

(Reserved)

Central Administrative Tribunal, Allahabad Bench, Allahabad

O.A. No.330/00054/2013

This the 16th day of March, 2021.

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)

Usha Devi wife of late Santosh Kumar village Bhakhmoodpur Quazi & Post Kokhraj District Kaushambi, presently residing at House No. 43, Indra Nagar Colony (Uphar) Glass Factory, Bamrauli, Allahabad.

Applicant

By Advocate: Ms. Susmita Mukherji

Versus

1. General Manager, Northern Central Railway, Allahabad.
2. Divisional Railway Manager, Northern Central Railway, Allahabad.
3. Deputy Finance Manager, DRM Office, Northern Central Railway, Allahabad.

Respondents

By Advocate: Sri Santosh Kumar Rai

ORDER

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

The instant Original Application has been filed, seeking the following reliefs:-

- a) To issue writ order or direction in the nature of mandamus commanding the respondents to release the pensionary benefit in favour of the petitioner being dependent wife of the deceased employee Santosh Kumar.
- b) To issue any other suitable order or direction which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case.

2. Shorn of unnecessary details, the facts relevant for a proper adjudication of the controversy, involved in this O.A., are that the applicant, Usha Devi, is the wife of late Santosh Kumar, who was working as a Driver under "Mandal Rail Prabandhak", Allahabad

(respondent No. 2) and who was murdered by some persons. He left behind him, his widow, Usha Devi (applicant), 3 sons and a daughter and also 3 daughters from his first wife late Bela Kumari, who pre-deceased late Santosh Kumar. After the death of Santosh Kumar, some dispute arose between the three daughters of first wife and the applicant and her children regarding succession. Later on, all of them arrived at a settlement by which it was amicably agreed between them that second wife, namely Usha Devi (the applicant) and her 4 children will avail pensionary benefits and the amount of life insurance policies of the deceased and the 3 daughters from his first wife will receive amount of GPF, Gratuity and Group Insurance of the deceased employee, which was to be later divided equally among them i.e. the 3 daughters from his first wife.

3. An application along with the said compromise deed was filed by the parties before the competent court with prayer to grant succession certificate, in accordance with the terms and condition of the compromise deed, which was registered as case No. 8/10/2006 Smt. Usha Devi Vs. Sunita Kumari and others before the Court of Civil Judge, Senior Division, Kaushambi. It was decided vide order dated 27.1.2008 in terms of the compromise. Copy of the order dated 27.1.2008, passed by Civil Judge, Senior Division, Kaushambi, has been annexed by the applicant as Annexure No. A-3 to the O.A.

4. For a ready reference, the order dated 27.1.2008, passed by Civil Judge, Senior Division, Kaushambi is reproduced below:-

“U; k; ky; fl foy tt (I hOMhO) tuin dikkEch A

mRrjkf/kdkj okn I ; k 8/10/2006

Jherh m'kk noh vlfn cuke I phirk dEjkjh vlfn
fnukd 27-1-2008

i kFkuk i = 4 x e; "ki Fk i = 5 x ij i kFkuk o foi {kx.k dks i kA

i kFkuk i = 4 x Jherh m'kk noh ntjk vUjkr /kjk 372 Hkjrh; mRrjkf/kdkj vf/kfu; e ds rgr i Lrj dj dgk x; k gSfd i kFkuk erd I Ursk djkj ek\$ Z dh i Ruh gS A erd I Ursk djkj ek\$ Z dh eR; fnukd 22-09-2000 dks gks x; h gSA foi {kx.k erd dh i q=; k gS A vr: erd I Ursk djkj }kjk tkMh x; h /kujf"k ds ckor mRrjkf/kdkj i ek.ki = tkjh fd; k tkos

