IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 607 of 2011 (O&M)
Decided on: 15.12.2017

Gurmail Singh .....Appellant

versus

The Principal, Govt. Senior Secondary School, Nogawan and Ors. .....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Sansar Kundu, Advocate for the appellant.

Mr. A.A. Pathak, Addl. A.G. Punjab.

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RAJBIR SEHRAWAT, JUDGE (ORAL)

This is the second appeal filed by the plaintiff; challenging the judgment and decree passed by the lower Appellate Court, whereby the judgment and decree passed by the trial Court; decreeing his suit was reversed and the suit filed by him, was ordered to be dismissed.

For convenience, the parties would be referred herein, as the plaintiff and defendants, as they were described in the original plaint.

Brief facts of this case are that the plaintiff filed a suit for mandatory injunctions, claiming directions to the defendants to pay the retiral benefits accruing to his uncle Sant Singh on account of his service. It was claimed that his uncle Sant Singh was an employee of the Punjab Education Department. He has since expired. His dues on account of G.P.F., gratuity, salary arrears and ex-gratia were lying with the Punjab Education Department. The plaintiff claimed that he is the only legal heir, nominated by his uncle Sant Singh. Therefore, he is entitled to receive the benefits, which are pending with the department. It was further averred that on the basis of the Will executed by Sant Singh, the plaintiff had even obtained Succession Certificate under Section 372 of the Indian Succession Act qua an amount of Rs.86,313/- on account of the above said benefits. The plaintiff had even issued registered A.D. notice dated 25.03.2000 to the defendants to release the benefits. However, the same has not been released. Therefore, the suit was filed.

On notice, the defendants filed written statement taking routine preliminary objections. It was claimed that the General Provident Fund of the deceased has already been paid to the plaintiff, as per Succession Certificate. Still further, it was pleaded that another amount of Rs.24,500/- has also been paid to him, as ex-gratia amount. However, the same has been wrongly paid to him and the same is liable to be recovered from the plaintiff. It was pleaded by the defendants that the payment of gratuity is covered by Rule 6.16B of Punjab Civil Service Rule, Vol.2. As per this rule, the plaintiff does not fall within the definition of family. Therefore, he is not entitled to pension or gratuity and ex-gratia amounts. Hence, the claim of the plaintiff was declined.

The parties led their evidence.

After hearing the parties, the trial Court decreed the suit filed by the plaintiff. Accordingly, direction was issued to the defendants to pay to the plaintiff the amount of Rs.86,313/- along with the interest lying with the Punjab Education Department on account of G.P Fund, gratuity, arrears of salary and ex-gratia and other retiral benefits of Sant Singh, who was the deceased employee. To support this mandatory injunction, the trial Court recorded that the plaintiff is having a Succession Certificate in his favour to receive all the benefits amounting to Rs.86,313/- along with interest. It was further held that, PW-4 Gurnam Kaur sister and PW-5 Gulzar Singh brother of the plaintiff, had deposed that they have no objection if all the terminal benefits of Sant Singh are paid to the plaintiff. The trial Court further recorded that although the plaintiff is not covered in the definition of family as given in Rule 6.16B of Punjab Civil Service Rules, but the plaintiff has got a Succession Certificate, Ex.P1 granted by the Court of the Civil Judge (Senior Division), Gurdaspur in his favour. A perusal of the certificate shows that the plaintiff has been held entitled to collect the sum of Rs.86,313/- with interest; lying with the Punjab Education Department. Therefore, the plaintiff was entitled to receive these benefits. It was further held that since the Succession Certificate qua these benefits have already been given by the competent Court, therefore, the question whether he is entitled to these benefits or not stands already decided by the previous Court, which granted the Succession Certificate in favour of the plaintiff. It was further held that merely because the plaintiff happened to be the nephew of the deceased and he is not covered under the definition of the family as prescribed under Rule 6.16B; does not mean that the Succession Certificate issued by the competent Court stands nullified or that the same can be ignored by the Court. Resultantly, the suit was decreed. Aggrieved against this judgment and decree, the defendants filed the appeal before the lower Appellate Court.

The lower Appellate Court partly reversed the judgment and decree passed by the trial Court. The lower Appellate Court, while reversing/modifying the judgment and decree of the trial Court held that since, the plaintiff is not a member of the family, as defined by the rules, therefore, according to the Succession Certificate, he is entitled only to two kinds of benefits, namely, the arrears of salary, if any, and the General Provident Fund. So far as the gratuity and other terminal benefits are concerned, the lower Appellate Court held that; these are available only to the members of the family of the deceased under the relevant rules. Since the plaintiff does not come within the definition of the family, therefore, he is not entitled to any other terminal benefits except the GPF of the deceased. Accordingly, the lower Appellate Court partly accepted the appeal filed by the defendants and modified the decree passed by the trial Court, restricting the benefit payable to the plaintiff to the GPF amount of the deceased. Aggrieved against this judgment and decree, the plaintiff has filed the present appeal.

