

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.2127 of 2014

Date of decision:8.2.2017

Punjab State Electricity Board through its Sr. Xen. Grid Construction,
Division, PSEB, Ludhiana

...petitioner

Versus

Sheela Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.J.S.Randhawa, Advocate for the petitioner.
Mr.Vivek Rattan, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the judgment dated 3.12.2013 passed by the learned District Judge, whereby appeal of the petitioner was dismissed, upholding the judgment dated 9.10.2012 passed by the learned trial Court, dismissing the application moved by the petitioner under Section 383 of the Indian Succession Act, 1925 ('the Act' for short) for revocation of Succession Certificate dated 26.10.2009, petitioner has approached this Court by way of instant revision petition under Article 227 of the Constitution of India, for setting aside the impugned judgments Annexures P-1 and P-2.

Brief facts of the case, as noticed by the learned District Judge in para 2 of his impugned judgment, are that respondent Sheela Devi was granted succession certificate in Succession Application no. 13 of 20.05.2009 titled as "Sheela Devi versus General Public" by the learned trial Court vide order dated 26.10.2009, to collect the ex-gratia grant of Rs.50,000/- leave encashment of Rs.33,657/-, G.P.F amount of Rs.48,447/- and balance salary of

Rs.12,153/- totalling Rs.1,44,257/- lying with Punjab State Electricity Board, Ludhiana regarding the estate of Hans Raj son of Fakir Chand, as per order passed by this Court in FAO No.177 of 2005; that the applicant was ready to release all the amounts except ex gratia grant which did not fall within the category of debt due to the estate of the deceased as the question of entitlement of ex gratia was to be considered as per eligibility as provided under rule 2.7 of Punjab Civil Service Rules, Volume II; that respondent Sheela Devi was married and was being maintained by her husband and was not dependent upon the deceased and thus, she could not be released the amount of ex gratia grant; that applicant-appellant came to know regarding issuance of succession certificate only when the same was produced for payment and prayer was made for revocation of succession certificate granted in favour of the respondent as regards ex gratia amount and hence the application.

Having been put to notice, respondent appeared and filed her contesting written statement to the application filed by the petitioner. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the applicant is entitled for the revocation of succession certificate dated 26.10.2009 issued in favour of Sheela Devi, respondent, as prayed for? OPA

4. Relief.

With a view to substantiate their respective stands taken, both the parties led their evidence. Since the petitioner-Punjab State Electricity Board ('PSEB' for short) moved an application under Section 383 of the Act, onus was on the applicant to prove its case, by leading cogent evidence. However, applicant-petitioner miserably failed to discharge its onus on the above-said issues. Accordingly, the learned trial Court dismissed the application filed by the petitioner under Section 383 of the

Act, seeking revocation of Succession Certificate dated 26.10.2009, vide its impugned judgment dated 9.10.2012 (Annexure P-1). Petitioner filed its appeal against the above-said judgment passed by the learned trial Court, which also came to be dismissed by the learned District Judge vide his impugned judgment dated 3.12.2013 (Annexure P-2). Hence this revision petition, at the hands of the unsuccessful applicant/petitioner-PSEB.

Learned counsel for the petitioner has raised only one argument, referring to Rule 2.7 of the Punjab Civil Services Rules-II, to contend that the respondent was not entitled for the payment on account of ex-gratia. Placing reliance on Rule 2.7 of Punjab Civil Services Rules, Vol. II, learned counsel for the petitioner submits that since the learned courts below failed to appreciate this material aspect of the matter, the impugned judgments are not sustainable in law. He prays for setting aside the impugned judgments, by allowing the present revision petition.

Per contra, learned counsel for the respondent vehemently contended that the learned courts below proceeded on a factually correct and legally justified approach, while passing the impugned judgments and the same deserve to be upheld. He places reliance on the order dated 23.7.2009 passed by this Court in **FAO No.177 of 2005 (Sheela Devi Vs. General Public (Annexure P-3))**, to contend that once the issue of ex-gratia amount was also subject matter of consideration before this Court and finally the appeal filed by respondent was allowed by this Court, petitioner has no case either on facts or in law. He prays for dismissal of the revision petition with exemplary costs.

Having heard the learned counsel for the parties at considerable

length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case noticed hereinabove, the impugned judgments passed by the learned courts below have not been found suffering from any illegality and the present revision petition is liable to be dismissed with costs, for the following more than one reasons.

