



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 23.05.2022

Judgment delivered on : 30.05.2022

+ W.P.(C) 10296/2019

TRIPTA GUPTA

.... Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. M.D. Jangra and Mr. Varun Kumar,  
Advocates.

For the Respondent : Mr. Sanjay Kumar Pathak, Senior Panel  
Counsel with Mr. K.K. Kiran Pathak, Mr.  
Sunil Kumar Jha, Mr. M.S. Akhtar and Mr.  
R.V. Tigga, Advocates for R-1 to 3.  
Mr. O.P. Saxena and Mr. Ravinder  
Aggarwal and Mr. Mandeep Singh,  
Advocates for R-4 and 5.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**JUDGMENT**

**TUSHAR RAO GEDELA, J.**

1. In the present case, the petitioner challenges the order dated 07.01.2019 passed by the Central Administrative Tribunal (hereinafter referred to as '*Tribunal*') Principal Bench, New Delhi and also seeks quashing of order dated 11.01.2018 passed by the Executive Engineer, CPWD.



2. The petitioner claims to be the second wife of the deceased – Late Sh. Ashok Kumar Gupta, who was serving as UDC in respondent No. 3/ CPWD. On 16.03.2017, Late Sh. Ashok Kumar Gupta died in harness. The petitioner on that premise is seeking the pensionary benefits, which she claims she is entitled to. Respondent Nos.1 to 3 are official respondents and respondents No.4 and 5, namely, Ms. Anjali Gupta and Mr. Nikhil Gupta are the children of deceased – Late Sh. Ashok Kumar Gupta from his first marriage.

3. It is not disputed that Late Sh. Ashok Kumar Gupta did not inform respondent No. 3/CPWD about the fact of his re-marriage with the petitioner. It is also on record that respondent No.4 - Ms. Anjali Gupta has been shown as nominee in the nomination papers submitted by Late Sh. Ashok Kumar Gupta. It is also un-disputed that the petitioner's Aadhar Card and CGHS medical card show her as wife of Late Sh. Ashok Kumar Gupta.

4. After the death of Late Sh. Ashok Kumar Gupta, the petitioner applied for family pension and on 12.06.2017 submitted the relevant forms. However, she neither received any response nor was any action initiated by respondent No. 3 / CPWD. Aggrieved by the lack of response, the petitioner sent a legal notice on 14.07.2017, no reply, however, was sent to the said legal notice. In such circumstances, the petitioner had approached the Central Administrative Tribunal, Principal Bench, New Delhi *vide* O.A. No.3623/2017, which was filed on 28.09.2017. By the order dated 13.10.2017, the Central Administrative Tribunal, Principal Bench, New Delhi, passed a



direction to the respondents to pass a speaking order in respect of her claim of family pension and other benefits. *Vide* the order dated 11.01.2018, a speaking order was passed by the respondent No. 3/ CPWD rejecting her claims.

5. Aggrieved thereof, the petitioner was yet again constrained to approach the Tribunal vide O.A. No. 562/2018 on 31.01.2018.

6. After hearing both the parties, the Tribunal came to the following conclusion:

(a) the petitioner's name was not reflected in the nomination papers.

(b) the respondent No.4 - Ms. Anjali Gupta's name appeared as a nominee in the said nomination papers.

(c) the petitioner was unable to file any marriage certificate or a succession certificate to prove that she is the legally wedded wife of Late Sh. Ashok Kumar Gupta.

(d) Late Sh. Ashok Kumar Gupta did not inform the respondent No. 3/ CPWD about the second marriage with the petitioner herein.

7. On the basis of above aspects and documents, the Tribunal concluded that the petitioner could substantiate and prove her case only on the basis of a valid succession certificate to be obtained by the petitioner in accordance with law. Thus, on this basis, the O.A. was dismissed *vide* the impugned order dated 07.01.2019.



