

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1164 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Smt. Gopa Mazumdar, W/o Late Ashoke
Kumar Mazumdar, 14, Tarak Bose Lane,
P.O. Tala, Calcutta-700 002

... Applicant

VS

1. Union of India through the
General Manager, Eastern Railway,
Fairlie Places, 17, Netaji Subhas Rd,
Calcutta-700 001

2. Sr. System Manager, EDP Centre,
Eastern Railway, New Koilaghat
Building, 14, Strand Road,
Calcutta-700 001

3. Chief Accounts Officer, Eastern
Railway, Calcutta-700 001

4. Smt. Kamala Majumdar, mother of
late Ashoke Kumar Mazumdar

... Respondents

For the Applicant : Mr. S. P. Bhattacharyya, counsel

For the Respondents: Mr. R.K. De, counsel

Mr. Surajit Samanta, counsel for private
respondent No.4.

Heard on 14.5.1999

: : Date of order: 9-6-1999

O R D E R

On a writ petition No.WP.CT.516/98 filed by the Railway
respondents against the order dated 5.8.1998 in OA 1164/97 the
Hon'ble High Court remanded the case for rehearing after
impleading private respondent, Smt. Kamala Mazumdar who is the
mother of the deceased Govt. employee late Ashoke Kumar
Mazumdar. As per direction of this Tribunal respondent No.4,
Smt. Kamala Mazumdar was added as a party and she was allowed to
file written reply to the OA filed by Smt. Gopa Mazumdar.

2. The respondent No.4, Smt. Kamala Mazumdar filed a written
reply. According to that, the instant application is not
maintainable and the applicant, Smt. Gopa Mazumdar has no right
to claim the retirement dues of the deceased Railway employee,

late Ashoke Kumar Mazumdar on the ground that the applicant had filed a suit for a decree for dissolution of the marriage between the applicant and her husband, late Ashoke Kumar Mazumdar and the said case was decreed ex parte by family court and permanent alimony was granted to the applicant and the deceased, Ashoke Kumar Mazumdar filed a misc. case for restoration of the main Mat Suit to its original records and that ex parte order was set aside and the original suit bearing Mat Suit No.90 of 1996 has been restored to the main file, but the said suit filed by Smt. Gopa Mazumdar has abated due to the death of her husband, Ashoke Kumar Mazumdar. So, the marital status of the applicant cannot be decided by her and hence the application is liable to be dismissed.

3. Briefly stated the facts giving rise to this application are that Ashoke Kumar Mazumdar, since deceased, was an ex-Sr. DEO of EDP Centre, Eastern Railway, who died on 16.12.1996, while he was in service. Before the death of Ashoke Kumar Mazumdar, his wife, Smt. Gopa Mazumdar, the present applicant, filed one matrimonial suit seeking divorce from her husband, Ashoke Kumar Mazumdar, but the said divorce case has abated due to death of Ashoke Kumar Mazumdar, before the passing of any decree of divorce as claimed by the applicant. During the pendency of the said matrimonial suit, the applicant, Smt. Gopa Mazumdar, received some relief of permanent alimony, as per order of the court. According to the applicant, as the widow of the deceased employee, Ashoke Kumar Mazumdar, she is only entitled to receive all settlement dues of her husband like family pension, provident fund under SR PF Rules, DCRG Gr.I Scheme and leave encashment, etc., under Railway Services (Pension) Rules, 1993 and the Family pension scheme for Railway Servant, 1964. Thereby the claim for production of the succession certificate under the provisions of Indian Succession Act by the applicant, as directed by the respondents vide their letter dated 18.6.1997 (Annexure/A1 to the

application), is highly arbitrary, illegal and liable to be quashed. According to the applicant, she as the widow of the deceased employee, is only entitled to receive all his retirement benefits.

4. The case of the applicant is resisted by the respondents stating inter alia that late Ashoke Kumar Mazumdar, who was working as Sr.DEO of EDP Centre, Eastern Railway, died on 16.12.1996 and a claim for payment of settlement dues of Late Ashoke Kumar Mazumdar was received from one Smt. Kamala Mazumdar, widow mother of the deceased on 9.1.1997. At the same time the respondents have also received another claim for payment of / settlement dues of late Ashoke Kumar Mazumdar as well as the family pension from one Smt. Gopa Mazumdar, the present applicant, on 30.1.1997. It is stated by the respondents that from the service record of the deceased employee, Ashoke Kumar Mazumdar, it was found that no nomination was filed by the deceased during his life time for his settlement dues i.e., provident fund, gratuity, leave salary, family pension, etc. in case of his death but only a nomination was found in Group Insurance Scheme wherein the deceased nominated his widow mother, Smt. Kamala Mazumdar. It was also found from pass/PTO's record that the deceased employee gave no declaration about his marriage with Smt. Gopa Mazumdar and the administration came to know of this fact only when the learned Family Court passed its order on 4.9.1995 in MAT Suit No.54 of 1995. According to the respondents, since there is a counter claim from the widow mother of the deceased employee for payment of his settlement dues, they have asked for production of the succession certificate by the applicant under the Indian Succession Act for proper disbursement of the settlement dues to the legally persons and thereby the action of the respondents, as will appear from the letter dated 18.6.1997, is fully justified and tenable in law and hence the application is devoid of merit and it should be dismissed.