i kFkuki = ds I eFk u eal ph 7 x I seR; q i ek.ki =, i fjkj jftLVj dh uDy o Hkjrh; thou chek fuxe dh 3 fdrkc i kfyI h I q; k 310015904,310543345 , oa 310545402 dh Nk; k i fr; ka nkf[ky dh x; h gA i kFkuk }kjk xtV o euknh Hkh djk; h x; h gSA i {kx.kk }kjk I gyukel dkxt I q; k 8 x nkf[ky dj dgk x; k gSfd i kfyI h dh /kujf"k I yg ds v/kj i j i kFkuk m'kk noh i klr djxh ft I I s foi {kx.k dks dkbZ okLro I jkdkj ugh gS rFkk jyos foHkx ds i kfyokj d iku vkn dh feyus okyh I fo/kk i kFkuk Jherh m'kk noh i klr djxh bl es foi {kx.k dks dkbZ vki fkr ugh gSA rFkk Loa I Ursk djkj dh eR; q ds i "pkr jyos foHkx I s feyus okyh I eLr /kujf"k rFkk Hkfo'; fuf/k eR; q mi knku o xij chek dh I eLr /kujf"k tk e@ 306184 : i; k mI s foi {kx.k xhrk djkj vkn i klr djxh A mI I s i kFkuk x.k dks dkbZ okLrk I jkdkj ugh gkx A vr: I e>k s ds v/kj ij I e>k i kFkuki = 8 x Lohdkj fd; s tkus; k; gSA

Vkn'sk

I e>k i kFkuk i = 8 x Lohdkj djrs gq s 3 x i kFkuki = fuLrkfjr fd; k tkrk gS A i kFkuk m'kk noh ds i k e i kfyI h I q; k mijkdr dh /kujf"k e@ 31000/- : 0 25000/- , oa 25000/- : i; k dks ckor mRrjkf/kdkj i ek.ki = tkjh fd; k A i klr gks okyh /kujf"k i j i kFkuk fu; ekut kj U; k; "k d vUj 10 fnu vnk djsA

gLrk{kj vi Buh;
fnukd 27-1-08
fl foy tt (I hOMh0)
dkskEch"

fnukd 27-1-08

5. Learned counsel for applicant has contended that despite a clear mention in the aforesaid order that the amount of pension payable by Railway Department will be received by Smt. Usha Devi and the respondents would have no objection against it, the Railway department has denied Usha Devi to pay family pension.

6. It is contended that the applicant has moved several representations before respondent No. 2, requesting him to release the pension in her favour but no response was received from the respondents. Copies of the representations have also been annexed by the applicant as Annexure No. A-4, A-5 and A-6, When no response was received from the respondents, the applicant has approached this Tribunal, seeking the reliefs as mentioned in the earlier part i.e. 1st paragraph of the judgment.

7. The respondents have filed Counter Affidavit whereby contesting the O.A. mainly on the ground that the applicant Usha Devi was a party in another Succession Suit No. 12/07/2005 filed earlier, in which she had been denied legal succession of the deceased. Therefore, she cannot be treated as wife of the deceased. Learned counsel for respondents has contended that applicant Usha Devi was party in succession case No. 12/07/2005 wherein Ld. Civil Judge, Senior Division, Kaushambi issued a succession certificate only in favour of 3 daughters of 1st wife of late Santosh Kumar and denied the legal succession of the deceased to the applicant. Therefore, she being not a valid legal heir, is not entitled for any pensionary benefits. Copy of the order passed in succession case No. 12/07/2005 has been filed by the respondents as Annexure CR-1 to the Counter Affidavit. For a ready reference, the aforesaid order dated 27.1.2008 passed in Succession Suit No. 12/07/2005 is also reproduced below:-

“U; k; ky; fl foy tt I hOMh0 dlskkEch A
 mRrjkf/kdkj okn I ; k 12/70/2005
 I phrk dEkjh ifr Jherh m'kk nsh vlfn
 ifkrh-