Since the entire case of the petitioner revolves around Rule 2.7 of Punjab Civil Service Rules, Volume II, it would be appropriate to refer to Rule 2.7. In fact, it has been reproduced by the learned counsel for the petitioner in paras 6 and 7 of his grounds of revision petition at pages 4 to 6 of the paper-book and the same read as under:-

“2.7 Government may allow ex-gratia grant to the members of the family of a government employee, including a member of All India Service under the Punjab Government who died while in service as indicated in the Annexure to this chapter.

(Annexure)

(Referred to in Rule 2.7)

Rules regulating the grant of Ex-gratia Grants.

1. The ex-gratia grant is intended for providing relief to the family of a Government employee, paid monthly from the State revenues, whether the rates of pay are fixed on a daily or a monthly basis, who dies while in service.

2. The ex-gratia grant will be equivalent to members of the family of an employee who dies in harness shall be paid at the rate of Rs.50,000/- on a uniform basis. It has also been decided

that the employee who, while in service are permanently disabled and rendered unfit for further service shall also be given ex-gratia grant at the rate of Rs.50,000/- on uniform basis.

The ex-gratia grant admissible to the dependent of the government employee dying in harness shall be given at double the rates in case, the death occurs due to causes attributable to the service.

The death or permanent disability of an employee in an accident while travelling on duty shall be deemed to be attributable to his service and such employee or the families of such employees as the case may be, shall be given pension/family pension/compensation at the rates mentioned above under the Extra-ordinary Pension Rules.

Para 3.4 of the Department of Finance Circular referred to above shall therefore read for stand as under:

“The Ex-gratia Grant Admissible to the dependents of the Government employee dying in harness shall be equal to 24 times of the basis pay of the government employee on the date of his/her death with a minimum limit of Rs.1.00 lac and maximum limit of Rs.3 lacs, if the death of the employee occurs due to causes attributable to service i.e. for reasons which are directly or substantially connected with the performance of official duties and is clearly relatable to performance of such duties.

7. That the ex-gratia grant will be payable to the following members of the family of the deceased employee and in the order mentioned above:

1. Widow or husband as the case may be	
2. Sons & Daughters	If they are unemployed and were entirely dependent on the deceased employee as certified by the Deputy Commissioner.
3. Father	
4. Mother	
5. Brothers & Sisters	

A bare reading of the above-said provisions would show that respondent Smt. Sheela Devi was the only surviving legal heir of deceased Hans Raj, being his sister and she would come within the definition of ‘family’. Although her brother Late Shri Hans Raj was married but his wife had obtained divorce and she never came forward to claim any benefits from the estate of Late Sh.Hans Raj, nor she ever applied for Succession Certificate under Section 372 of the Act. After untimely death of Sh.Hans Raj, while in service with the petitioner, his sister, the only surviving legal heir as per the registered Will dated 11.4.1987, moved an application under Section 372 of the Act, for issuance of a Succession Certificate in her favour. Said application under Section 372 of the Act was contested by nobody else except PSEB-petitioner herein. At that point of time, petitioner-PSEB placed reliance only on Rule 16.16-A and B of the Punjab

Civil Service Rules, Chapter- VI, Volume II, wherein 'family' includes wife or wives including judicially separated wife or wives. Application filed by Smt.Sheela Devi-respondent under Section 372 of the Act was dismissed by the learned trial Court vide order dated 20.10.2004.

Dissatisfied, she approached this Court by way of FAO No.177 of 2005 (Sheela Devi Vs. General Public), which came to be allowed by this Court vide its order dated 23.7.2009 (Annexure P-3). Relevant part of the order passed by this Court, which deserves to be noticed here, reads as under:-

“It is evident from the order of the trial Court that Sheela Devi had herself appeared as her own witness AW1 and examined AW2 Parkash Chand, AW3 Gandhi Singh, Advocate, AW4 Som Nath Malhotra and thereafter closed the evidence. To rebut this evidence, P.S.E.B. examined Kahan Singh RW1, Gurdial Singh RW2 and thereafter, they closed the evidence. Sheela Devi, when appeared in the witness box as AW1, deposed that Hans Raj was her brother. His mother has died. He has executed a registered Will on 11-04-1997 in her favour and on the basis of this Will, she is entitled to receive the amount of Rs.75,000/- lying deposited with P.S.E.B, after the death of his brother Hans Raj. Parkash Chand (AW2) deposed that on 11-04-1997, Hans Raj has executed a Will in favour of Sheela Devi, which was read over and explained to him, who after admitting its correctness, signed the same in his presence and proved the same as Ex.A1. He deposed that when the Will had been executed in favour of Sheela Devi, Hans Raj was in sound disposing mind. Gandhi Singh, Advocate (AW3) also proved the execution of the Will, copy of which is Ex.P1. Som Nath Malhotra (AW4) deposed that Hans Raj was working in P.S.E.B. He has

brought the service record. As leave encashment of 227 days, amount of which come to Rs.33,657/-. G.P amount is Rs.48,447/- which is payable to him. Balance salary is lying of Rs.12,153/-, Ex-gratia amount comes to Rs.50,000/-.

