

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.1001 of 1997 decided on 3.11.1998.

Name of Applicant : Smt. Lakhraji Devi

By Advocate : Shri D.R. Roy

Versus

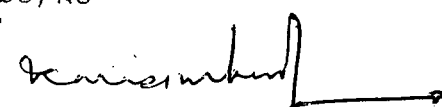
Name of respondent/s Union of India & another

By Advocate : Shri R.P. Aggarwal

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. - ~~Yes~~/No


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1001 of 1998

New Delhi, this the 3rd day of November, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)

Smt. Lakhraji Devi, Wife of late Sh. Ram Shankar, Gate Keeper (R.M.) Deptt. of Telecom, Presently residing at C/o Shri Har Kishan Sharma @ Pappu, Sonia Vihar, near Yaumna Vihar, New Delhi-110032

-APPLICANT

(By Advocate Shri D.R.Roy)

Versus

Union of India through

1. Director General, Deptt. of Telecom, Sanchar Bhawan, New Delhi-110001.

2. General Manager, Telecommunications, Sector-16, Faridabad, Haryana-121001. -RESPONDENTS

(By Advocate Shri R.P. Aggarwal)

ORDER

By Mr. N. Sahu, Member (Admnv) -

The prayer in this Original Application is to direct payment of pension and gratuity to the applicant along with other dues as per law and pay due compensation for the accidental death of her husband due to injuries sustained while on duty.

2. The applicant's husband Shri Ram Shankar was employed as a regular Mazdoor. He died on 13.7.1996. The other undisputed facts are that the applicant was paid Rs. 10,000/- for the purpose of treatment of the deceased. The retirement benefits were not released on the ground that there was no nomination in favour of the applicant or anybody else. In the absence of any nomination and as respondent no.2 received a notice dated 10.5.1997 from the Civil

Judge, Faridabad enclosing a copy of the succession petition filed by one Jagdish Prasad, the retirement benefits could not be released. The allegation of the applicant in the O.A. is that the youngest brother of her husband Shri Ram Karan is also an employee of the respondents and in collusion with Jagdish the claimant to succession who is a nephew of the applicant's husband had tried to put a spanner in the process of the payment of retiral benefits to the applicant.

3. The respondents have filed an affidavit before the Additional Civil Judge, Faridabad as a reply to the Succession claim filed by Shri Jagdish. The averments of the respondents deserves to be extracted -

PRELIMINARY OBJECTIONS -

"3. That the petitioner has concealed the material facts of the case and has not come to the court with clean hands. He has no relationship with the deceased as per the records available with the answering respondent. Rather the deceased has left his wife Smt. Lakhraji Devi who is the sole dependent survivor as the couple has no issues and no other dependent. (emphasis supplied)

4. That the petitioner has no locus standi to file the present petition as the wife of the deceased Ram Shankar is the successor legally as per the Schedule under the Hindu Succession Act, 1956 as Class I heir of the deceased and the petitioner falls nowhere in the schedule Class-I."

REPLY PARAWISE -

3. That para no:3 of the petition is wrong and denied for want of knowledge and the petitioner may be put to strict proof. However, the deceased Ram Shankar has nowhere given any name of the nominee to the answering defendant and therefore there is no mention of any nominee in the service book of the deceased. The deceased Ram Shankar has only twice availed L.T.C. in the year 1988-89 for himself and his wife and also for

the year 1992-93 L.T.C. in his name as Ram Shankar aged 40 years along with Smt. Lakhraji Devi aged 30 years as wife and the same was also paid to the deceased Ram Shankar... On the contrary the answering respondent is having the Identity Card issued by the Election Commissioner of India of Shri Ram Shankar son of Ganga Ram bearing no. HR/06/51/291456 and of Smt. Lakhraji Devi wife of late Shri Ram Shankar aged 46 years bearing no. HR/06/51/291457 and the address mentioned at the back of the Card has been shown as 174 Jhuggiyan Neelam Bata, Ward No.16, N.I.T. Faridabad issued on 23.11.1994. It is, therefore, submitted in reply to this para that the wife of the deceased Ram Shankar is also the claimant to receive all the legal dues of the deceased and the amounts left by the deceased with the answering defendant.....

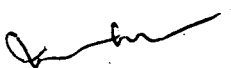
4. That para no.4 of the petition is also wrong and denied. The petitioner is not covered as Class-I heir as per the Schedule of the Hindu Succession Act. The wife of the deceased Ram Shankar has the first and the exclusive entitlement to the claim of the deceased Ram Shankar as per the Hindu Succession Act. The petitioner is therefore not entitled for any amount of debts and securities left by the deceased Ram Shankar."

