

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.471 OF 2024**

Sri Subodh Bhowmik and anr.
Vs.
The State of Tripura and ors.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Present:

For the Petitioner(s) : Mr. R. Saha, Advocate.
Ms. R. Purukayastha, Advocate.

For the Respondent(s) : Mr. M. Debbarma, Addl.G.A.
Mr. N. Majumder, Advocate.

12.07.2024

Order

Heard Mr. R. Saha, learned counsel appearing for the petitioners as well as Mr. M. Debbarma, learned Addl. G.A. appearing for the State-respondents and Mr. N. Majumder, learned counsel appearing for respondent No.6.

2. This present writ petition is filed seeking the following reliefs:-

“(1) Issue RULE NISI;

(ii) Issue a Rule calling upon the Respondents and each one of them to show cause as to why a Writ of Ceriorari and/or in the nature thereof, shall not be issued thereby quashing/ setting aside the impugned order vide No.F.8/GVHS/2023/OC(LA)/2078 dated 15/09/2023 issued by the Member Secretary, Managing Committee, Golden Valley H.S. School, Respondent No.7 (Annexure-13, supra) whereby the representation of the petitioners dated 03.04.2021 for releasing the service (death) benefits such as Leave Salaries, GPF, Gratuity, GSLI accrued in the name of the deceased Sunil Bhowmik during his service tenure, in favour of the present petitioners, had been most illegally regretted, declaring the same as null and void and violative of and beyond the established provisions of Payment of Gratuity Act, Hindu Succession Act as well as the Constitution of India:

(iii) Issue a Rule calling upon the Respondents and each one of them to show cause as to why a Writ of mandamus and/or in the nature thereof, shall not be issued mandating/ directing/ commanding the respondent authorities particularly the respondent No. 4 to release the service benefits such as Leave Salaries, GPF, Gratuity, GSLI accrued in the name of the deceased Sunil Bhowmik during his service tenure in favour of the present petitioners;

(iv) Issue a Rule calling upon the Respondents and each one of them to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be

issued, calling of the records pertaining to the application submitted by the petitioners on 03.04.2021, from the office of the respondent No. 7;

(v) After hearing the parties be pleased to make the rule absolute in terms of (i), (ii) & (iii), above;

AND

(vi) Pass any other order/ orders as this Hon'ble Court deems fit for the fair ends of justice.

3. Earlier the petitioners filed a Writ Petition No.416 of 2022 seeking the following reliefs:-

"1. Issue Rule Nisi.

2. Issue Rule calling upon the respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued mandating/directing/commanding the respondent authorities particularly the respondent No.4 to release the service benefits such as leave salaries/GPF, Gratuity, GSLI accrued in the name of the deceased Sunil Bhowmik during the service tenure in favour of the present petitioners;

3. Issue a Rule calling upon the respondents and each one of them to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued calling of the records pertaining to the application submitted by the petitioners on 30.04.2021 from the office of the respondent No.7.

4. After hearing the parties be pleased to make the rule absolute in terms of (i), (ii) & (iii) above.

4. This court vide order dated 06.07.2023 without expressing any opinion on merits disposed of the writ petition directing the respondents to consider the case of the petitioner in accordance with the law.

5. In pursuance thereof, the petitioners have approached the respondent-education institution, and thereafter by impugned proceedings dated 15.09.2023, the said respondent passed an order which is as under:-

"ORDER

Whereas, Late Sunil Bhowmik, an Assistant Teacher of Golden Valley HS School died while in service on 12.04.2019 leaving no nominee;

and

Whereas, Sri Subhash Bhowmik, a brother of the deceased teacher submitted a representation dated 03.04.2021 requesting the release of the posthumous financial benefits such as GPF amount, Gratuity, Leave Salary, Insurance etc. of the deceased teacher in favour of him and his another brother, Sri Subodh Bhowmik;

and

Whereas, subsequently, the claimants, Sri Subhash Bhowmik and another filed a case bearing No. Civil Misc (succ).09 of 2021 under section 372 of the Indian Succession Act, 1925 in the Court of the Hon'ble Civil Judge (Sr. Division), North Tripura, Dharmanagar for grant of Succession Certificate in favour of them for claiming the posthumous financial benefits of Late Sunil Bhowmik;

