest the petition. She was set exparte.
6. Heard and considered.
7. The factum of deceased Balbir Singh having died in harness in a tragic IED blast triggered by terrorists on the given date and place is not in controversy. It appears that the deceased, despite being married, did not nominate his wife – Kamaljit Kour- respondent no.4 as a nominee in the service book. Instead he nominated his mother – petitioner No.1 as his nominee and the same continued till his fatal end. It further appears that on the strength of a succession certificate obtained by respondent no.4 from Civil Judge, Junior Division Batala (exercising powers of District Judge under Indian Succession Act), all service benefits except death cum

retirement gratuity of deceased were paid to respondent no.4 which implies that the succession certificate was obtained by respondent no.4 from Batala in Gurdaspur District of Punjab to the exclusion of parents of deceased while the fatal accident had occurred at Ramsoo Tehsil Banihal and the deceased and his parents belonged to Jammu in the State of Jammu and Kashmir. It is indisputable that under Hindu Succession Act, petitioner no.1 being mother of the deceased is a class –I heir of the deceased entitled to a share in the service benefits of deceased alongwith respondent no.4. Petitioners allege that Respondent no. 4 procured succession certificate regarding service benefits of deceased from a court in Punjab lacking jurisdiction by misrepresentation of facts and without arraying them as party respondents. Since respondent no.4 has not appeared to contest the petition, such allegations are deemed to be admitted. The question arising for consideration is whether the petitioner would be entitled to claim the benefit of death cum retirement gratuity of deceased to the exclusion of respondent no.4 on the strength of her nomination in service book of the deceased.

8. Payment of death gratuity is regulated by provision contained in Rule 50 (1) (b) of Central Civil Services

Pension Rules, 1972. The Rule provides that if a Government servant dies while in service, the death gratuity shall be paid to his family in the manner indicated in sub-Rule 1 of Rule 51 which provides that the gratuity shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under Rule 53. In terms of Rule 53, a Government servant is required to make a nomination conferring on one or more persons the right to receive gratuity payable under Rule 50. Such nomination is to be made on the initial confirmation of Government servant in a service or post. The proviso to the rule provides that if the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family. Sub Rule-2 provides that if the Government servant nominates more than one person, he shall specify in the nomination the amount of share payable to each of the nominees.

9. Applying the principles embodied in these rules to the fact situation of instant case be it seen that respondent no.4 has not contested the claim of petitioner no.1 on the strength of latter being the nominee of deceased. From pleadings of the parties, it does not emerge whether the option of nominating respondent no.4 was

available to the deceased at the time of making nomination. It is also not forthcoming from record that the deceased was called upon to revise the nomination in his service book after he acquired a family. Be that as it may, the fact is that the petitioner no.1, besides being a class –I heir of deceased alongwith respondent no.4, is the nominee of deceased which has not been declared invalid on the strength of deceased having acquired a family subsequently. Thus viewed, the instant case cannot be treated as a case of ‘no valid nomination’, moreso as respondent no.4 has not chosen to rebut or refute the petitioner’s claim. In the peculiar circumstances of instant case, where the head of office has not taken steps to obtain fresh/revised nomination form from the deceased after his marriage, the petitioner no.1, on strength of the nomination subsisting in her favour, cannot be denied the benefit of death gratuity of deceased.

10. In view of the foregoing discussion, the petition is allowed. Let Writ of mandamus commanding respondents 1 to 3 be issued to release and disburse death cum retirement gratuity amount in favour of petitioner no.1 together with interest accrued thereon, if any, subject to filing of an undertaking that in the event

of any other person being found entitled to a share therein, petitioner no.1 shall reimburse the same.

Disposed of alongwith connected CMA's.

(Bansi Lal Bhat)
Judge

Jammu:
06.08.2014
Varun Bedi