

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

LIBRARY

MA. 350/00096/2016
(OA. 350/00198/2014)

Date of Order: 30.5.16.

Present

: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. K.N. Shrivastava, Administrative Member

Phani Krishna Mondal, son of late Bijoy Krishna Mondal, aged about 65 years, retired as Wireman Grade-I (Electrical Mechanic), at Customs Sub-Division, Customs House, residing at Village- & P.O. Baidyapur, P.S.- Gangnapur, Dist- Nadia, Pin- 741256.

.....Applicant.

-versus-

1. Union of India, through the Secretary to the Government of India, Ministry of Urban Affairs and Employment, Nirman Bhawan, New Delhi- 110011.
2. The Director General of Works, CPWD, Government of India, Nirman Bhawan, New Delhi- 110011.
3. The Chief Engineer (Elect.), Eastern Region, CPWD, Nizam Palace, 234/4, A.J.C. Bose Road, Kolkata- 700 020.
4. The Executive Engineer (EI), Kolkata, Central Electrical Division No. IV, 1st MSO Bldg. 2nd Floor, Nizam Palace, 234/4, A.J. C. Bose Road Kolkata - 700 020.
5. The Pay & Accounts Office (Eastern Zone), CPWD (EZ), Nizam Palace, 234/4, A.J.C. Bose Road, Kolkata- 700 020.

.....Respondents.

For the Applicant : Mr. SS Mondal, Counsel

For the Respondents : Ms. R. Basu, Counsel
Mr. JR Das, Counsel (Pvt. Res.)

ORDER

Per Ms. Bidisha Banerjee, JM:-

The applicant a retired employee, deprived of his pension and other retiral benefits would seek the following reliefs:

BS

"8(a) An order do issue directing the respondent authorities to give the monthly pension to the applicant forthwith along with the arrear pension with interest @ 18% per annum.

(b) An order do issue directing the respondent authorities to release forthwith all the retirement dues of the applicant along with the interest @ 18% per annum accrued thereon.

(c) An order do issue directing the respondent authorities to rescind, revoke, cancel and/or quash the Memo bearing No. 10(1)/KCED-IV/CPWD/2013/85 dated 19.01.2013 and the Memo No. 10(1)/KCED-IV/CPWD/2013/487 dated 03.04.2013 issued by the Executive Engineer (E1). (Annexure 'A-4')."

2. Learned counsel for both parties were heard and materials placed on record were perused.

3. During the course of hearing it emerged that the pension case of the applicant, who retired on 31.08.2009, had not been processed till that date, on the ground that the applicant nominated his brother to receive family pension instead of his wife. It could be discerned that the applicant had already obtained a decree of divorce from his wife. Therefore, the respondent authorities in fact were compelling the applicant to nominate his judicially separated wife by withholding his own retiral dues.

4. The wife of the applicant would seek impleadment as respondent by way of an MA. Learned counsel appearing for the wife would vociferously submit that the decree of divorce being stayed by the Hon'ble High Court had no legal effect and therefore the applicant was bound to nominate his client, i.e. the wife namely Haritara Mondal.

5. Learned counsel for the respondents would contend that the decision of the respondents not to disburse the pension was in view of Rule 53 of CCS (Pension) Rules which mandated nomination only in favour of the members of the family such as wife etc.

We noted the text of Rule 53 of CCS (Pension) Rules, as under:

"(1) A Government servant shall, on his initial confirmation in a service or post, make a nomination in Form 1 or 2, as may be, as appropriate in the circumstances of the case, conferring on one or more persons the right to receive the [retirement gratuity/death gratuity] payable under Rule 50:

B

Provided that if at the time of making the nomination –

- (i) 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; or
- (ii) *the Government servant has no family, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not.*

(2) *If a Government servant nominates more than one person under sub-rule (1), he shall specify in the nomination the amount of share payable to each of the nominees, in such manner as to cover the entire amount of gratuity.*

(3) *A Government servant may provide in the nomination-*

- (i) *that in respect of any specified nominee who predeceases the Government servant, or who dies after the death of the Government servant but before receiving the payment of gratuity, the right conferred on that nominee shall pass of such other person as may be specified in the nomination:*

Provided that if at the time of making the nomination the Government servant has a family consisting of more than one member, the person so specified shall not be a person other than a member of his family:

Provided further that where a Government servant has only one member in his family, and a nomination has been made in his favour, it is open to the Government servant to nominate alternate nominee or nominees in favour of any person or a body of individuals, whether incorporated or not;

- (iii) *that the nomination shall become invalid in the event of the happening of the contingency provided therein.*

(4) *The nomination made by a Government servant who has no family at the time of making it, or the nomination made by a Government servant under the second proviso to Clause (i) of sub-rule (3) where he has only one member in his family shall become invalid in the event of the Government servant subsequently acquiring a family, or an additional member in the family, as the case may be.*

(5) A Government servant may, at any time, cancel a nomination by sending a notice in writing to the Head of Office:

Provided that he shall, along with such notice, send a fresh nomination made in accordance with this rule.