4. For the simple reason that a notice was issued by a Civil Court the respondents have stopped payment of the retiral dues. There is no interim stay order by the Civil Court in the Succession Petition prohibiting the respondents from making payment of any retiral dues. The respondents are satisfied that in their record the applicant is the legally wedded wife; that she and her husband were allowed two LTC claims thereby recording and accepting the status of the applicant as the legally wedded wife. The identity card by the Chief Election Commissioner states the applicant and her late husband as wife and husband and the fact that no other evidence exists denying or doubting the status of the applicant as the wife points out to the frivolous nature of the applicant's succession

petition. Under these circumstances depriving the widow of pensionary benefits and even family pension amounts to unjust deprivation of legal statutory dues. A mere claim disputing the right cannot stop the payment of statutory dues particularly when the respondents have no doubt whatsoever in their mind about the status of the applicant. Under these circumstances it would be totally unjust to allow the applicant to starve and to deprive her of family pension and GPF till the petition before the civil court is disposed of. These cases take an inordinate length of time and meanwhile the very spirit of payment of family pension is nullified if such an attitude is adopted by a court which protects and guards the rights of a citizen.

5. According to the Government of India's instructions as well Section 5 of the Provident Funds Act, 1925 the right of a nominee to receive the PF money of a subscriber is absolute and this right subsists unless the nomination itself is held invalid. Even in cases where there is no nomination made by the subscriber the PF money is required to be paid to the members of the deceased subscriber's family in the order prescribed in the appropriate GPF Rules. It would thus appear that even a Court of Law cannot order that PF money of a subscriber should be appropriated to meet any other liabilities of the deceased subscriber or paid to person other than those mentioned in nomination directly made by the subscriber or in the absence of a nomination to persons other than the deceased subscriber's family in the prescribed order of precedence.

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6. Under the Government of India decision no.(13) under Rule 54 of the CCS (Pension) Rules, 1972 family pension cannot be granted even to the second wife. This decision having the effect of modifying the rule is issued in the light of Section 5 of the Hindu Marriage Act, 1955. It is clear that family pension is payable only to the legally wedded wife of the deceased Government servant. According to Rule 51(1)(b)(i) of the CCS (Pension) Rules where there is no nomination or if the nomination made does not subsist, the gratuity shall be paid equally among the wife and other dependant children as per rules.

7. In Govt. of India, Ministry of Finance O.M.No. 7(5)-E.V(B)/74 dated the 22nd January, 1975, incorporated below Rule 53 of the CCS (Pension) Rules, 1972, the decision is as under -

A number of cases have also come to notice of Government where Government servants having died without making any valid nominations, the surviving members of their family approach courts for grant of succession certificates in order to entitle them to their share of the gratuity. It may be clarified in this regard that payment of death/retirement gratuity to the members of family of a deceased Government servant is normally to be made according to the relevant service rules. While payment on the basis of a succession certificate would discharge Government's liability, a succession certificate does not necessarily create an obligation on the part of the Government to pay the amount. Such a claim can be resisted if it is otherwise not in order. Therefore, in order to save the families of the Government servants from the expenditure involved on the court fees for obtaining succession certificates and the inevitable delay which this process entails, the Government servants may be advised to file their nominations in the prescribed forms without fail."

[Handwritten signature]

8. The respondents are clearly satisfied that Smt. Lakhraji Devi is the legally wedded wife of the deceased employee and, therefore, in the absence of a nomination and issues, her right to provident fund and gratuity as a priority heir is undisputed and legally valid. The respondents are presumably satisfied that the applicant has tendered her claim in accordance with the family pension rules and the provisions of gratuity rules. They are duty bound to apply the rules and are obliged under law to pay the amount to the legally wedded wife. A mere filing of a petition under Section 372 of the Indian Succession Act, 1925 for grant of succession certificate in respect of a debt and securities of late Shri Rama Shankar before the Civil Judge Faridabad does not create a right in favour of Shri Jagdish Parsad, who is claimed to be the nephew of the deceased. This would frustrate the purpose of paying family pension to a widow particularly when the only earning member, namely, her husband died. It is incorrect on the part of the respondents to defer the payment till the Civil Court issues a succession certificate in respect of the applicant or denied the same to Shri Jagdish Parsad. There is no provision in the pension rules, family pension rules, GPF rules that a legally wedded wife has also to produce a succession certificate as a condition precedent for receiving the statutory dues. The respondents cannot travel beyond the rules and impose a condition for payment to the applicant of what is legally due to her.

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However, I would dispose of this O.A. by giving a simple direction to the respondents in the following manner -

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The respondents shall put Shri Jagdish Parsad on notice within two weeks from the date of receipt of a copy of this order stating their the accepted position about the status of the applicant as the legally wedded wife and their obligation under law to make the payment of provident fund, family pension and gratuity. They may also allow a further period of three months to Shri Jagdish Parsad to place before them either an order of stay or an injunction from a competent Civil Court restraining them to make the payment of the above statutory dues to the applicant in view of Shri Jagdish Parsad's disputed claim. If the respondents do not receive any order from a competent civil court restraining or prohibiting them from making the payment either by way of a stay, injunction or any other order under the C.P.C. within the above time - limit, they shall promptly make the payment of all the retiral dues to the applicant. If the respondents fail to make the payment of above statutory dues after the expiry of the period of three months mentioned above, they are hereby directed to pay an amount of interest at the rate of 18% per annum. The O.A. is disposed of as above. No costs.

rkv.

N. Sahu
(N. Sahu)
Member (Admnv) 3/11/98