

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.20959 of 2013 (O&M)
DATE OF DECISION : 10th JULY, 2018

Smt. Surjit Kaur

.... Petitioner

Versus

Union of India & others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

* * * *

Present : Mr. N. R. Dahia, Advocate for the petitioner.

Ms. Anita Balyan, Advocate for respondent Nos.1, 2 and 4.

Mr. Akshay Khunger, Advocate for respondent No. 3.

Mr. Parvez Akhtar and Mohd. Yousaf, Advocates
for respondent No.6.

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A. B. CHAUDHARI, J. (Oral)

CM-3247-CWP-2018

The application is allowed and succession certificate
(Annexure P- 10) is taken on record, subject to all just exceptions.

CWP No.20959 of 2013

Preface:

The controversy that arose in the present petition could have been clearly avoided by the concerned respondent No.3, had the respondent No.3 applied the law governed the parties and also pronounced by the Apex Court authoritatively way back in the year 1984 in the case of *Smt. Sarbati Devi and another versus Smt. Usha Devi*, ***AIR 1984 Supreme Court, 346***. It has been found that in large number

of cases the beneficiaries are put to harassment, avoidable litigation caused either because of the faulty rules/regulations/schemes running contrary to the law of succession by which the parties are governed or due to the tendency to avoid taking a decision in accordance with law by projecting preposterous and unacceptable reasons. The case at hand is one such handled by respondent No.3 connected with Army.

Facts:

1. Lance Naik Gurpreet Singh of 55 Engineer Regiment C/o 56 APO, in the Indian Army, while on leave unfortunately met with an accident and accidental death on 06.02.2013. He had nominated his mother-petitioner-Surjit Kaur, as per the Army records but then having come to know about the fact that he had married Smt. Sandeep Kaur-respondent No.6, on 14.02.2010, her name was substituted/entered in the records. The petitioner-mother and respondent No.6-wife of the deceased thus were the only Class I heirs left by the deceased. Thus the case was the simplest one of its kind to take a decision immediately and disburse the amount of AGIF benefits/insurance. Respondent No.3-Army Group Insurance Fund, is a society for management of funds related to pensions for meeting immediate needs of the dependants of the persons dying in accident or otherwise, constituted under the Army Order No. 23/2000 of AGI-Army Insurance Scheme that was framed for implementation of the disbursal of insurance claims. The claim of the petitioner was refuted by respondent No.3. by relying on para 11 of the scheme, which provides that 75% of the insurance claim shall go to the widow of the deceased and the remaining 25% to the mother of the

deceased. The scheme also inherently empowers for cancellation of nomination of beneficiaries by respondent No.3 after the death of employee and re-nomination also, which according to the petitioner, is unlawful.

2. In response to the notice of motion, the contesting respondent No.3 has filed reply. The sum and substance of the stand that has been taken is that the petitioner-mother wanted 50% share of death benefits but since the widow-respondent No.6 had declined to have give her consent for the said purpose. Hence, petitioner should obtain succession certificate from the Court. Para 11 of the scheme states that 75% amount has to be given to the wife and children while mother and others shall be given 25% of the total AGIF benefits. According to respondent No.3 the petitioner-mother and the respondent No.6-widow of the deceased fell in dispute and therefore they could not disburse the amount to anybody but have invested the amount in fixed deposit with PNB.

Arguments:

3. In support of the petition the learned counsel for the petitioner submitted that the petitioner has obtained succession certificate after being compelled to do so by respondent No.3 and in the process the petitioner had to spend an amount of ₹50,000/-. According to the learned counsel for the petitioner it was wholly unnecessary for respondent No.3 to ask the petitioner to get succession certificate when there are only two class I heirs namely the petitioner-mother and respondent No.6-widow, asking for the claim of the AGIF benefits. According to the petitioner,

therefore, not only that there was an act of negligence but attitude to make harassment to the petitioner and respondent No.6 and therefore the petitioner is entitled to compensatory cost from the respondent No.3. According to the counsel for the petitioner in 1984 the law was clarified and pronounced by the Apex Court.