6. The respondents in the impugned order dated 19.01.2013, which is under challenge in the present OA, had also referred Rule 50(6) of CCS Pension Rules, which defines the following:

"50(6) For the purposes of this rule and Rules 51, 52 and 53, 'family', in relation to a Government servant, means-

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- (i) wife or wives including judicially separated wife or wives in the case of a male Government servant,
- (ii) husband, including judicially separated husband in the case of a female Government servant,
- (iii) sons including stepsons and adopted sons,
- (iv) unmarried, daughters including stepdaughters and adopted daughters,

Citing the aforesaid, the learned counsel for respondents would contend that since the term "family" included "judicially separated wife" therefore the judicially separated wife of the present applicant was also entitled to be "nominated" and reason for not granting pension so long, was justified.

7. We have noted that the list of members constituting a "family" in Rule 56 *ibid* was in regard to "payment of retirement/death gratuity" and not in regard to "nomination for family pension". For family pension separate provisions in Rule 54 have been coined. Therefore, Rule 56 would have no manner of application in regard to defining a "family" for the purpose of "nomination for family pension".

8. However, "family" under Rule 54 includes "a judicially separated wife or husband such separation not being granted on the ground of adultery". Nevertheless the text of Rule 54 (*ibid*) does not mandate "nomination" much less nomination only in favour of a wife in case of a married employee. Similarly, it does not mandate that if an employee did not nominate his wife or judicially separated wife for family pension he would be deprived of his own retiral dues. The Rule only regulated the manner in which the family pension would be disbursed and the persons entitled to the same but not the manner in which "nomination" would be executed. Further, sub rule 11-B would be quite interesting to quote. It is as under:

"(11-B) (a) Where a female Government servant or male Government servant dies leaving behind a judicially separated husband or widow with a child or children, the family pension payable in respect of deceased shall be payable to the surviving person, provided he or she is the guardian of such child or children.

(b) Where the surviving person has ceased to be the guardian of such child or children, such family pension shall be payable to the person who is the actual guardian of such child or children."

Therefore, the contention of the respondents that pension rules mandated nomination for family pension in favour of wife is without any basis.

9. Further, we noted that the wife of the present employee, namely, Haritara Mondal, who has preferred the MA seeking impleadment in this OA as respondent no. 6, had earlier preferred OA. 1721 of 2009 seeking the following reliefs:

"(i) To direct the statutory authority record the name of the applicant as wife and only valid nominee of the private respondent no. 7 within no time in deletion of the name of private respondent no. 8 being without any right and claim for such nomination.

(ii) To direct the respondent authority to pay 50% allowances/dues to the private respondent no. 7 being the retirement benefit including DCRG and other benefits as well as of PLI, Insurance benefit, GPF and any other dues, if any, to the applicant being her legitimate wife within no time.

(iii) To direct the statutory authority to take such steps and made such arrangement so that the applicant he and remain eligible for family pension/widow pension following expiry of her husband in course of time.

(iv) To dispose of the representation claiming 50% of all retirement benefits due to her husband on his superannuation including DCRG, GPF and other benefits.

(v) To pass an appropriate order directing the respondents to submit all relevant records of the case before the Hon'ble Tribunal for conscionable justice with copies to the Ld. Advocate of the applicant for reference thereto.

(vi) Any other order or further order/orders as to this Hon'ble Tribunal may seek fit and proper."

The said OA, wherein Smt. Haritara Mondal had sought for recording of her name as wife and only valid nominee of private respondent no. 7, meaning thereby the present applicant, and deletion of name of private respondent no. 8 i.e. the brother of present applicant, was dismissed on the grounds infra :

".....till the time the Government employee is alive even the pension cannot be disbursed to anyone else except employee.

.....the wife or anyone cannot claim any retrial dues such as DCRG, GPF and any other amount due to the retired employee. The averment of the respondents are also cannot be denied to extend that as soon as the family papers/family details including the name of wife etc is submitted by the employee, the same will be recorded in the service book and the proposal for pension/family pension will be forwarded to the Pay and Accounts Office for earlier clearance of retrial dues.