I phrk dEkjh v; q yxHkx 25 o'kz i h Lo0 I Ursk dEkj o Lo0 cyk
 dEkjh iRuh Lo0 I Ursk dEkj fuokfl uh xte edneij dkth pejksh i jxuk
 o rgl hy pk; y tuin dlskkEch gky eph 38 , eqMjk e.Mh “kgj” bykgknf us
 vki l s fuEufyf[kr __.k s ds fy, ifrHkr; k s ds ckjs esd Hkkjrh; mRrjkf/kdkj
 vf/fu; e 1925 Hkkx 10 ds v/khu fnukd 18-3-05 dks bl U; k; ky; es okn
 iLrj fd; k gSvFkk

rnuq kj ; g i ek.k i = ifrofnuh I ; k 3 xhrk dEkjh jyos foHkx I s
 /kujkf”k ikr djdsml es l s 1/3 Hkkx i kFkjh I phrk dEkjh o 1/3 Hkkx ifrofnuh
 I ; k 2 vuhrk dEkjh rFkk “ksk 1/3 Hkkx Lo; a xhrk dEkjh dks vunR; fd; k tkrk
 gS vlg ; g i ek.k i = vki dks mu __.k s ds l xg djus ds fy, djus ds fy, mu
 ifrHkr; k i j C; kt yHkkk iku djus ds fy, mudk ijxe.k djus ds fy,
 vlrj.k djus ds fy, I “kDr fd; k tkrk gSA

(i h0l h0 i Vsy)
 fl foy tt (I hOMh0)
 dlskkEch”
 21.7.08

8. In the Rejoinder Affidavit, it has been stated that it is highly incorrect that the applicant was denied any succession. Succession

Suit No. 12/07/2005 was filed by daughters of first wife Bela Kumari only in respect of their shares in some of the terminal dues of the deceased i.e. the amount of GPF, Gratuity and Group Insurance and therefore, the learned Civil Judge, Senior Division, Kaushambi issued a succession certificate in favour of three daughters, entitling each of them of 1/3rd part of the total aforesaid amount. Hence, it cannot be considered as a general succession certificate, for all properties and claims. The submission of the learned counsel for the applicant is that only for this reason that a succession certificate ascertaining the equal shares of 3 daughters of first wife of deceased Santosh Kumar has been issued, regarding a particular property/amount, it cannot be said that the applicant and her four children are not the legal heirs of the deceased and they do not have any right to claim other benefits..

9. Learned counsel for applicant has vehemently argued that the respondents have no where stated that the applicant is not the legally wedded wife of the deceased Santosh Kumar. Deceased Santosh Kumar had married the applicant after the death of his first wife Bela Kumari, therefore, the applicant's marriage with him was a valid marriage. It is further contended that Santosh Kumar had died, leaving behind his 3 daughters from 1st wife. The applicant performed their marriages. She has 4 children of her own. The amount of GPF, Gratuity and Group Insurance of her husband has been received by 3 daughters of first wife. Therefore, now the applicant has no money for survival and maintenance of her family and the respondents are unnecessarily denying her the pensionary benefits on frivolous grounds.

10. We have given our thoughtful consideration to rival contentions of learned counsel for both the parties and have carefully gone through the records.

11. The only ground taken by the respondents to deny the pensionary benefits to the applicant is that as per the order passed in succession case No. 12/07/2005, Civil Judge, Senior Division, Kaushambi, legal succession of the deceased has been denied to anyone except the 3 daughters of the deceased. Therefore, she is not entitled to receive any pension.

12. The aforesaid ground taken by the respondents is not tenable. A perusal of Annexure CA-1 (succession certificate issued in case No. 12/07/2005) clearly shows that this succession certificate has been issued by Civil Judge, Senior Division, Kaushambi only in respect of share of 3 daughters of first wife of the deceased as per settlement arrived at between all the legal heirs of the deceased. By no stretch of imagination, it can be treated as a certificate denying legal heirship to the applicant and her children. In the Counter Affidavit, no where it has been stated by the respondents that the applicant is not the legally wedded wife of the deceased Santosh Kumar. The respondents must have with them the service record of deceased Santosh Kumar and they could have easily produced the same before this Tribunal to show that applicant's name is not mentioned in the service record of the deceased Santosh Kumar or to show that she has not been made the nominee of pensionary benefits. However, despite the fact that ample time and opportunity was with the respondents, as the case is pending since the year 2013, no such documents or service record has been filed by the respondents.

