

HIGH COURT OF CHHATTISGARH, BILASPURCivil Revision No.145 of 2016Order reserved on: 10-4-2019Order delivered on: 15-4-2019

1. Smt. Samunda Bai, widow of Late Vijay Kumar Kaushik, aged about 54 years.
2. Sudhir Kumar Kaushik, S/o Late Vijay Kumar Kaushik, aged about 30 years.

Both residents of Village Nawapara Ghutku, P.S. Sarkanda, Bilaspur (C.G.), Tahsil & District Bilaspur, Civil & Revenue District Bilaspur (C.G.)

(Appellants)
---- Applicants

Versus

1. General Public.
2. Smt. Kanti Bai, widow of Late Vijay Kaushik.
3. Vikas Kumar, S/o Late Vijay Kaushik.
4. Vinod Kumar, S/o Late Vijay Kaushik.
5. Vishal Kaushik, S/o Late Vijay Kaushik.

Nos.2 to 5 are residents of Khokhra Road, Near the Canal, Janjgir, Tahsil Janjgir, District Janjgir-Champa.

6. In-charge, Salary Branch, Office of the Superintendent of Police, Janjgir-Champa (C.G.)

---- Respondents

For Petitioners:	Miss Shivali Dubey, Advocate.
For Respondents No.2 to 5:	Mr. Devesh Chandra Verma, Advocate.
For Respondent No.6/State:	Mr. Apoorva Goyal, Panel Lawyer.
For State of Chhattisgarh:	Mr. Kanak Tiwari, Advocate General with Mr. Ghanshyam Patel, Govt. Advocate.
<i>Amicus Curiae:</i>	Mr. Hari Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Shri Vijay Kumar Kaushik, who was working in the Office of the

Superintendent of Police, Janjgir-Champa as Head Constable, died in harness on 2-2-2012. Smt. Samunda Bai, first wife of Late Shri Vijay Kumar Kaushik, and her son made an application under Section 372 of the Indian Succession Act, 1925 (for short, 'the Act of 1925') for grant of succession certificate claiming GIS - ₹ 1,50,000/-, FBF - ₹ 19,080/-, DPF - ₹ 1,43,034/-, GIS - ₹ 81,540/-, Gratuity - ₹ 3,58,034/- & ₹ 1,89,936/- and Pension ₹ 7,185/-; total amounting to ₹ 9,25,249/- in which they also impleaded Smt. Kanti Bai, second wife of Late Shri Vijay Kumar Kaushik, and her three sons as party non-applicants. Respondents No.2 to 5 herein claimed that since deceased Shri Vijay Kumar Kaushik has made a Will in their favour on 15-1-2012 and also nominated them in the service records, therefore, the applicants / petitioners herein are not entitled for grant of succession certificate. The trial Court rejected that application which has been affirmed by the appellate Court and against which this revision petition under Section 388(3) of the Act of 1925 has been preferred.

2. Miss Shivali Dubey, learned counsel for the petitioners, submits that both the courts below are absolutely unjustified in rejecting the application for grant of succession certificate in their favour. Petitioner No.1 being legally wedded wife of Late Shri Vijay Kumar Kaushik and petitioner No.2 being son out of the wedlock of Shri Vijay Kumar Kaushik & petitioner No.1 herein, are only entitled for succession certificate and even the family pension cannot be bequeathed by Will as it does not form part of estate of the employee. She relies upon the decisions of the Supreme Court in the matters of **Smt Violet Issaac and others v. Union of India**

and others¹, Vidhyadhari and others v. Sukhrana Bai and others², Raj Kumari and another v. Krishna and others³ and Rameshwari Devi v. State of Bihar and others⁴ to buttress her submission. She would also rely upon Rule 44 of the Chhattisgarh Civil Services (Pension) Rules, 1976 to stress that only the first wife and her son are entitled for even the amount of gratuity. She further submits that in respect of family pension, the deceased had no right to nominate anybody in violation of the Pension Rules and such a nomination made is invalid. In order to buttress this submission she further relies upon Rule 47 and 48 of the Chhattisgarh Civil Services (Pension) Rules, 1976.

