$~13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of hearing and Order: 21.05.2015**

\+ **W.P.(C) 1353/2015**

UOI AND ORS ..... Petitioners

Through Mr. J.K. Singh, Adv.

versus

JANKI DEVI ..... Respondent

Through Mr. G.D. Bhandari, Adv.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S. MEHTA

O R D E R

KAILASH GAMBHIR, J. (ORAL)

C.M. Appl. No.2378/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No.1353/2015 & C.M. Appl. No.2377/2015 (Stay)

1. Challenge in the present petition is the order dated 12.08.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi, whereby the learned Tribunal has allowed the O.A. preferred by the respondent with a direction to the petitioners herein to settle the claim of the respondent for pension and all the terminal benefits with effect from 07.11.2004 within a period of two months from the date of the receipt of copy of this order. The Tribunal further allowed interest at the rate of 10% in favour of the respondent and against the petitioners with effect from the death of the husband of the respondent, i.e., 07.11.2004. Mr. J.K. Singh, counsel for the petitioners has contended that in Form No.6 the

deceased did not disclose the name of his wife and in fact he has disclosed his marital status as that of `single' and it is because of the said status disclosed by the deceased employee himself the petitioners rightly suspected the documents filed by the respondent claiming herself to be the wife of the deceased employee. Counsel further submits that even the documents which were placed on record by the respondent to support her status as wife of the deceased were produced subsequent to the death of the deceased. Counsel also submits that the petitioners have no difficulty in implementing the direction given by the Tribunal insofar as release of pension and other terminal benefits in favour of the respondent is concerned but the only prayer of the petitioners is that they should not be burdened to pay interest.

2. We have heard learned counsel for the petitioners and learned counsel for the respondent. The Tribunal has threadbare gone into all these issues and we need not reiterate the reasoning given by the Tribunal in our order. The Tribunal has also placed reliance on the judgment of the Apex Court in ***G.L. Bhatia v. Union of India, 1999 (5) SCC 237*** where in almost identical facts the employee had not disclosed the name of her husband on the relevant form and after the death of the employee the husband had approached the employer claiming his entitlement to the grant of family pension and the view taken by the Apex Court was that the rights of the parties are governed by the statutory provision and the individual lapse in not nominating his/her family member as nominee do not deprive the nominee to the grant of the family pension. The relevant para of the said judgment although referred to in the impugned order is again reproduced here for better appreciation:-

> *"2. The sole question that arises for consideration in this appeal is whether the appellant, who happens to be the husband of the deceased government servant, is entitled to*

family pension under the provisions of the Central Civil Services (Pension) Rules (for short "the rules") notwithstanding the fact that the deceased wife in her nomination did not include the husband. The forums below have taken the view agreeing with the authorities that since the nomination was not in favour of the husband and the husband was staying separate from the wife, the husband would not be entitled to family pension in question. This view cannot be sustained in view of the provisions contained in Rule 54 of the rules. It is too well settled that where rights of the parties are governed by statutory provisions, the individual nomination contrary to the statute will not operate.

3. Under Rule 54 sub-rule (14(b)(i) the expression "family" has been defined thus:

> *"54. (14(b)(i) Wife in the case of a male government servant, or husband in the case of a female government servant...."*

4. Sub-Rule (8(r) of Rule 54 states that:

> *"54. (8(r) If a deceased government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child."*

5. In the light of the aforesaid provisions and there being no divorce between the husband and wife even though they might be staying separately, the appellant husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nomination made by the deceased wife of the appellant. The impugned order is, accordingly, set aside and this appeal stands allowed."

3. Indisputably, this respondent had produced various documents to establish her claim of being a legally wedded wife of the deceased

employee and one of the proofs was the election card. We find no reason for the petitioners to have raised any suspicion over such documents which are coming from the source of Government departments and in the present case from the office of Election Commission of India. Since the petitioners failed to entertain the claim of the respondent, this led the respondent to approach the learned Tribunal vide O.A. No.1885/2013 and practically it has taken more than 9 years in granting the said relief to the respondent which undoubtedly was her vested right under the statute. For such enormous delay caused by the petitioners in not releasing the pension to the respondent, now they cannot turn round to say that they are not liable to pay interest for the delay caused by them.

4. Reliance in this regard can be placed on the judgment of the Hon'ble Supreme Court in the case ***State of Kerala and Ors. v. M. Padmanabhan Nair (1985) 1 SCC 429*** wherein it was held that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and, property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be overemphasized. It would not be unreasonable to direct the payment of penal interest on such dues at current market rate at the expiry of two months from the date of retirement.

5. In the case of ***Dr. Uma Agrawal v. State of U.P. and Anr. AIR 1999 SC 1212*** there was a delay in payment of retiral benefits. Their Lordships of the Supreme Court referred to the various Rules/ instructions which ought to be followed in the matter of payment of pension and other retiral

benefits, and held as under:

> *"We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the rules/ instructions are followed strictly much of the litigation can be avoided and retired Government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the Government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case"*

6. Under the above circumstances, we do not find any merit in the present petition. We accordingly uphold the impugned order dated 12.08.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi. The order shall be implemented by the petitioners as directed by the learned Tribunal within a period of one month, failing which we make it clear that the concerned officer of the petitioners shall be held liable for committing contempt.

The petition and the stay application stand dismissed.

KAILASH GAMBHIR
(JUDGE)

I.S. MEHTA
(JUDGE)

MAY 21, 2015/km