4. Per contra, learned counsel for the contesting respondent No.3 has opposed the petition and submitted that respondent No.3 could not have made the disbursement of payment to either of the parties and could not have taken the risk of making payment to the wrong person in wrong proportion as para 11 of the scheme requires disbursement of amount in 75 % and 25 % in such cases and further that the scheme empowers respondent No.3 to change the nomination which was done in respect of respondent No.6-widow. According to counsel for respondent No.3 the petitioner-mother was asked to bring a consent from respondent No.6-widow if at all the petitioner wanted to make 50% claim but then respondent No.6 did not want to give consent for which respondent No.3 cannot be held responsible. Hence, according to respondent No.3 no case was made out for award of any interest or compensation or costs.

Consideration:

5. At the outset, we are appalled to notice the fact that respondent No.3-Authority did not at all apply its mind to the law of the land in the present case nor the higher ranking officers of respondent No.3 wanted to take any decision according to law, which could have been easily done and the payment could have been easily disbursed to the petitioner and respondent No.6 within two months from the date of death

of deceased-Lance Naik Gurpreet Singh. It appears that the Principal Director Administration and Secretary of respondent No.3 is a retired officer of rank of Brigadier and we feel extremely sorry that when dispute could have been resolved within a reasonable period of maximum two months the respondent No.3 avoided to take a decision and threw the petitioner and respondent No.6 in the web of litigation. We are also disturbed to see that para 11 of the scheme as well as some other paragraphs of the scheme clearly run counter to the law of the land and in this case the law of succession. The decision of the Supreme Court in the case of ***Sarbati Devi (supra)*** was pronounced in the year 1984 but none made efforts to bring the scheme in tandem with the law of land. On the contrary, the stand that is taken is that the respondent No.3 would disburse 75% of the share to wife and 25% to the petitioner-mother. This is preposterous and in violation of law in the case of ***Sarbati Devi (supra)*** pronounced way back in the year 1984. It cannot be lie in the mouth of respondent No.3 that respondent No.3 did not know the said law. The relevant paragraphs of the case ***Sarbati Devi (supra)*** are paras 5 and 12 which we quote hereunder:

5. xxx.... xxx.... xxx.... But the summary of the relevant provisions of section 39 given above establishes clearly that the policy holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy holder. If that is so, on the death of the policy holder the

amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that section 39 of the Act operates as a third kind of succession which is styled as a 'statutory testament' in paragraph 16 of the decision of the Delhi High Court in Mrs. Uma Sehgal's case (AIR 1982 Delhi 36) (supra). If section 39 of the Act is contrasted with section 38 of the Act which provides for transfer or assignment of the rights under a policy, the tenuous character of the right of a nominee would become more pronounced. It is difficult to hold that section 39 of the Act was intended to act as a third mode of succession provided by the statute. The provision in sub-section (6) of section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. We have to bear in mind here the special care which law and judicial precedents take in the matter of execution and proof of wills which have the effect of diverting the estate from the ordinary course of intestate succession and that the rigour of the rules governing the testamentary

succession is not relaxed even where wills are registered.

6 to 11 xxx.... xxx.... xxx....

12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in Fauja Singh's case (AIR 1978 Delhi 276) (supra) and in Mrs. Uma Sehgal's case (AIR 1982 Delhi 36) (supra) do not lay down the law correctly. They are, therefore,

overruled. We approve the views expressed by the other High Courts on the meaning of section 39 of the Act and hold that a mere nomination made under section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.

It is thus clear from the above said pronouncement of the law that respondent No.3 was supposed to follow the law of succession under the Hindu Succession Act 1956. The petitioner-mother and respondent No.6-widow, are Class I heirs and therefore obviously the amount would go in equal share namely 50% and 50%. This decision could have been taken easily within two months from the date of death of the deceased and there is no other legal heir making a claim. There was no reason to ask the petitioner to obtain the consent from respondent No.6 and/or to obtain the succession certificate from the Court. There was no justification for doing so for closing the doors by respondent No.3. But that was done to shirk the responsibility. Such an omission on the part of the respondent No.3 must be deprecated. That resulted into

unnecessary harassment to petitioner and respondent No.6. To say that respondent No.3 was not at fault because respondent No.6 did not give consent and raised a dispute, is absolutely unwarranted and unjustified in such a simple case.

6. It appears that this type of state of affair is seen in many Government and other departments so also the establishments and corporations. But then it is necessary that the dependents are not put to harassment by making necessary amendments and bringing the regulations, schemes etc. in tandem with the law of the land and that is the need of hour. Para 11 reads thus:

“Para 11 Married personnel. The individual is required to make a fresh nomination in the name of his wife. Even if he has not made nomination in the name of his wife, his earlier nomination automatically becomes null and void, when the individual gets married and the widow automatically becomes the nominee to receive death benefits. However, the married member also has the option, if he so desires, to nominate his mother/father/minor brothers/unmarried sisters to receive a total share not exceeding 25 per cent of the total AGIF benefits. The nomination for the balance share of 75 per cent will have to be in the name of wife and children including step and legally adopted children. In case, a member desires

to nominate his wife and children to receive 100 per cent of AGIF benefits, he may do so.”

