

GAHC010106612023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./105/2023

KHOKA MOHAN SARKAR AND 3 ORS.
S/O LT. JATU RAM SARKAR VILL- SONDUBA P.O. SONDUBA P.S.
BHURAGAON DIST. MORIGAON, ASSAM.

2: SMTI. DULALI BALA SARKAR
D/O LT. JATU RAM SARKAR W/O SHRI SUMESH CH. SARKAR VILL-
SONDUBA P.O. SONDUBA P.S. BHURAGAON DIST. MORIGAON
ASSAM.

3: SRI MILAN SARKAR
D/O LT. JATU RAM SARKAR W/O SHRI MOHAN CH. SARKAR VILL-
SANKAR DEV NAGAR MORIGAON TOWN
P.O. and P.S. MORIGAON
ASSAM.

4: SMTI. MINA SARKAR
W/O LT. INDRA MOHAN SARKAR VILL- SONDUBA P.S. BHURAGAON DIST.
MORIGAON
ASSAM

VERSUS

JYOTSNA KAKATI AND 4 ORS.
W/O LT. NIRMAL CHANDRA KAKATI R/O VILL- ANNADAPALLY NORTH
LUMDING, P.O. and P.S. LUMDING DIST. NAGAON, ASSAM, PIN - 782447.

2: THE NORTHEAST FRONTIER RAILWAY
REPRESENTED BY THE GENERAL MANAGER
NF RAILWAY
MALIGAON
GUWAHATI 781011

3: THE DIVISIONAL RAILWAY MANAGER P
N.F. RAILWAY

LUMDING DIST.NAGAON
ASSAM
PIN - 782447.

4:THE CHIEF MEDICAL SUPERINTENDENT N.F.
RAILWAY
LUMDING
DIST. NAGAON
ASSAM. PIN - 782447.

5:THE FINANCIAL ADVISOR and CHIEF ACCOUNTS
OFFICER ADMINISTRATION
N.F. RAILWAY MALIGAON
GUWAHATI-11

Advocate for the Petitioner : MR. B CHAKRABORTY

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 25-09-2023

[Soumitra Saikia, J]

Heard Mr. B. Chakraborty, learned counsel for the review petitioners. Also heard Mr. K. Gogoi, learned CGC appearing for the respondent nos. 2 to 8.

2. This Review Petition is directed against the judgment and order dated 22.12.2021, passed in W.P(C) No. 3604/2015 where the review petitioners were the respondents no. 5 to 8 in the said writ petition. The opposite party/respondent no. 1 filed an application being Original Application (O.A.) No.040/00189/2014 before the Central Administrative Tribunal (CAT), Guwahati claiming all retirement dues and pensionary benefits of one late Utpal Chandra Sarkar, who was working as a Chief Pharmacist under the AMCS/Store, NF

Railway, Lumding. Late Utpal Chandra Sarkar was unmarried and was residing at North Lumding. It was contended by the respondent no.1 before the CAT, Guwahati that she was treated by the late Utpal Chandra Sarkar as his younger widowed sister.

3. Learned counsel for the review petitioners submits that the late Utpal Chandra Sarkar joined in the N.F. railways on 06.05.1981 and was to superannuate from service in the year 2019. However, he died while in service on 22.03.2013 at the age of about 53 years. Late Utpal Chandra Sarkar made a family declaration on 03.02.2005 before the Railway Authorities where the opposite party/respondent No. 1, her daughter and sons were shown as family members of the deceased employee.

4. The further case before the CAT, Guwahati was that the opposite party/respondent no. 1 looked after the said Utpal Chandra Sarkar and in his health card made on 01.07.2013 and Life Insurance of India Policy, he had mentioned the opposite party/respondent no.1 as his widowed sister. After his demise, the opposite party/respondent No. 1 filed an application on 29.04.2013 before the Railway Authorities enclosing the death certificate praying for release of all death benefits admissible to the deceased employee. The Railway authorities rejected the application of the opposite party/respondent No. 1 on the ground that the opposite party/respondent No. 1 was not a blood relation of the deceased employee and as per the Railway Services (Pension) Rules, 1993 the opposite party/respondent No. 1 was not entitled to the benefits as claimed.

5. The present review petitioners, who are the siblings and the relatives of the said Utpal Chandra Sarkar also contested the claim of the opposite party/respondent No. 1 disputing her claim. They had approached the District Judge, Morigaon for issuance of a Succession Certificate being the siblings of

late Utpal Chandra Sarkar for claiming the pensionary and other benefits of the deceased employee. The District Judge, Morigaon, vide order dated 22.10.2014 granted a Succession Certificate to the review petitioners as they are Class II legal heirs of late Utpal Chandra Sarkar. The CAT, Guwahati upon consideration of the entire matter rejected the claim of the opposite party/respondent no.1 by order dated 07.04.2015 and directed the respondent authorities to release the Death-cum-Retirement Gratuity (DCRG) and other retirement dues of the deceased employee to the private respondents by complying with the proviso to Rule 73 of the Railway Services (Pension) Rules, 1993 within a period of three months from the date of receipt of the order.