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5. Mr. S. P. Bhattacharyya, learned counsel appearing on behalf of the applicant, has argued before me that admittedly no nomination has been executed by the deceased employee, Ashoke Kumar Mazumdar in favour of his widow mother, Smt. Kamala Mazumdar, except the nomination for Group Insurance Scheme, and the Pass/PTOs. It remains undisputed from the side of the respondents that the applicant had filed a Mat Suit bearing No.122 of 1992 in the City Civil Court at Calcutta, seeking a decree of declaration of the marriage between the applicant, Smt. Gopa Mazumdar and her husband, Ashoke Kumar Mazumdar, as nullity by passing of a decree of divorce. In that suit a pendente lite alimony @ Rs.750/- p.m. was granted in favour of the present applicant alongwith payment of Rs.1500/- to her as costs of proceedings as an interim measure. However, the said divorce suit has ultimately abated due to the death of Ashoke Kumar Mazumdar when the same was pending before the Family Court, Calcutta, when the same was transferred from the City Civil Court by operation of the Family Courts Act, 1984 and the old Mat Suit No.122 of 1992 was renumbered before the Family Court as Mat Suit No.54/1995. Thereby, Mr. Bhattacharyya submits there cannot be any doubt that the applicant is the legally married wife of the deceased employee and is now the widow wife of the deceased employee, Ashoke Kumar Mazumdar. Hence, she is entitled to receive the family pension payable under the Family Pension Scheme, 1964, and other settlement dues except the amount of Group Insurance in respect of which a nomination has been executed by the deceased employee. So, the question of production of succession certificate under the present circumstances, does not arise.

6. Mr. Bhattacharya, learned advocate further contended that the interests of the respondent No.4 were well protected in the original judgment passed on 5.8.98 by this Tribunal, though she was not made a party to it and he submits that the judgment

passed earlier by this Tribunal holds good in view of the fact that the widow, respondent No.4, Smt. Kamala Mazumdar could not substantiate her right to get settlement dues on account of the death of her son, Ashoke Kumar Mazumdar and respondent No.4 being widow mother is not entitled to get family pension even. Mr. Bhattacharyya, learned advocate further submits that in the definition of 'Family' under the Family Pension Scheme, the dependant mother is not included. Thereby the mother is not entitled to get the benefit of family pension under the Railway Service (Pension) Rules, 1993. So, Mr. Bhattacharyya submits that no claim of the widow mother of the deceased employee for family pension and other settlement dues for which no nomination was executed by the deceased employee, Ashoke Kumar Mazumdar, during his life time, can be entertained by the respondents. Similarly, the provident fund amount is also payable to the wife of the deceased in the absence of any valid nomination executed by the employee, Ashoke Kumar Mazumdar, since deceased.

7. Mr. S.P. Bhattacharyya, learned advocate has strongly relied on the judgment passed in the case of Violet Issaacs & Ors. vs. Union of India & Ors., reported in 1991(1) SCC 725, where the Hon'ble Supreme Court has decided that only designated persons i.e., the widow and unmarried children of the deceased employee are entitled to family pension under the rules. He also relied on another decision passed by the Ernakulam Bench of this Tribunal in the case of T. Kuppammal vs. Divisional Personnel Officer, Southern Railway, Palghat reported in 1994(27) ATC 328. This decision was based on the judgment of Violet Issaacs & Ors. vs. Union of India & Ors., referred to above. Mr. Bhattacharyya, therefore, submits that in view of the judgment passed in the case of Violet Issaacs (Supra), the applicant is not required to produce the succession certificate, as asked for by the respondents and the respondents be thus directed to make all payments of the settlement dues of her husband as his legally

married wife. So, the letter dated 18.6.1997 (Annexure/A1) is arbitrary and illegal and is liable to be quashed.

8. Mr. R.K. De, learned advocate appearing on behalf of the Railway respondents submits that written arguments submitted by the learned advocate, Mr. Samaddar are arguments for the railway respondents and Mr. De further submits that no illegality has been committed by the Railway respondents by asking for the succession certificate from the applicant by their letter dated 18.6.97. On submission of the same by the applicant the case will be finalised and payment made and he further submits that the application is devoid of merit and is liable to be dismissed.

