

Court No. - 33

Case :- WRIT - A No. - 14715 of 2023

Petitioner :- Kalpana

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Dheeraj Kumar Yadav,Avanish Tripathi

Counsel for Respondent :- C.S.C.,Shiv Kumar Singh

Hon'ble J.J. Munir,J.

Mr. Shiv Kumar Singh, learned Counsel appearing on behalf of the Nagar Nigam, Aligarh has produced before the Court the original service records relating to the deceased, Maya Devi. Though in the service book, there is no nomination recorded, but there is a separate application signed by Maya Devi widow of Diwari Lal dated 31.08.2015 addressed to the Nagar Aayukt, Nagar Nigam, Aligarh, wherein she has made a nomination regarding her provident fund and group insurance in favour of her daughter, Smt. Kalpana wife of Manoj Kumar. In view of the said nomination *ex facie* the petitioner is entitled to receive gratuity, leave encashment, provident fund and group insurance due to the late Maya Devi. In paragraph no. 10 of the compliance affidavit filed on behalf of the Executive Officer, Nagar Nigam, Aligarh, it is averred:

10. That since there is a dispute of succession the answering respondents is not able to make the payment of retiral dues in the absence of succession certificate from a Civil Court, since the amount reflected in the succession certificate issued by the office of District Magistrate is only upto the extent of Rs. 5000/-. The delay is because of the dispute of succession.

Upon hearing learned Counsel for the parties, this Court finds that once there is a nomination in the service records by the deceased regarding entitlement to receive her provident fund and group insurance in favour of the petitioner, there is absolutely no reason for the Nagar Nigam to withhold the petitioner's dues on account of her mother's post retiral benefits, to wit, gratuity, leave

encashment, provident fund and group insurance.

The question of succession certificate is not relevant once a nomination is there. The fact that the Nagar Nigam is liable to pay the petitioner these post retiral benefits does not mean that the petitioner has beneficial interest in the said sum of money or a beneficial interest to the exclusion of other heirs and LRs of the deceased Maya Devi. All that a nomination does is to entitle the Nagar Nigam as a trustee of the funds to a valid discharge *vis-a-vis* the third parties or other rival claimants. This being the position of law, insistence on a succession certificate is besides the point. A succession certificate by the Judge also does not decide the parties' beneficial interest in money or the movables of the deceased. That is the office of a duly constituted suit amongst the heirs, which they can always bring, to establish their entitlement or share *inter se*.

In the circumstances, a mandamus is issued to the Executive Officer, Nagar Nigam, Aligarh to release the petitioner's post retiral benefits, to wit, gratuity, dues on account of leave encashment, group insurance and provident fund in favour of the petitioner within three weeks of date and also ensure that it is credited to her account.

This writ petition is **allowed** in terms of the aforesaid orders. There shall be no order as to costs.

The original records produced here shall be returned to Mr. Shiv Kumar Singh for onward transmission to the Executive Officer, Nagar Nigam, Aligarh.

Let this order be communicated to the Executive Officer, Nagar Nigam, Aligarh by the Registrar (Compliance) by **16.11.2023**.

Order Date :- 9.11.2023/Deepak