8. The Tribunal directed the petitioner to provide succession certificate to the respondent No.3/ CPWD, failing which the claim to family pension and other benefits would stand rejected. In the meanwhile, the Tribunal gave directions to release provisional pension to the petitioner. It appears that the respondents had not complied with the order of provisional pension passed by the Tribunal. A contempt petition was filed by the petitioner on the ground of non-compliance of order dated 07.01.2019. Pursuant to this, the said order of provisional pension was complied with by the respondents on 19.08.2019.

9. We have heard both the learned counsel appearing on behalf of the petitioner as well as the respondents. The official respondents No.1 to 3 are represented by Mr. Sanjay Kumar Pathak and respondents No.4 and 5 are represented by Mr. O.P. Saxena.

10. Mr. Jangra, learned counsel for the petitioner submits that there is overwhelming evidence to show that the petitioner is the second wife of Late Sh. Ashok Kumar Gupta and the Tribunal has ignored and not appreciated the documents which are on record and, therefore, requiring judicial review of the impugned order.

11. Mr. Jangra, invited our attention to page Nos. 119 and 121, which is the medical card issued by the Ministry of Health and Family Welfare under the Central Government Health Scheme, which reflects the name of the petitioner as wife of Late Sh. Ashok Kumar Gupta along with respondents No.4 and 5. Mr. Jangra also drew our attention



to page No.123 and 125 of the paper book, which show the LTC availed between the block years 2000-2005 by Late Sh. Ashok Kumar Gupta for his wife Smt. Tripta Gupta, the petitioner, for going to Agra and back. This was issued by Section Officer of Respondent No. 3/ CPWD on 01.06.2005. Similarly at page 125 of the paper book, Late Sh. Ashok Kumar Gupta had availed LTC for himself and his wife Smt. Tripta Gupta, the petitioner, for the journey beginning on 23.02.2013 to 26.02.2013, which was sanctioned by the Section Officer of Respondent No. 3 / CPWD *vide* the order dated 06.03.2013.

12. Mr. Jangra also referred to a letter dated 22.06.2010 at page No. 126 of the paper book, whereby the respondent No. 3 / CPWD had, on the representation submitted by the petitioner, permitted her to get the medical diagnostics done of her husband Ashok Kumar Gupta from Delhi MR & CT Centre. In the said letter, the petitioner was referred to as the wife of Late Sh. Ashok Kumar Gupta. Mr. Jangra, also refers to a document at page No. 128 of the paper book, which is the notice issued for biometric enrolment for the National Population Register of the year 2011. In the said notice, the name of the petitioner along with her voter ID card number, was clearly mentioned. Mr. Jangra also relies upon the photocopy of the passbook showing a statement of account of Late Sh. Ashok Kumar Gupta, indicating the name of the petitioner as the registered nominee.

13. Mr. Jangra relies upon the judgment in the case of *Ragesh Kumar v. National Commission for Schedule Castes* bearing W.P.(C) 4704/2008, passed by this Court, on 15.09.2010 and the judgment of



the Hon'ble Supreme Court dated 23.04.1999 in Civil Appeal No. 2458/1999, titled as "*G.L. Bhatia v. Union of India And Another*".

14. Mr. Sanjay Kumar Pathak, learned counsel for respondents No.1 to 3 reiterates the stand taken before the Tribunal and supports the conclusion reached by it. He also submits that in the absence of any valid document establishing the marriage between the petitioner and late Sh. Ashok Kumar Gupta, the conclusion reached by the authorities as well as the Tribunal cannot be faulted with. He further submits that the direction to obtain and submit the succession certificate by the petitioner is a fair direction and ought not to be interfered with by this Court.

15. Mr. Saxena, learned counsel appearing for respondents No.4 and 5 supports the stand taken by Mr. Pathak and further submits that the factum of marriage has not been duly proved by the petitioner in the absence whereof, coupled with the fact that respondent No.1 has been validly entered as the nominee of late Sh. Ashok Kumar Gupta, the present writ petition ought to be dismissed being devoid of any merits.