7. It is thus significant to note the following pleadings in the written statement filed by respondent No.3 which we quote hereunder:

“5. xxx.... xxx.... xxx.... As per policy of AGIF, in case any individual (AGIF member) gets married and he fails to make a fresh nomination for AGIF, his earlier nomination automatically becomes null and void and the widow automatically becomes the nominee to receive death benefits in the event of death of an individual. The deceased soldier had married Smt. Sandeep Kaur on 14 Feb 2010, as per policy of AGIF Smt. Sandeep Kaur who is a legally wedded wife of her son is entitled to receive payment of insurance benefits under AGI Scheme. In view of the foregoing, if she desire to receive a share, she may obtain consent affidavit from wife of the deceased (Smt. Sandeep Kaur) as per specimen attached. The consent affidavit so executed by widow should be witnessed by two witnesses and attested by 1st Class Magistrate. In case the widow declines to give her consent for a share, she may obtain a succession certificate from Court of law making widow as a party. Without consent

affidavit/succession certificate, AGIF is unable to make payment of 50% share of death benefits.”

8. The same relates to the power in respondent No.3 to cancel the nomination on its own. Obviously, in the light of the above discussion about the applicability of the law of succession, it would not be legal that respondent No.3 would be automatically entitled to cancel the nomination of petitioner-mother and substitute the same by respondent No.6's.

9. To sum up, the petitioner as well as the respondent No.6 were entitled to AGIF claim in equal share and respondent No.3 is under obligation to distribute the same accordingly. The reasons given by respondent No.3 in the written statement for not making the timely payment in our opinion is nothing but a hoax and such reasons cannot be accepted. We, therefore, reject those reasons for delaying the payment to mother and widow of the deceased. We would also like to observe that the respondent No.3 ought not to create such type of confusion resulting into harassment to the dependants of the deceased or injured, as the distribution of money will have to be made in accordance with law relating to succession by which the parties are governed. The respondent No.3 ought to keep a table of the manner in which money is to be distributed in accordance with law of succession of Hindus, Sikhs, Muslims and so on and so forth and the same could be done within reasonable time. Instead of applying the law of succession oneself, it would be shirking the duty/responsibility to ask the parties to bring succession certificate. We hope and trust that at least hereinafter the

respondent No.3 would do well in giving early relief to the dependants and injured persons. We also hope and trust that the respondent No.3 would revisit the paragraphs/regulations in the scheme for bringing them in tandem with law of the land, rather than creating their own law, resulting into harassment. Learned counsel for respondent No.3 has fairly agreed to distribute the payment in equal share to the petitioner and respondent No.6-widow of the deceased, within a period of fifteen days from today along with interest earned on the fixed deposit.

10. We accept the statement made by learned counsel for respondent No.3 about the distribution of amount within fifteen days from today.

11. Since we have arrived at the conclusion that respondent No.3 was responsible in the entire matter or responsible in delaying the payment to the mother and the widow of the deceased and that the mother was required to incur expenditure for obtaining succession certificate on the direction of respondent No.3, the respondent No.3 ought to make payment of compensatory cost to the petitioner and also the respondent No.6 for delay.

12. In the result we make the following order:

ORDER

- (i) The CWP No.20959 of 2013 is allowed.
- (ii) The respondent No.3-AGIF shall make payment of AGIF benefits to the petitioner-mother of the deceased and respondent No.6 widow of the deceased in equal share from the fixed

deposits in the Punjab National Bank, along with interest earned thereon, within a period of three weeks from today.

- (iii) The respondent No.3 shall pay costs in the sum of ₹50,000/- to the petitioner-Smt. Surjit Kaur and costs in the sum of ₹25,000/- to respondent No.6-Smt. Sandeep Kaur along with the above payments.
- (iv) Copy of this order be supplied to the learned counsel for the parties, under the signature of the Bench Secretary.

(A. B. CHAUDHARI)
JUDGE

10TH JULY, 2018
'raj'

(KULDIP SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>