6. Being aggrieved, WP(C) No.3604/2015 was filed by the opposite party no.1 herein as the petitioner, assailing the order dated 07.04.2015 passed by CAT, Guwahati. This Court by Judgment and Order dated 22.12.2021 in WP(C) No.3604/2015 disposed of the Writ Petition holding that in terms of the Railway Services (Pension) Rules, 1993, the petitioner (opposite party/respondent No. 1 herein) cannot be considered to be a member of the family of the deceased and upheld the order of the CAT, Guwahati to that extent. The Division Bench further held that the direction of the CAT, Guwahati to the Railways to release the Death-cum-Retirement Gratuity (DCRG) and other retirement dues of the deceased employee in favour of the respondents (review petitioners herein) also could not have been given. It was held that as far as the claim of family pension is concerned, these siblings, namely the review petitioners before this Court, are already married and under the Rules, pension was to be given only to unmarried sisters and brothers who are below the age of 18 years, which they are not. However, in view of the Succession Certificate having stated to have been issued to the said brothers and sisters of the deceased person, namely the review

petitioners herein; the writ petition was disposed of with a direction that the review petitioners will be entitled for Death-cum-Retirement Gratuity (DCRG) alone and no other benefits.

7. The present Review Petition has been filed seeking a review of the said Judgment and Order dated 22.12.2021 on the ground that under the Rule 73 of the Railway Services (Pension) Amendment Rule, the review petitioners are entitled to draw other dues like leave salary, GIS and other miscellaneous dues as the review petitioners had obtained a Succession Certificate being the legal heirs of the deceased. It is further submitted that under Clause 70 of the Employees Provident Fund Scheme, 1952, it is provided that if the deceased member or employee had not nominated anyone under the scheme then the dues would be payable to family members. In the event, Clause-70 (i) & (ii) of the Employees Provident Fund Scheme, 1952 are not applicable, then the amount would be payable to the person legally entitled.

8. The learned counsel for the review petitioners submits that since they are the only surviving legal heirs of the deceased and had also been granted the Succession Certificate by order dated 22.10.2014 passed by Competent Court of Civil Jurisdiction, they would be covered within the term "*persons legally entitled*". It is further submitted that the Rules, 1993 or any other Rules cannot exclude the benefits due to the review petitioners under the Employees Provident Fund Scheme, 1952. Under such circumstances, the direction of the writ Court that the review petitioners will be entitled only to Death-cum-Retirement Gratuity (DCRG) alone and no other benefit, being contrary to the scheme of the Employees Provident Fund Scheme, 1952, there is an error apparent on the face of the record and therefore, the same is required to be reviewed.

9. Mr. K. Gogoi, learned CGC appearing for the respondents submits that there is no error apparent in the Judgment and Order dated 22.12.2021 which calls for a review. The writ Court had upheld the order of the CAT, Guwahati and accordingly, the review petitioners were granted the benefit of availing DCRG. He, however, submits that he has no instructions in respect of the applicability of the Employees Provident Fund Scheme, 1952 and the rights of the review petitioners there under, if any.

10. Having heard the learned counsels for the parties, we find that there is no dispute at the Bar that the review petitioners have been granted a succession certificate dated 22.10.2014 issued by the District Judge, Morigaon. On perusal of the review petition, we however find that the relevant amendment of Rule 73 of the Railway Services (Pension) Amendment Rules and the Employees Provident Fund Scheme, 1952 upon which reliance is placed by the review petitioners are not extracted in the Review Petition nor are copies thereof enclosed, save and except a reference thereof in the grounds that are urged in this review petition. Instead of keeping the Review Petition pending, we therefore propose to dispose of this review petition clarifying that the observations of the writ Court in Paragraph-10 of the Judgment and Order dated 22.12.2021 that the respondents no. 5 to 8, namely *the review petitioners herein will only be entitled to DCRG and no other benefits*, will not operate as a bar for the Railway authorities to examine any claims due to the review petitioners for the benefits like Provident fund, leave salary, GIS, miscellaneous dues, in view of the fact that a Succession Certificate is stated to have been issued in their favour by a Competent Court of Civil Jurisdiction, if there otherwise found to be entitled to be so under the provisions of Employees Provident Fund Scheme, 1952 and any other provision of law as may be

applicable.

11. The Review Petition is disposed of in terms of the above clarificatory order. The Railway authorities will examine the claims of the review petitioners and pass appropriate orders within 30 (thirty) days from the date of receipt of a certified copy of this order.

JUDGE

CHIEF JUSTICE

Comparing Assistant