3. Mr. Devesh Chandra Verma, learned counsel appearing for respondents No.2 to 5, submits that both the Courts below are absolutely justified in rejecting the application for succession, as the second wife was nominated in the service records by Late Shri Vijay Kumar Kaushik and drawing my attention towards paragraph 14 of the decision in Vidhyadhari (supra), he would submit that both the Courts below are absolutely justified in rejecting the application, therefore, the petitioners are not entitled for grant of succession certificate. He would also rely upon a decision of this Court in the matter of Usha Shukla and others v. Smt. Tarini Shukla and others⁵ to buttress his submission.

4. Mr. Apoorva Goyal, learned Panel Lawyer appearing on behalf of the State/respondent No.6, would support the impugned order.

1 (1991) 1 SCC 725

2 (2008) 2 SCC 238

3 (2015) 14 SCC 511

4 (2000) 2 SCC 431

5 2011(4) C.G.L.J. 368

5. Mr. Kanak Tiwari, learned Advocate General, would submit that petitioner No.1 being the first wife will be entitled for family pension as per the rules, as the Pension Rules will prevail despite the nomination made in favour of the son of the second wife, because the corpus of pension does not form part of the estate of deceased Vijay Kumar Kaushik. Similarly, the ex-gratia amount will also be governed accordingly and the petitioners will be entitled to receive the same. He would further submit that other payments will accrue in favour of the son of the second wife, as the applicable rules provide for specific nomination in favour of the nominee by the person who has accorded nomination. He would also submit that gratuity, provident fund, leave encashment, group insurance and family benefit would form part of the estate of the deceased and same will be disbursed as per the nomination and the Will executed by the deceased employee.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.

7. Shri Vijay Kumar Kaushik, working as Head Constable in the Office of the Superintendent of Police, died on 2-2-2012. The following dues are claimed by both the parties for which the competent authority directed to produce succession certificate: -

1. DPF (Department Provident Fund): -

₹ 61,676-00

2. Gratuity:

₹ 3,63,159-00

3. Leave encashment:

₹ 1,84,464-00

4. Pension:

₹ 7,635-00 per month + DA

- 5. GIS: ₹ 1,50,000-00
- 6. FBF (Family Benefit Fund): -
₹ 19,080-00
- 7. Ex-gratia Amount: ₹ 35,000-00
- 8. Police Welfare Amount: ₹ 20,000-00

8. It is the case of the private respondents herein that all pensionary benefits even pension, have been bequeathed by deceased Vijay Kumar in favour of respondent No.4 (son from second wife Kanti Bai) and the amount of pension has been bequeathed to respondent No.2 (second wife), which has been disputed by the petitioners herein stating that petitioner No.1 being the first and legally wedded wife of deceased Vijay Kumar, is entitled for all pensionary benefits as per the provisions contained in the Rules of 1976 and pensionary benefits cannot be bequeathed by way of Will. However, both the Courts below have concurrently held that since the deceased had already executed a Will in favour of respondents No.2 to 5, therefore, the petitioners are not entitled for succession certificate in respect of pensionary benefits and rejected the application for grant of succession certificate.

9. The short question for consideration would be whether the Government servant can make a testamentary disposition of all his retiral benefits or it has to be disbursed in accordance with the rules and regulations governing the service conditions of such Government servant?

10. The issue posed herein for consideration is longer *res integra* and stood determined authoritatively by Their Lordships of the Supreme Court in the matter of Jodh Singh v. Union of India and another⁶

⁶ (1980) 4 SCC 306

wherein Their Lordships have held that a special family pension granted to a widow in her capacity as widow could never form part of the estate of the deceased which could be disposed of by testamentary disposition and held as under: -

“12. The real controversy is whether a special family pension admissible to a widow in her capacity as widow could ever form a part of the estate of the deceased which could be disposed of by testamentary disposition? Special family pension is payable to the widow on the death of the officer. It is not payable in his lifetime. What is not payable during lifetime of the deceased over which he has no power of disposition cannot form part of his estate. It is the event of his death that provides the eligibility qualification for claiming special family pension. Such qualifying event which can only occur on the death of the deceased and which event confers some monetary benefit on someone other than the deceased albeit related to the deceased, cannot form part of the estate of the deceased which he can dispose of by testamentary disposition. Therefore, it is unquestionably established that special family pension sanctioned to the widow of an officer of the Indian Air Force by the President of India under Rule 74 of the Rules could not be subject-matter of testamentary disposition.”