9. Mr. Samanta, learned advocate appearing on behalf of the respondent No.4 submits that since the applicant sought divorce by the competent court, thereby by conduct and action she cannot claim to get retirement benefits of the deceased, Ashoke Kumar Mazumdar, though matrimonial suit has abated due to the death of Ashoke Kumar Mazumdar.

10. I have considered the submissions of the learned counsels of all the parties and also the judgments relied on by the learned counsel for the applicant. According to the respondents, no declaration had been made by the deceased employee regarding his marriage with the applicant, Gopa Mazumdar, in the Railway Department. However, one nomination in respect of Group Insurance in favour of the employee's widow mother, Smt. Kamala Mazumdar, was available in the department and she has also raised a claim for payment of his settlement dues before the railway authorities on account of the death of her son, Ashoke Kumar Mazumdar. In view of the circumstances mentioned above, the status of the applicant, Smt. Gopa Mazumdar, who was the legally married wife and at present the widow wife of the deceased employee, Ashoke Kumar Mazumdar, cannot be brought into controversy on the face of the order passed by the City Civil Court, Calcutta, where a pendente lite alimony @ Rs.750/- p.m.

as wife had been granted to the applicant in Mat Suit No.122 of 1992. It remains undisputed that the said Mat suit has been renumbered as Mat Suit No.54/1995 before the Family Court and the said suit has abated before the passing of the decree by the Family Court, as sought for by the applicant, due to death of her husband, Ashoke Kumar Mazumdar. So, in view of the aforesaid circumstances, there is no doubt that the marriage between the applicant, Smt. Gopa Mazumdar and late Ashoke Kumar Mazumdar under the Hindu Marriage Act, 1955, is nothing but sacrosanct and marriage tie between them remained till the death of Ashok Kumar Mazumdar. Hence, there cannot be any dispute regarding the legal identity of the present applicant as claimed in this application. I am of the view that in view of the aforesaid circumstances, the applicant, Smt. Gopa Mazumdar, is the legally married widow wife of the deceased employee, Ashoke Kumar Mazumdar.

11. According to Family Pension Scheme, expression of 'Family' does not include the widow mother for getting the benefit of family pension. Rule 75 (19)(b)(i) of the Railway Service (Pension) Rules, 1993, envisages that 'Family' in relation to railway servant for the purpose of family pension means "wife" in case of male railway servant. Rule 75(B)(ii) of Railway Service (Pension) Rules, 1993, further envisages that family pension is payable to the widow of the deceased railway servant and to his children.

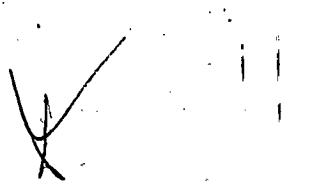
12. The Hon'ble Apex Court in the case of Violet Isaac vs. Union of India & Ors. (Supra) has opined that rules do not provide for payment of family pension to brother or any other family member or relation of the deceased railway employee. The Family Pension Scheme under the rules is designed to provide relief to the widow and children by way of compensation on the untimely death of the deceased employee. The rules do not provide for any nomination with regard to family pension, instead the rules designate the persons who are entitled to receive the

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family pension. Thus no other person except those designated under the rules are entitled to receive family pension. The family pension scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since the rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

13. Recently, the Hon'ble Apex Court in a judgment in the case of State of Himachal Pradesh vs. Kedarnath Sur, reported in 1998 SCC (L&S) 556 has settled the controversy regarding claim of the widow mother and father of the deceased Govt. servant by interpreting the provisions of Rule 54 (14)(5)(i) of CCS (Pension) Rules, 1972, where the definition of the 'family' has been mentioned. In the said judgment, the Hon'ble Apex Court has held that parents of the deceased Govt. servant are not members of the family to get pension under the definition of Family Pension Scheme, 1964.

14. So, in view of the aforesaid circumstances, it can be safely said that the applicant, Smt. Gopa Mazumdar, being a widow and having no issue till the death of the deceased employee, Ashoke Kumar Mazumdar, is entitled to get family pension without obtaining and producing any succession certificate, as asked for notwithstanding the fact that the mother of the deceased has raised a claim for payment of family pension to her. Family Pension is not an inheritance and the estate of the deceased. It is a statutory benefit which is to be



given to the widow and the children in case of death of an employee by way of compensation. Hence, entitlement of family pension under the scheme is not covered by the Hindu Succession Act.

