

Court No. - 21

Case :- SPECIAL APPEAL No. - 674 of 2023

Appellant :- Mithlesh Kumar

Respondent :- Union Of India And 2 Others

Counsel for Appellant :- Shobhanath Singh Yadav

Counsel for Respondent :- A.S.G.I.,Rajshekhar Srivastava

Hon'ble Manoj Kumar Gupta,Acting Chief Justice

Hon'ble Donadi Ramesh,J.

1. Heard Shri Shobhanath Singh Yadav, learned counsel for the appellant and Shri Rajshekhar Srivastava, learned counsel appearing on behalf of the respondents.
2. The instant intra-court appeal is directed against the order dated 25.08.2023 passed by learned Single Judge in Writ - A No. 12967 of 2023 (Mithilesh Kumar vs. Union of India and 2 others). The dispute relates to entitlement of person to the pensionary benefits of deceased employee Late Smt. Maya Bharti.
3. The Writ-Court has dismissed the writ petition filed by the petitioner/appellant and has upheld the order dated 21.04.2023 passed by respondent No. 2 holding that the appellant, who is brother of the deceased employee, would not be entitled to pensionary benefits, when her husband and two minor sons are alive. The order impugned in the writ petition was passed in compliance of the order dated 24.11.2022 passed by this Court in writ petition filed by Smt. Surji Devi, mother of the petitioner herein claiming a share in pension and gratuity amount of her daughter Maya Bharti. The order records that the mother of deceased employee, Smt. Surji Devi, had died on 06.12.2022 and the only surviving legal heirs of deceased employee are her husband Ajay Kumar Gautam and two minor sons, namely, Ayan Kumar Gautam and Arman Kumar Gautam and therefore they would only be entitled to the remaining pensionary benefits in equal shares.
4. The appellant claiming through his mother Surji Devi challenged the aforesaid order. The Writ Court has held that the appellant being brother of late Maya Bharti,

the deceased employee would have no right to claim any terminal benefits.

5. Learned counsel for the appellant submits that the intention of the deceased while making nomination in favour of her mother was that she and after her death, her legal heirs should get 50% of the pension amount. In support of his contention, he places reliance on Rule 46(4) of the Central Civil Services (Pension) Rules, 2021. He submits that Rule 50 on which reliance has been placed would not apply to the facts of the instant case.

6. On the other hand, learned counsel appearing on behalf of the respondents contended that there is no illegality in the impugned order and after the death of mother of the deceased employee, the petitioner does not get any right to claim share in the pension. Relevant part of Rule 46 which relates to nominations is extracted below:

"46. Nominations.— (1) A Government servant shall, on his initial appointment in a service or post, make a nomination in Form 3 conferring on one or more persons the right to receive the retirement gratuity and death gratuity payable under Rule 45.

(2) In case at the time of making the nomination,—

(i) the Government servant has one or more members of family as referred to in the explanation below sub-rule (6) of Rule 45, the nomination shall be in favour of any member or members of his family referred to in that rule; or

(ii) the Government servant has no family as referred to in the explanation below sub-rule (6) of Rule 45, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not.

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

(4) 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 on to 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:"

7. Under sub rule (1), a Government servant has been conferred with right to nominate one or more persons to receive the retirement gratuity and death gratuity payable under Rule 45. Under Clause (i) of sub rule (2) of Rule 46, if the Government servant has one or more members of family as referred to in the Explanation to sub rule (6) of Rule 45, the nomination has to be in favour of any member or members of his family referred to in that Rule. Maya Bharti, the Government servant, was having more than one member in her family at the time of nomination. 'Family' is defined in the Explanation to sub rule (6) of Rule 45, as follows: -

"Explanation.— For the purposes of this rule and Rules 46, 47, 48 and 49, 'family', in relation to a Government servant, means,—

(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;

(v) widowed or divorced daughters including stepdaughters and adopted daughters;

(vi) father including adoptive parents in the case of individuals whose personal law permits adoption;

(vii) mother including adoptive parents in the case of individuals whose personal law permits adoption;

(viii) brothers including stepbrothers who are suffering from any disorder or disability of mind including the mentally retarded or physically crippled or disabled without any limit of age and brothers, including stepbrothers, below the age of eighteen years, in other cases;

(ix) unmarried sisters, widowed sisters and divorced sisters including stepsisters;

(x) married daughters; and

(xi) children of a pre-deceased son."

8. As per nomination form, there were two nominees, namely Smt. Surji Devi (mother) and Ajay Kumar Gautam (husband). Both of them fell under the definition of 'family'. The petitioner who was neither major, nor mentally retarded, or physically crippled, or disabled person, was not covered under the definition of 'family'. He could not have been nominated when other family members were alive.

9. Under sub rule (4), it is open to a Government servant to provide in the nomination form that in respect of any specified nominee who dies after the death of the Government servant but before receiving the payment of gratuity, the right conferred on that nominee shall pass on to such other person as may be specified in the nomination form. Admittedly, in the instant case, the nomination form did not provide that after death of Surji Devi, the petitioner would be entitled to her share. Even otherwise, when other family members were there, the Government servant was not authorized to nominate any person who is not member of his family. Rule 46 (2)(i) and 46 (4)(i) have to be read together.

10. In normal course, the status of a nominee is that of a trustee who holds the amount in trust for the actual legal heirs and representatives. Under the Service Rules noted above, right has been conferred on the nominee to receive the retirement gratuity and death gratuity payable under Rule 45 but it is subject to the specifications in the nomination form. The learned Single Judge was perfectly

justified in rejecting the claim of the petitioner as set up in the writ petition.

11. The appeal, lacks merit, is accordingly dismissed.

Order Date :- 22.11.2023

Mukesh Kr.

(Donadi Ramesh,J.) (Manoj Kumar Gupta,A.C.J.)