11. In **Jodh Singh** (supra), Their Lordships were dealing with a special family pension which was to be paid apart from the ordinary pension under a different Air Force Rule and that too upon the satisfaction of the President of India, to which all widows of the employee were not entitled.

12. In **Smt Violet Issaac** (supra) following the principle of law laid down in **Jodh Singh** (supra), Their Lordships have applied the said principle for all family pension schemes and in para 4 of the report, while giving reasons for the said adjudication, have held as under: -

“4. The dispute between the parties relates to gratuity, provident fund, family pension and other allowances, but this Court while issuing notice to the respondents confined the dispute only to family pension. We would therefore deal with the question of family pension only. Family Pension Rules, 1964 provide for the sanction of

family pension to the survivors of a Railway employee. Rule 801 provides that family pension shall be granted to the widow/widower and where there is no widow/widower to the minor children of a Railway servant who may have died while in service. Under the Rules son of the deceased is entitled to family pension until he attains the age of 25 years, an unmarried daughter is also entitled to family pension till she attains the age of 25 years or gets married, whichever is earlier. The Rules do not provide for payment of family pension to brother or any other family member or relation of the deceased Railway employee. The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The Family Pension Scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.”

13. The principle of law laid down in Jodh Singh (supra) and Smt Violet Issaac (supra) has been reiterated and followed by Their Lordships of the Supreme Court in the matter of Nitu v. Sheela Rani and others⁷ and holds the field till this date.
14. Their Lordships of the Supreme Court in Jodh Singh (supra) and Smt Violet Issaac (supra) have made it clear by specifically stating that they are not dealing with the issue as to whether gratuity would be an estate of employee so as to dispose it off by testamentary disposition.

⁷ (2016) 16 SCC 229

15. On the basis of the principles of law laid down in the above-stated judgments, the following guiding principles of law relating to retiral benefits vis-a-vis their testamentary disposition emerges out: -

1. An employee has no power of testamentary disposition with respect to something which was not payable to him during his lifetime.
2. If the qualifying event/benefit occurs only on the death of the deceased while he is in service and due to this, some monetary benefits accrue, it would not form part of the estate of the deceased and the same cannot be disposed by testamentary disposition because there is an element of uncertainty of happening of event.
3. If the scheme and/or service Rules designate certain persons who are entitled to receive benefits out of the scheme, then no other person except those designated persons can be entitled to the said benefits.
4. If the employee makes no contribution to the benefit, he has no control over the same to dispose it by testamentary disposition.
5. If the scheme/Rules do not provide for nomination of any person during the lifetime of the deceased employee, he has no title to the same and it cannot be disposed by testamentary disposition.

16. However, the said principles are not exhaustive and the conditions laid above are independent of each other and not mutually destructive and in the event of any of the conditions being fulfilled, it

cannot be said that testamentary dispositions can be made with respect to the said benefit.

17. Reverting to the facts of the case in light of the principles of law laid down by the Supreme Court in above-stated judgments (supra) and applying the guiding principles in the instant case, I will proceed to consider the entitlement of parties for grant of succession certificate on different heads one by one.

Family Pension: -

18. The grant of family pension in the instant case is governed by Rule 47 of the Chhattisgarh Civil Services (Pension) Rules, 1976 which provides for grant of family pension both in a case where a Government servant dies during in service and after his retirement from service, but the grant of such family pension is restricted only to the family of the deceased and further, no nomination for grant of family pension can be made. Sub-rule (6) of Rule 47 of the said Rules provides as to the persons who are entitled to receive pension and sub-rule (7) further provides that family pension shall not be payable to more than one member of family at the same time and if deceased leaves behind a widow, the family pension shall be paid to the said widow only. As such, it is quite vivid that the said pension do not form part of the estate of the deceased and he had no right to make testamentary disposition with regard to family pension in favour of respondent No.4. Therefore, petitioner No.1 Smt. Samunda Bai being legally wedded wife of the deceased Government servant would be entitled for the entire amount of pension.