While arguing the case, the learned counsel has submitted that it has been proved on record that the plaintiff is the sole legal heir, nominated by the deceased himself qua all his properties through his Will. He has obtained the Succession Certificate on the basis of Will only. Hence, he shall be deemed to be a person appointed as legal heir and the nominee of the deceased for all purposes. Still further, it is submitted by the counsel that Rule 6.16B of Punjab Civil Service Rules itself makes a provision that; if the family members are not present or where the deceased makes nomination of a person outside the family members, then such person nominated by the deceased is duly entitled to receive the retiral terminal benefits of the deceased. He places reliance upon Rule 6.16 B (4). Accordingly, it is submitted by him that lower Appellate Court has gone wrong in law in denying the remaining benefits, other than the GPF amount.

On the other hand, learned counsel for the respondents/defendants have submitted that since gratuity is a kind of gratuitous amount, therefore, any other person cannot claim as a matter of right, unless he falls in the definition of family; as prescribed under Rule 6.16B of Punjab Civil Service Rules, Vol.2. So far as the nomination plea of the plaintiff is concerned, learned counsel for the defedants/respondents submits that Sub Rule (6) of Rule 6.16 B of Punjab Civil Service Rules prescribed that the nomination, if any, has to be in the specified pension forms I-C and 1-F. No such forms were submitted by the deceased employee in favour of plaintiff. Hence, it is submitted that there is no proper nomination in favour of the plaintiff. Therefore, he is not entitled to the retiral terminal benefits of the deceased.

Having heard the learned counsel for the parties, and perusing the record with their able assistance, this Court is of the considered opinion that the arguments raised by the learned counsel for the appellant deserve to succeed and the appeal deserves to be allowed.

Admittedly, the plaintiff/appellant herein does not come within the definition of the family, as specified under Rule 6.16B. Therefore, as a family member, he is not entitled to receive the retiral benefits.

However, the same Rule makes a provision that if any member of the family, as specified in the definition, is not available, then the employee can make a nomination in favour of a person outside the members of family as specified under the Rules. Hence this takes away the force from the argument of learned counsel for the defendant/respondent that under any circumstances the gratuity and ex-gratia cannot be paid to a person other than a family member. So far as the nomination of the plaintiff is concerned, although, the learned counsel for the respondents is right in submitting that there is no nomination in their record on prescribed forms showing the plaintiff to be a person duly nominated by the deceased, however, the fact remains that there is a Succession Certificate issued in favour of the plaintiff on the basis of a Will. So far as the prescription of the form for making a nomination is concerned, the same are prescribed by the rules only to grant certainty to the nomination and to remove any scope for dispute between the legal heirs of a person, as to the claim of the retiral benefit of a deceased employee. Beyond that no significance can be attached with the prescribed forms of nomination. In any case, filling up the nomination forms is only a procedural aspects. So far as the present appellant is concerned, the nomination by the deceased employee in favour of the plaintiff is duly established by the Will executed in favour of the plaintiff by the deceased employee. That nomination of the plaintiff through the Will has been duly certified by the competent Court through a Succession Certificate, specifically granted by the Court qua a specified amount. This Succession Certificate has even gone unchallenged by the respondents or anybody else. Hence, it cannot be said that there was no nomination by the deceased employee in favour of the plaintiff.

It is worth mentioned here that in the present case, the plaintiff is not seeking recovery of these benefits in his own right as a “family member” of the deceased. His claim is based on the basis of a Will, which shows his nomination by the deceased himself. In the present proceedings, the plaintiff has come only as a representative of the deceased and not in his own capacity as a “family member”. Therefore, the definition of the 'family member' as given in Rule 6.16B would not stand in his way, in getting the benefits of the deceased as nominated representative of the deceased.

Hence the plaintiff would be very much entitled to receive all the terminal benefits of the deceased employee, although as nominated representative of the deceased employee and not in his own capacity as a family member.

In view of the above, this court finds that judgement and decree passed by the lower Appellate Court are not in conformity with the law. The judgment and decree passed by the trial court has wrongly been set aside by the lower Appellate court. Hence, the judgement and decree passed by the lower Appellate Court deserve to be set aside.

No other argument was raised.

Accordingly, the judgment and decree passed by the lower Appellate Court are set aside. The judgment and decree passed by the trial Court are upheld.

In view of the above the present appeal is allowed.

15th December , 2017 **[RAJBIR SEHRAWAT]**
Manju **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No