16. However, Mr. Saxena was unable to give an explanation as to the contradictory stand taken by respondents, in that, the admission of marriage between the petitioner and Late Sh. Ashok Kumar Gupta and their living together as husband and wife as well as to the entitlement of the Petitioner to at least 1/3<sup>rd</sup> share in family pension and other benefits, in comparison to the completely diametrically opposite stand



taken by the very same respondents in their counter affidavit to the present writ petition. Mr. Saxena conceded before us that he has no objection if the petitioner is given 1/3<sup>rd</sup> of the retiral benefits including the family pension so long as the respondent Nos. 4 and 5 get the balance 2/3<sup>rd</sup> share. This concession by Mr. Saxena would bind the respondent Nos. 4 and 5.

17. Mr. Saxena also agreed that the prayer in their counter affidavit also admitted that the petitioner may be entitled to a maximum of 1/3<sup>rd</sup> retiral benefits. Mr. Saxena also did not dispute the fact that it was the petitioner who had taken care of both the respondents No.4 and 5, when they were young and brought them up as a mother would have done. It is unfortunate that respondents No.4 and 5, while they were young and vulnerable, did not have any qualms while being taken care of by the petitioner and now, at this stage, questioning her very credibility as wife of their late father Sh. Ashok Kumar Gupta and a role played by the petitioner as their mother.

18. We have heard the counsel for the parties and have given anxious consideration to the pleadings and the documents on record. It is interesting to note the contents of para 1 of the reply filed on behalf of respondent No.4 before the Tribunal, whereby the respondent No.4 has admitted as under :

*“1. That the facts/contents averred in Para 1 of the O.A. contains the particulars of the Order/Cause dated 11.01.2018 against which the Original Application is being filed U/s 19 of Administrative Tribunal Act, 1985. This is, humbly, submitted that assertion /avermnt made in the relevant para is matter of*



*record to the extent of observation made by the Respondent No. 3 in their order dated 11.01.2018. This is humbly submitted that the Applicant is not the sole claimant/ beneficiary of GPF amount, Gratuity, leave encashment etc. of deceased person namely Sh. Ashok Kumar Gupta. The claims made by the Applicant in entirety are not sustainable to the extent of retiral/terminal benefits except the family monthly pension. This is reiterated that the Respondent No. 4 and 5 have no objection if the family pension is granted/ ordered in favor of the Applicant and the facts of which has already been deposed/verified in Affidavit dated 21-06-2017.”*

19. A perusal of the statement made in para 4.12 of the reply on merits of the respondent No.4, makes it clear that the admissions made therein would bind the respondent and which are extracted as under:

*“this is submitted that respondent No.4 is still the nominee of all the retiral benefits in the records of respondent No.3 and has not been changed even after marriage with the applicant on 31.05.1998.”*

20. It is clear from the above that the respondents No.4 and 5 have categorically admitted not only the factum of the marriage between the petitioner and their late father Sh. Ashok Kumar Gupta but also the extent to which the petitioner may be entitled, so far as the family pension and other benefits are concerned.

21. Interestingly, respondents No.4 and 5 in their counter affidavit, filed in the present writ petition, specially the prayer clause, have stated as under :

*“without prejudice and without admitting anything, it is submitted that the petitioner may be entitled maximum for 1/3<sup>rd</sup> retiral/ terminal benefits etc., thus, respondents No.1 and 3 be*



*directed to release 2/3<sup>rd</sup> share in favour of respondents No.4 and 5 along with accrued interest @18% per annum and her alleged 1/3<sup>rd</sup> share be ordered to be kept in Court or in interest bearing escrow account, with the direction that if the petitioner prove her marriage with the deceased before appropriate court/forum, then the same shall be released to the petitioner, otherwise, to the answering respondents, in the interest of justice.”*