and

Whereas, the Hon'ble Court of District and Sessions Judge, North Tripura, Dharmanagar dismissed the case on 19.12.2022 on merits and held that there was a bar to issuance o succession certificate under the Rules in favour of the petitioners;

and

Whereas, the claimants, Sri Subhash Bhowmik and another being aggrieved by alleged non-action of the respondent(s) approached the Hon'ble High Court of Tripura and filed a Writ Petition bearing No. WP(C) 416/2023 for mandating/directing / commanding the respondents to release the service benefits such as leave salary, GPF, Gratuity, GSLI accrued in the name of the deceased Sunil Bhowmik during the service tenure in favour of the petitioners;

and

Whereas, the Hon'ble High Court of Tripura in its Order dated 06.07.2023 directed as follows:

"Without expressing any opinion on the merits of the case, this present writ petition is disposed of directing the respondents to consider the representation of the petitioner dated 03.04.2021 which is pending before them in the light of the proposal made by the school management of Golden Valley H.S. School by the order dated 20.07.2021 in accordance with law within a period of three months from the date of receipt of copy of this order. The petitioner is at liberty to provide all the relevant materials to the respondents, if so advised.

With the above observation and direction, this present writ petition stands disposed of. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.";

and

Whereas, in view of the judgment of the Hon'ble Court of District and Sessions Judge, North Tripura, Dharmanagar, dated 19.12.2022, it is obvious that the claimants are not entitled to

receive any posthumous financial benefits of Late Sunil Bhowmik as per the rules and regulations governing the payment of gratuity and pension of teachers in Tripura as the claimants are not legal heirs or family members of Late Sunil Bhowmik, within the meaning of 'family' as per extant rules, governing such benefits, in absence of nomination;

and

Whereas, as per the Tripura Payment of Gratuity Rules, 1975, gratuity is payable only to the nominee or nominees duly appointed by the employee in accordance with the provisions of section 6 of the Payment of Gratuity Act, 1972 and in case the employee has not made any nomination, the gratuity shall be paid to his legal heirs in accordance with the provisions of section 7 of the Act;"

6. Aggrieved by the same, the present writ petition is filed.

7. Mr. R. Saha, Counsel appearing for the petitioners contended that the petitioners herein are the brothers and they are class-2 legal heirs as per the Hindu Succession Act and under Section 4 of the said Act, they are entitled to claim the death benefits and respondents could not by touching Sections 6 and 7 of the Payment of Gratuity Act deny the relief claimed by the petitioners.

8. Heard and perused the evidence on record.

9. On perusal of the record, it is seen that earlier the petitioners approached the learned Court of Civil Judge, Senior Division, Dharmanagar, North Tripura, and filed an application vide No.Civil Misc.(Succession)09 of 2021. By way of an order dated 19.12.2022, the Court below dismissed the

claim of the petitioners which was filed under the Hindu Succession Act, and the same became final. Further, there is no other certificate obtained from any competent authority under the Hindu Succession Act to say that the petitioners herein complied with the requirements under Section 4 of the Act and further under Section 6 of the Payment of Gratuity Act since the deceased died intestate and without giving any nominee and the present petitioners are claiming the said benefits. Viewed from any angle, the petitioners have not placed any certificate from the competent authority to say that the petitioners are the legal heirs under the statute and they are entitled to claim the money. Further, the Survival certificate that is placed on record cannot be treated as a legal heir certificate under Section 6 of the Payment of Gratuity Act.

10. In view of the same this Court is not inclined to accept the claim of the petitioners that they are entitled to gratuity and accordingly, the writ petition is liable to be dismissed.

11. However the petitioners if advised may approach the concerned Civil Court seeking appropriate order to declare that they are legal heirs of late Sunil Bhowmik and thereafter it is open for them to approach the respondent-education institution afresh.

12. With the above observation, the writ petition stands dismissed. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

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