15. Regarding provident fund dues as admissible to late Ashoke Kumar Mazumdar, it is admitted by the respondents that the deceased employee during his lifetime, did not execute any nomination in favour of any person including his widow mother, Smt. Kamala Mazumdar, and his wife, Smt. Gopa Mazumdar, to receive his provident fund dues from the respondents. It is true that nomination for the purpose of payment of provident fund depends on the will of the employee concerned who contributed to the provident fund. However, the nomination does not confer any right or title upon the person so nominated. The expression of 'nomination' indicates only an authority to receive the money from the authority on the basis of the nomination. Whereas, family pension goes by the rule itself. In view of the judgment of the Hon'ble Apex Court, since I have held that Smt. Gopa Mazumdar is the widow of the deceased employee, Ashoke Kumar Mazumdar, thereby it can be said that Smt. Gopa Mazumdar is the designated person under the Family Pension Rules as well as the Provident Fund Rules in absence of any nomination. Thereby, the applicant as widow wife of the deceased has absolute right to receive the provident fund dues from the authorities. Therefore, I am of the view that in the absence of any disputed nomination as claimed by the mother and wife, the benefit ought to have been given to the wife, Smt. Gopa Mazumdar, for the purpose of receiving the provident fund money from the authorities in respect of her husband, for which also no succession certificate is required, where no nomination has been executed by the deceased in favour of his widow mother.

16. Similarly, gratuity is not an inheritance and not covered by the Hindu Succession Act, 1955. Admittedly, no nomination has



been executed by the applicant for the purpose of receipt of gratuity from the respondents. Mother of the deceased as Class-I heir, does not come into the picture because of the fact that Rule 71 of the Railway Service (Pension) Rules, 1993, requires gratuity payable under Rule 70 to person or persons on whom the right to receive gratuity is conferred by making nomination under Rule 74. Rule 74 deals with the nomination required to be made in Form 4 or Form 5. Since gratuity is not an estate of the deceased, it is also payable by the respondents under welfare scheme, under the rules. Hence, the widow is also not required to produce any succession certificate for the purpose of receipt of gratuity from the respondents, as admissible to her, on account of death of her husband.

17. However, it is found that the deceased employee during his life time, had executed a nomination in favour of his widow mother for the purpose of receipt of Group Insurance. Regarding payment of Group Insurance money to the family members on the death of the employee I find there is some clarification at page 14 of Swamy's Compilation of Group Insurance Scheme for Central Govt. employees where it has been stated that if an employee has a family at the time of making the nomination, he shall make such nomination only in favour of a member or members of his family, and any nomination made before marriage of the employee becomes invalid after marriage. But it remains undisputed that the said nomination is a contract between the Government and the employee concerned. For the purpose of the Scheme the expression 'family' has the same meaning as defined in GPF and CPF Rules. Family includes in the case of male subscriber, the wife or wives, parents, children, minor brothers, unmarried sisters, deceased son's widow and children, and where no parent of the subscriber is alive, a paternal grandparent. The provision of the said rule further envisages that if a subscriber proves that his wife has been judicially separated from him or has ceased under the

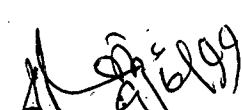
customary law of the community to which she belongs to be entitled to maintenance, she shall henceforth be deemed to be no longer a member of the subscriber's family in matters to which this scheme relates, unless the subscriber subsequently intimates in writing to the Accounts Officer that she shall continue to be so regarded. It is an admitted position in this case that the applicant was paid pendente lite alimony @ Rs.750/- per month. Thereby, it indicates that the applicant has been residing separately. So, I am of the view that the nomination exercised or executed by the deceased employee in favour of his widow mother, cannot be said to be invalid under the scheme for the purpose of receipt of Group Insurance money. I am also of the view that such benefit cannot be granted to the wife of Ashoke Kumar Mazumdar, since deceased, under the rules, when he had executed a nomination during his lifetime in favour of his widow mother, until that nomination is cancelled or invalidated by any court of law. By dint of the said nomination, the widow mother of the deceased is entitled to receive the Group Insurance money. But that does not confer any title upon the widow mother merely on such receipt of Group Insurance money on the strength of the nomination.

18. In view of the aforesaid I am of the view that the respondents' action was not justified to ask for the succession certificate for the purpose of disbursement of family pension, gratuity, provident fund, leave salary etc. No succession certificate is also required for the purpose of receipt of Group Insurance money by the widow mother of the deceased, in favour of whom nomination has been executed by the deceased.

19. Under the circumstances stated above, I direct the respondents to make all payments under the heads of family pension, gratuity, provident fund and leave salary to the applicant, Smt. Gopa Mazumdar, within three months from the date of receipt of this order by the respondents. The applicant,



Smt. Gopa Mazumdar would also be entitled to get interest at the rate of 12% per annum on the entire amount payable to her from the date the amount became due to her till the date it is actually paid. The widow mother of the deceased employee, respondent No. 4 would be paid the Group Insurance money within the period of three months from the date of receipt of the order together with interest at the rate of 12% per annum from the date of claim raised by her till date of actual payment. With the aforesaid observation the application is disposed of awarding no cost.


(D. Purkayastha)

MEMBER (J)