Notice of motion was issued in this case and the General Public was ordered to be served through publication in "Chardi Kalan". As per the Office report, General Public was duly served. However, no one has put in appearance on behalf of the General Public. It may be pointed out that the P.S.E.B had appeared in the Court of Civil Judge, Dhuri, in response to the Public Notice to the General Public. However, no one has put in appearance in the present appeal. The deceased had a divorced wife. The observations of the trial Court that the appellant did not disclose the fact in her application, is therefore, not valid, in as much as, exhibit R-1 which was produced by the P.S.E.B and relied upon by the trial Court itself mentioned that he has obtained divorce from his wife. Thus, at the time of filing of the application i.e. on 20-05-1999, there was no other relative of the deceased because the wife of the deceased was divorced much earlier. Further, none has raised any objection, even the said divorced wife, to the claim of the applicant. So, there is no family or alleged legal heir has come forward to contest the grant of succession certificate claimed by the appellant. The relevant rule, relied on by the Additional Civil Judge (Sr. Divn.), Dhuri, while dismissing the petition of the appellant, is reproduced below :-

"Rule 6.16 B of Punjab Civil Services Rules, Chapter-VI, Volume-II : "family" includes "wife or wives" including judicially separated "wife or wives" in the case of the male officer and as per

Rule 16.16-A *“family of the deceased is eligible for pension and other benefit of service after the death of male officer.”*

A perusal of the above Rule show that the family does not include a divorced wife. The judicially separated “wife or wives” is a wife and not a divorced wife and would be termed ‘widow’ after the death of her husband. The divorced wife does not fall under the definition of legal heir. Thus, the reliance placed on the above mentioned rules, in order to deny the Succession Certificate, on the ground the divorced wife was not impleaded as party or she was not mentioned as the surviving legal heir, cannot be sustained. On the directions of this Court, the appellant filed her affidavit dated 28-05-2007 with the following declaration :-

- “1. That deponent is real sister of deceased Hans Raj regarding whom succession certificate is being claimed by her.*
- 2. That said Hans Raj did not have any son or daughter, brother or sister or any other legal heir.*
- 3. That his wife obtained divorce more than 15 years before his death on 09-01-1999 and she never claimed any right to the estate of deceased Hans Raj.*
- 4. That even according to Will executed by said Hans Raj dated 11-04-1997 which was duly proved on the record, the deponent is entitled to succeed to the estate of said Hans Raj.*
- 5. That the deponent is the only legal heir of said Hans Raj and is entitled to grant of succession certificate as prayed for.”*

In view of the above discussion, it is apparent that deponent is the only legal heir of the deceased-Hans Raj. The wife obtained divorce and is, therefore, not a legal heir. Rather, she too has not come forward to contest the claim of the appellant. No alleged family member has come forward to contest the claim.

Taking into evidence produced by Sheela Devi and affidavit dated 28-05-2007 placed on record and none having appeared on behalf of the General Public, despite service, there is no impediment in allowing the appeal.

Accordingly, the same is accepted and the order of the Additional Civil Judge (Sr. Divn.). Dhuri dated 20-10-2004 is set aside and the Succession Certificate to the estate of Hans Raj son of Fakir Chand resident of Dhuri to collect the amount lying with the P.S.E.B., Ludhiana is ordered to be issued.”

In compliance of the above-said order passed by this Court, Succession Certificate dated 26.10.2009 came to be issued in favour of Smt.Sheela Devi-respondent. All other payments were released by the petitioner in favour of the respondent, as agreed between learned counsel for the parties, except ex-gratia amount of Rs.50,000/-, pointing out that respondent was not entitled for this amount. It is also a matter of record and not in dispute that the above-said order dated 23.7.2009 (Annexure P-3) passed by this Court, has attained finality between the parties. Neither petitioner moved any application for recalling the said order nor sought any kind of modification or clarification therein, including qua the ex-gratia amount, which is being disputed now. The above-said order dated 23.7.2009 passed by this Court was also not challenged by the petitioner, before the Hon'ble Supreme Court. Under the above-said fact situation, obtaining on

record in the present case, no fault can be found with the impugned judgments passed by the learned courts below and the same deserve to be upheld.