Gratuity: -

19. Their Lordships of the Supreme Court in **Jodh Singh** (supra) and **Smt Violet Issaac** (supra) have specifically made it clear that the issue as to whether gratuity would be an estate of the employee so as to dispose it off by testamentary disposition, is not being dealt with and as such the issue of grant of gratuity in the instant case is governed by Rules 44, 45 and 46 of the Chhattisgarh Civil Services (Pension) Rules, 1976. Rule 44 of the said Rules specifically provides that a Government servant who has completed 5 years of service shall be entitled to receive death-cum-retirement gratuity on his retirement and clause (b) of sub-rule (1) of Rule 44 provides that if a Government servant dies while in service, it shall be paid in the manner as provided in Rule 45. Rule 45(1)(a) provides that gratuity amount shall be paid to the person who has been made nominee under Rule 46, however, Rule 45(1)(b) provides that in case of no nomination or when no nomination subsists, gratuity shall be paid to the legal heirs of the Government servant. As such, disbursement of gratuity stands under different footing than the disbursement of family pension and there is no legal impediment in disbursement of gratuity as created in case of family pension by virtue of Rule 47 (6) and (7). Therefore, it can be safely concluded that gratuity would form part of the estate of the deceased employee over which he has right to testamentary disposition and in the instant case, it would go to respondent No.4 to whom the deceased employee has executed a Will on 15-1-2012. It is also pertinent to mention that despite passage of judgments in **Jodh Singh** (supra) and **Smt Violet Issaac** (supra) way back in 1980 and 1991, respectively, the

legislature in its wisdom has not chosen to amend the applicable rules and make disbursement of gratuity at par with family pension.

Leave encashment: -

20. Since the Government servant is entitled for leave encashment during his lifetime and while on/or after retirement from service, it can be said that leave encashment forms part of the estate of the deceased employee and can be disposed of by testamentary disposition.

Group Insurance Scheme (GIS): -

21. The rules governing the Group Insurance Scheme do not give the characteristics of pure term/life insurance rather make it an endowment scheme i.e. a dual benefit, whereby some part of contribution is paid as pure life insurance premium and remaining part of the contribution made by the employee is invested in saving fund and upon retirement, the employee receives back his principal amount along with interest/bonus accrued therein. The monetary benefit/corpus accumulated would be returned back to the employee on his retirement which is certain event to happen and not mere possibility, therefore, it can be safely concluded that it would form part of the estate of the deceased and the same can be disposed by testamentary disposition.

Family Benefit Fund: -

22. With respect to the Family Benefit Fund, it is informed that this scheme was cancelled with effect from 1-11-1984 due to introduction of GIS and the accumulated benefits (principal + interest) in this scheme will be paid to the retired employees on the day of retirement and deceased employees on the day of death,

therefore, it forms part of the estate of the deceased employee.

Ex-gratia amount and Police Welfare amount: -

23. As per the applicable Rules, ex-gratia payment and police welfare payment are paid only in the event of death of an employee while he is in service and grant of this monetary benefit is also a mere possibility and not certain, therefore, it can be safely concluded that it would not form part of the estate of the deceased and the same cannot be disposed by testamentary disposition.

Department Provident Fund (DPF): -

24. Since an employee makes contribution to this fund during his lifetime and can also make partial withdrawal from this fund during his lifetime, it can be said that DPF forms the estate of the deceased employee and can be disposed by testamentary disposition.
25. Consequently, the revision is allowed and impugned order relating to the issuance of succession certificate in relation to pension, ex-gratia payment and police welfare payment cannot be sustained and is liable to be set-aside, it is accordingly set-aside and the petitioners will be entitled for succession certificate with regard to pension, ex-gratia and police welfare payment. However, respondent No.4 would be entitled to get the amount under heads of Provident Fund, Gratuity, Leave Encashment, Group Insurance Scheme and Family Benefit Fund as per the Will / nomination. No order as to cost(s).
26. This Court appreciates the assistance rendered by Mr. Hari Agrawal, Advocate, as *amicus curiae*.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.145 of 2016

Smt. Samunda Bai and another

Versus

General Public and others

Head Note

A Government servant is not eligible to make Will of family pension, as it has to be disbursed as per the pension rules.

एक शासकीय सेवक परिवार पेंशन की वसीयत करने का पात्र नहीं है, क्योंकि इसका संवितरण पेंशन नियमों के अनुसार होना चाहिए।