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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH CUTTACK

ORIGINAL APPLICATION NO. 421 OF 1999
Cuttack this the 13th day of April 2000

Smt. Hillalika Dash

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the ~~NA~~ Central Administrative Tribunal or not ?

L. — 13-4-2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 421 OF 1999
Cuttack this the 13th day of April, 2000

CORAM:

THE HON'BLE SHRT G.NARASIMHAM, MEMBER(JUDICIAL)

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1. Smt. Hillalika Dash, 45,
W/o. Late Kshetra Mohan Dash
2. Bandana Dash 19
3. Santosh Kumar Dash 17
2 and 3 daughter and son of Late Kshetra Mohan Das,
Sl. No.3 represented by mother guardian Hillalika
Dash, Vill: Harachandi Sahi, PS: Lingaraj Dist:
Khurda

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Applicants

By the Advocates : M/s.M.M.Basu
Diganta Dey

-Versus-

1. Union of India represented by Secretary to Government
of India, Department of Telecommunications, New Delhi
2. General Manager Tele Communications, Orissa Circle,
Bhubaneswar
3. General Manager, Department of Telecommunications,
Telecom District, Bhubaneswar
4. Kalpana Dash 32, D/o Not Known C/o. Vinod Trikha
Qr.No. S. 53 Unit-III N.A.C. Colony, PS:
Kharavelanagar, Dist: Khurda

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Respondents

By the Advocates : Mr.A.Routray
Addl. Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): In this application praying for issue of direction to Res. 1 to 3 to release the D.C.R.G. benefits in favour of the applicants of Late Khetra Mohan Dash, the facts not in dispute are that the deceased Khetra Mohan Dash who was serving as Telecom Assistant died on 21.3.1999. While in service he did not file any nomination as required under Rule-53 of C.C.S.(Pension) Rules.

Applicant No.1 claiming to be the widow of the deceased and the applicants 2 and 3 daughter and son of the deceased moved the departmental respondents for settlement and release of D.C.R.G. benefits as may be available to them. Res.No.4 Kalpana Dash also claiming to be the wife of the deceased and having put with two minor children also approached the Department for this purpose. Hence the Department advised the applicants as well as Res.4 to submit the succession certificates as would be granted by the competent authority, i.e. Civil Court for consideration of their claims. Pursuant to this Res.4 Kalpana Dash instituted Title Suit No.115/99 in the Court of Civil Judge(Junior Division) Bhubaneswar for issue of succession certificate along with Misc.Case 128/99 for injuncting the Department not to release the death benefits till the disposal of that Suit.

While in service the deceased availed L.T.C. one describing the applicants, and Kamala Dash, the mother as family members. These facts are not in controversy.

2. Res.4 though duly noticed had neither entered appearance nor filed any counter.

3. I have heard Shri M.M.Basu, learned counsel for the

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applicant and Shri A.Routray learned Addl. Standing Counsel appearing for the departmental respondents.

During hearing Shri Routray the learned Addl. Standing Counsel submitted that in the Title Suit filed by Res.⁴ the applicants have been impleaded as defendants besides the Department and no order has been passed in the Misc. Case praying for injunction since the Department in that case is yet to file counter. Misc. Case and the Suit are still pending for disposal. These facts are not disputed by Shri Basu.

4. Shri Basu the learned counsel however vehemently contends that the Department having not disputed the applicant No.1 to be the wife of the deceased and applicants 2 and 3 his children are bound to pay the gratuity even in the absence of nomination letter and the matter need not wait till the disposal of the Civil Court Bhubaneswar which in fact has no jurisdiction to entertain a suit with regard to issue of succession certificate after the establishment of Central Administrative Tribunal to deal with the service problems of the employees. Under the provisions of the Act this Bench has no power to issue a succession certificate which is guided under the provisions of Indian Succession Act and only a Civil Court of competent jurisdiction can issue such certificate. In support of his submission that this Tribunal has jurisdiction and not the Civil Court Shri Basu could not cite any authority. Moreover, Shri Basu could not enlighten me as to whether applicants had in fact questioned the jurisdiction of the Civil Court in the Title Suit filed by Res.⁴. I am, therefore, not inclined to agree with the contention of Shri Basu.

The second contention of Shri Basu is that even if Res.⁴ is the married wife of the deceased such marriage is void as it had taken place during the life time of the first wife(applicant No.1), the first legitimate wife of the deceased, because the parties are Hindu by religion and bigamy is not recognised ^{under} ~~the~~ provision of Hindu Marriage Act. Basing on this contention Shri Basu further contended that children of Res.⁴ born through the deceased being illegitimate ~~could~~ ^{cannot} not also be entitled to gratuity or other pensionary benefits of the deceased. Hence insistence of succession certificate in this case is redundant. Shri Routray, on the other hand took me through Rule 50(6) of C.C.S.(Pension) Rules and invited my attention that family in relation to Govt. servant means wife or wives(including judicially separated wife or wives), sons including stepsons and adopted sons, unmarried daughters including stepdaughters and adopted daughters, and so on, and contended that since the expression includes the expression "wives", Res.⁴ claiming to be the second wife will also come under the definition of family and consequently her minor children, through the deceased employee and it is for this reason and specially in the absence of nomination the Department has to wait the decision of the Civil Court in the matter of issuing succession certificate. I think there is some force in this contention.

The last contention advanced by Shri Basu is with reference to Rule-77(2) of the C.C.S.(Pension) Rules stating that in the absence of such nomination paper the Department is to inquire as to who are the family members ~~of~~ of the deceased for disbursement of gratuity and cannot

shift the responsibility to another forum like Civil Court. I have carefully gone through this Rule-77, which nowhere lays down that the Department has to inquire into the matter. Words mentioned therein are that where the Head Office receives intimation about the death of a Govt. servant while in service he shall ascertain whether the family of the said Govt. servant is eligible to gratuity under Rule-50, the Head Office shall ascertain if the deceased Govt. servant had nominated any person or persons to receive gratuity; and if the deceased Govt. servant had not made any nomination or the nomination made does not subsist, the person or persons to whom the gratuity may be payable. In other words, the Head of Office will collect information from the office where the deceased Govt. servant was employed at the time of his death or just before his death as to the particulars of the familymembers eligible for receipt of gratuity in the absence of nomination. This does not mean that the Department has to make an inquiry. Inquiry will not be necessary when there is dispute as to who are the claimants and under such circumstance, ascertainment by the Head of Office will not be sufficient. Hence this contention of Shri Basu also fails.

5. In the result I do not see any merit in this application. At this stage when the Department is doubtful with regard to claimants of the D.C.R.G. they are justified under law in not releasing the D.C.R.G. amount in favour of the applicants till the competent Court of Law gives a decision on this point.

6. The application fails and is therefore, dismissed, but without any order as to costs.

13-4-2021
 (G.NARASIMHAM)
 MEMBER(JUDICIAL)