During the course of hearing, when confronted with the above-said factual as well as legal aspects of the matter, including that ex-gratia amount was also subject matter of consideration before this Court at the time of passing the order dated 23.7.2009 (Annexure P-3), learned counsel for the petitioner had no answer and rightly so, it being a matter of record. When asked as to why they did not challenge the order passed by this Court either before the Hon'ble Supreme Court or sought recalling or modification of that order, learned counsel for the petitioner again had no answer.

Petitioner also did not file any suit for declaration, so as to challenge the Succession Certificate dated 26.10.2009 issued by the learned trial Court in favour of respondent-Smt.Sheela Devi, in compliance of the above-said order dated 23.7.2009 passed by this Court. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and the same deserve to be upheld, for this reason also.

Learned District Judge, before arriving at a just conclusion, reconsidered and appreciated true facts of the case, to record his own findings in para 13 of the impugned judgment and the same read as under:-

“It was admitted case of the parties that succession certificate dated 26.10.2009 was issued by the learned trial Court in Succession Application No.13 of 20.05.2009 titled as Sheela Devi versus General Public, as per directions issued by the Hon'ble High Court of Punjab & Haryana in judgment dated 23.07.2009 passed in FAO No.177 of 2005. A perusal of judgment

dated 23.07.2009 passed by the Hon'ble High Court reveals that matter regarding ex gratia amount along with other amounts with respect to deceased Hans Raj was subject matter before the Hon'ble High court and vide judgment dated 23.07.2009, Hon'ble High Court was pleased to order that succession certificate to the estate of Hans Raj son of Fakir Chand, resident of Dhuri to collect the amount lying with the applicant was ordered to be issued and accordingly, succession certificate was issued by the learned trial Court. A close scrutiny of copies of judgment dated 23.07.2009 passed by the Hon'ble High Court and succession certificate issued by the learned trial Court show that succession certificate in question was issued strictly in compliance with the directions issued by the Hon'ble High Court of Punjab & Haryana. Had the appellant been aggrieved from the findings recorded by the Hon'ble High Court of Punjab & Haryana in aforesaid FAO No.177 of 2005, the applicant-appellant could avail its remedy either before the Hon'ble High Court or the Hon'ble Supreme Court of India and not by way of filing application before the learned trial Court seeking revocation of succession certificate out of which present proceedings have emanated. Thus, it can be safely held that the application of the applicant-appellant was not maintainable before the learned trial Court and was rightly dismissed by the learned trial Court”.

Under the peculiar facts and circumstances of the case discussed hereinabove, it can be safely concluded that the petitioner has no case either on facts or in law. Petitioner is trying to drag the respondent in unnecessary and avoidable litigation, because of which instant revision petition is liable to be dismissed with costs. It is so said because petitioner

has been changing its stand as per its own suitability. At the time of opposing the application of respondent under Section 372 of the Act, petitioner raised the issue of Rule 6.16-A and B of Punjab Civil Service Rules, Chapter-VI, Volume II. The petitioner did not invoke the above-said provisions of Rule 2.7 of Punjab Civil Service Rules, Volume II against the respondent qua ex-gratia amount, for the reasons best known to it.

As noticed hereinabove, petitioner neither sought recalling of the order dated 23.7.2009 passed by this Court nor sought any modification or clarification therein. Neither any suit for declaration was filed, challenging the validity of Succession Certificate dated 26.10.2009 nor the above-said order passed by this Court was challenged by the petitioner, before the Hon'ble Supreme Court. It is the settled principle of law that litigation between the parties must be decided at the earliest and the litigation must attain finality between the parties. Since the learned courts below committed no error of law, while passing their respective impugned judgments, the same deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below, which may warrant interference, at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned judgments are factually correct and legally justified, therefore, both the impugned judgments are upheld.

Present revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Consequently, the revision petition is dismissed with costs, which are quantified at Rs.30,000/-. Since the petitioner has unnecessarily delayed the payment of ex-gratia amount of Rs.50,000/- to the respondent for all this long period, without there being any kind of justification, petitioner is directed to pay the same to the respondent along with interest @ 9% per annum from the date when the amount became due till the date of its actual payment, because during all this period petitioner has been using this amount. Let ex-gratia amount of Rs.50,000/- with interest @ 9% per annum along with the above-said amount of costs of Rs.30,000/- be paid to the respondent by the petitioner at an early date and in any case within a period of two months from the date of receipt of a certified copy of this order.

Resultantly, with the above-said observations made and directions issued, the instant revision petition stands dismissed, with costs.

8.2.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No