

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-28040-2019(O&M)
Date of decision:26.03.2021

Tarunjeet Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Pankaj Sharma, Advocate for the petitioner

Ms. Maloo Chahal, DAG, Punjab

ANIL KSHETARPAL, J.

CM-4012-CWP-2021

Allowed as prayed for. Replication is taken on record.

Main case

With the consent of the learned counsel for the parties, the writ petition is taken on Board.

Through this petition, the petitioner prays for the following substantive reliefs:-

“i. A writ in the nature of mandamus directing the respondents to pay the amount of Gratuity and Leave Encashment to the petitioner on the basis of Adoption Agreement dated 11.02.2009 (Annexure P-2) and Will dated 25.11.2009 (Annexure P-3) made by Adopted father in favour of the petitioner after his death on 18.10.2016 during service with the respondent Department as Beldar.

ii. Further, a writ in the nature of Mandamus be issued directing respondents to considered the case of the petitioner for compassionate appointment after the death of the adopted father of the petitioner in the respondent Department. As per letter written by respondent no.3 dated 13.06.2019 (Annexure P-10) and Govt. Letter dated 19.09.2002 (Annexure P-11).”

The petitioner claims that he is an adopted son of Late Sh. Narinder Singh, Beldar, who died in harness on 18.10.2016.

Learned counsel for the petitioner admits that the adoption of the petitioner is not valid since at that time he was above the age of 15 years which is more than the maximum age prescribed for a valid adoption under Section 10 of the Hindu Adoption and Maintenance Act, 1956. However, he submits that Late Sh. Narinder Singh left behind a registered Will in favour of his nephew-the writ petitioner. He further submits that the amount of GPF and Ex gratia have already been released to the petitioner being nominee of Late Sh. Narinder Singh.

On the other hand, Ms. Maloo Chahal, DAG, Punjab, has submitted that since there was no nomination in favour of the petitioner with respect to the amount of gratuity and leave encashment, therefore, these amounts can not be released to the petitioner.

Learned counsel for the petitioner submit that remaining legal heirs of Late Sh. Narinder Singh, have already filed their affidavits in this Court giving their no objection for release of the amount to the

petitioner on the basis of a registered Will. It is further submitted that once the correctness and validity of the Will has been admitted by the remaining legal heirs, there is no reason to withhold the amount.

Keeping in view the aforesaid facts, it is considered appropriate to dispose of the writ petition by directing the Secretary, Department of Irrigation, Punjab, Chandigarh, to decide the claim of the petitioner for release of gratuity and leave encashment within one month from the date of receipt of the certified copy of this order. It is expected that the Secretary would take a compassionate view and will not force the petitioner into unnecessary litigation, particularly, when the other legal heirs are not contesting the genuineness of the Will. However, the Secretary will be entitled to satisfy himself about the genuineness of the Will.

As regards the petitioner's claim for compassionate appointment, it may be noted that Sh. Narinder Singh died on 18.10.2016 and once it is admitted and established that the petitioner is not a validly adopted son, therefore, his claim cannot be considered. Even otherwise, the compassionate appointment is to provide immediate support to the family. Now more than 4 ½ years have elapsed from the date of death. Hence, the claim for compassionate appointment is rejected for the above-mentioned reasons.

Disposed of.

26.03.2021

rekha

Whether speaking/reasoned Yes /No
Whether Reportable Yes / No

(ANIL KSHETARPAL)
JUDGE