22. We have also perused the judgment in the case of *Ragesh Kumar v. National Commission for Schedule Castes* bearing W.P.(C) 4704/2008, passed by this Court, on 15.09.2010. In para 14 of the said judgment, the Single Judge of this Court had extracted the relevant portion of Section 53 (1) of the CCS (Pension) Rules, 1972, which is as under :

*“14. The relevant rule of CCS (Pension) Rules 1972 with regard to the disbursement of DCRG are referred as under :*

*“Section 53(1) : A Govt. servant on his initial confirmation in a service of post, must make a nomination in Form 1 or 2, as may be, as appropriate in the circumstances of the case, conferring on one or more persons the right to receive the retirement/death gratuity payable under Rule 50:*

*Provided that if at the time of making the nomination-*

- (i) The Government servant has a family the nomination shall not be in favour of any person or persons other than the members of his family; or*
- (ii) The Government servant has no family, the nomination may be made in favour of a person or persons, or to a body of individuals, whether incorporated or not.*

*Further Section 53(4) of CCS (Pensions) Rules, 1972 reads, “the nomination made by a Government servant who has no family at the time of making it, or the nomination made by a Government servant under the second proviso to clause (i) of sub-rule (3) where he has only one member in his family shall become invalid in the event of*



*the Government servant acquiring a family, or an additional member in the family, as the case be.”*

23. The learned Single Judge concluded as under in para 21 of the said judgment :

*“In view of rule 53 (4) of CCS (Pension) Rules 1957, it is very clear that the nomination if made by a Government servant under the second proviso where he has only one member in his family shall become invalid in the event of Government servant acquiring a family or an additional member coming in the family as the case may be.”*

24. The judgment in the case of *Ragesh Kumar v. National Commission for Schedule Castes*, relying upon Rule 53(1) of the CCS (Pension) Rules, 1972, makes it clear that where a Government servant acquires family or an additional member in the family, the previous nomination would become invalid. Applying to the present case, it is clear that even if the name of respondent No.4 was entered as a nominee in the nomination papers of late Ashok Kumar Gupta, the same would become invalid. Thus, the nomination so entered would become irrelevant.

25. The law laid down by the Hon'ble Supreme Court in Civil Appeal No. 2458/1999, titled as “*G.L. Bhatia v. Union of India And Another*” dated 23.04.1999, that when the rights of parties are governed by statutory provisions, the individual nomination contrary to the statute will not operate, would apply to the facts of the present case.



26. On law, we agree with the judgment in the case of *Ragesh Kumar v. National Commission for Schedule Castes* about the applicability of Section 53(1) of the CCS (Pension) Rules, 1972, Hon'ble Supreme Court in Civil Appeal No. 2458/1999, titled as "*G.L. Bhatia v. Union of India And Another*" dated 23.04.1999 which are applicable to the present case on all fours.

27. In view of the above, we are of the considered opinion that there is no *iota* of a doubt that the petitioner herein was the legally wedded wife of Late Sh. Ashok Kumar Gupta and thus, was legally entitled to the family pension as well as all the retiral benefits, which would have accrued to late Sh. Ashok Kumar Gupta, but to the extent of her share and entitlement along with those of respondents No.4 and 5.

28. The impugned order dated 07.01.2019 passed by the Tribunal as well as the order dated 11.01.2018 passed by the Executive Engineer, CPWD are quashed and set aside and respondent Nos. 1 to 3 are directed to process the papers/ documents submitted by the petitioner seeking family pension and other retiral benefits to the extent of her share as well as those of respondents No.4 and 5 in the appropriate share/ proportion, within a period of four weeks from today. The amounts due and accruable on such processing may be remitted to the petitioner and respondents No.4 and 5 within a period of eight weeks thereafter, failing which the accruable amounts will attract an interest of 6% per annum.



29. The writ petition stands disposed of, but with no order as to costs.

**TUSHAR RAO GEDELA, J**

**SANJEEV SACHDEVA, J**

MAY 30, 2022/*nd*