The claim of the applicant is that her name to be included in the service book of the applicant is not sustainable as the applicant is not having any valid right upon the claim of the retrial dues of the respondent no. 7 till the time he is alive. As such the present original applicant is fit to be dismissed."

10. Such recording of observations/findings in the said order would show that the prayer of the wife Smt. Haritara Mondal, to get her name recorded in the Service Book as a nominee to receive retiral/death benefits, was already considered and dismissed on merits. Therefore, the prayer sought for in the present MA would be barred by principles of res-judicata. Therefore, the MA is rejected.

11. In OWP No. 80 of 2007, Hon'ble High Court of Jammu and Kashmir at **Jammu vs. Ravinder Kour and Anr.**, in a case where mother being a nominee had claimed DCRG under Rule 50 CCS (Pension) Rules, in exclusion of wife (Respondent No. 4 therein), had ruled as under:

".....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."

After discussion on the implications of Rules 50(1) b, 51, 53 of the CCS (Pension) Rules, the Hon'ble Court held as under:

"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....."

12. A contrary view could be noted in a decision of Hon'ble High Court of Judicature at Madras in WP No. 29894 of 2002, in a case where "daughters of a Sub Divisional Engineer, Transmission Unit, Office of the Director, Bharat Sanchar Nigam Ltd., (BSNL), Chennai, claiming themselves as legal heirs, entitled to the terminal benefits, on account of the death of their father, have sought for a Mandamus, directing to the respondents no. 1 to 3 to pay the same. The 4th respondent is the brother of the deceased, in whose favour, the nomination has been made, by the employee", it was held:

"52.....the nominee is only an authorized person or a trustee to receive the amount or manage the property. If there is any claim by the heirs of the deceased, to the beneficial interest in the property, the same should devolve only upon the legal heirs of the deceased, in accordance with the law of succession, governing them.

53. In the light of the decision of the Supreme Court, the petitioners, daughters of the deceased alone are entitled to the beneficial interest and to receive the payments under the heads.

55. Before parting with this case, this Court would like to make an observation. Though a positive direction cannot be granted for appointment of any amount to the fourth respondent, but, considering the fact that after divorce, the employee continued to live with his brother, till his death and that it was only the fourth respondent-brother, nominee, who shared the food and shelter, joy and sorrow, pleasure and pain and remained as a bachelor till the demise of his brother, this Court is of the view that it is for the petitioners-daughters to take a pragmatic approach and apportion some amount to the fourth respondent, their uncle, if they so desire, considering the fact that the brothers were together, until they were separated, by death, which is inevitable. Sometimes law cannot extend its helping hand even in deserving cases. But equity, good conscience and justice, can always be considered by the daughters, while taking a decision in this regard. With the above directions and observation, the Writ Petition is allowed. No costs.

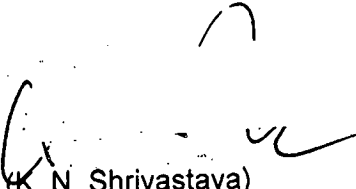
13. Having noted the tenor of the decisions supra, no opinion would be required to be expressed in the present case in regard to the legality of the applicant's nomination in favour of his mother or brother for DCRG or family pension, since the same is not under challenge and the DCRG or pension would be payable to the employee himself. If need be, the disbursement of family pension would take its usual course as per explicit provision of CCS (Pension) Rules, as already enumerated hereinabove.

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14. Be that as it may, in the case at hand, we failed to notice any stipulation explicit in the Pension Rules which would require an employee to nominate his wife for family pension or would allow the respondents to withhold the retiral dues of the employee for not nominating his wife or judicially separated wife, for family pension. Therefore, we find no justification in such withholding. Accordingly, we would allow the OA with a direction upon the respondents to disburse the entire retiral dues of the present applicant including pension with arrears, to the applicant within a period of 2 months from the date of communication of this order. For the purpose the respondents may ask the applicant to submit all the documents as would be required for processing his case without insisting for change of nomination in favour of Smt. Haritara Mondal in regard to family pension. She would not be remediless but have her legal recourse.

15. Further we would direct the respondents to release the arrears with interest at @ 8% per annum from the date of default since the apathy and non-payment occurred due to sheer callousness of respondent's officials, in misdirecting themselves, in misreading, either consciously and deliberately or acting in ignorance of pension rules, and since the delay in making payments could not be attributed to the present applicant as, in absence of specific provisions in the Pension Rules for nomination of his wife for family pension, he was neither bound to nor could be compelled to nominate his wife for family pension.

16. The OA would accordingly stand disposed of. No costs.


(K. N. Shrivastava)
Member (A)


(Bidisha Banerjee)
Member (J)

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