13. The settlement arrived at between the parties i.e. between the 3 daughters of the deceased born from first wife Bela Kumari and the applicant and her 4 children, was presented before the Civil Judge, Senior Division, Kaushambi in case No. 8/10/2006 decided on 27.1.2008, in which there is a clear mention that the application is allowed on the basis of the compromise which deserves to be accepted. "वरेतेसावधान इतेतक इत्तमि = ८ अल्ली फैस्तुस; अ-ग्र" Thus, the court of competent jurisdiction has accepted the compromise arrived at between the parties. The compromise deed has also been annexed by the applicant as Annexure No. A-2 with the O.A. In succession Suit No. 12/07/2005, also the said compromise deed was produced before the court and in that case too, there is a clear mention that both parties have arrived at an amicable settlement and it has been decided between them that the entire amount of GPF, Gratuity and Group Insurance will be received by the 3 daughters of first wife equally and if a succession certificate in respect of the aforesaid amount is issued by the competent court in favour of the 3 daughters of first wife, the 2nd wife Usha Devi will have no objection. It was also decided between the parties that amount of 3 Life Insurance Policies of the deceased would be given to Usha Devi and the family pension would also be received by Usha Devi (applicant) and other parties namely 3 daughters of first wife would have no objection.

14. As the compromise has been accepted by a competent court, it will be treated as part of the judgment and order. The succession certificate issued in Suit No. 12/07/2005, has been issued only for the limited purpose of payment of amounts of GPF, GIF and Gratuity to the 3 daughters of first wife. Only on the basis of this certificate, it cannot be said that applicant Usha Devi is not a legal heir of the deceased and is not entitled for family pension.

15. Hon'ble Allahabad High Court in **Writ Petition No. 44491 of 2007 Smt. Rizwana and others Vs. Civil Judge (Sr. Div.) Alld. And others** decided on 25.09.2017 has observed as under:-

"Part X of the Indian Succession Act deals with the property in respect of which the succession certificate may be granted, to whom it may be granted, who may grant it, and the procedure for granting a succession certificate. The purpose of granting a succession certificate is to facilitate the collection of debts and afford protection to the parties paying the debt to the representative of the deceased person. The grant of a succession certificate in favour of a particular person does not determine the question of title of the property in respect of which the succession certificate has been granted. It only enables the holder of the succession certificate to collect the debts and security due to the deceased person. The grant of a succession certificate merely confers on its holder an authority to realise the debt of the deceased and give a valid discharge to the debtor. It is the duty of the holder of the succession certificate to dispose of the amount in the proportion in which the heirs are entitled to it.

In proceedings initiated under Sections 372 and 373 of the Indian Succession Act, the Court does not enter into intricate questions of title. The Court only issues the certificate to the person who has the best claim and prima-facie title and leaves the parties to get the question of title decided by a regular suit if they so desire. Any person, who has a beneficial interest in the debt or security may apply for a succession certificate.

Upon an application being filed for a grant of succession certificate, the Court is required to make a summary enquiry. It is not the function of the Court to determine the question of title. The only matter after the service of the notice that the Court is required to decide is the right of the applicant concerned, that is to say, that the Court is required to inquire whether the applicant is the representative of the person to whom the debt was alleged to be due. The Court is not required to inquire into the existence or non-existence of the debt. Under Section 373[3] of the Act, the Court could grant a succession certificate to the applicant if the applicant appeared to be the person having a prima-facie, the best title thereto.”

16. In view of the above discussion, the O.A. is allowed. The respondents are directed to grant family pension and its arrear from the date it became due, to the applicant within a period of 30 days from the date of production of certified copy of this order. The respondents are further directed to pay 6% interest on the amount of arrear of family pension, accrued so far, within the said period..

17. There shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

HLS/-