225 *2023 : PHHC: 138987*

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3436-2016 (O&M)
Date of decision : 31.10.2023

Rajinder Kaur **...Petitioner**

Vs.

State of Punjab and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Pushpinder Kaushal, Advocate
for the petitioner.

Ms. Rishu Madan, AAG, Punjab.

Ms. Eknoor Kaur Sara, Advocate
for respondent Nos.2 and 3.

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DEEPAK MANCHANDA, J.(Oral)

Petitioner has filed this writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondent Nos.1 and 2 to ensure that respondent No.3 take note of the memo No.67584 dated 12.09.2012 to make release of gratuity and leave encashment funds to the petitioner as per rules.

2. The facts in brief leading to the present petition are that the father of petitioner, namely, Teja Singh s/o Chanan Singh, who was working as Lineman in the Punjab State Electricity Board (now Punjab State Power Corporation Ltd.PSPCL), Patiala died on 19.08.2011, therefore, to claim the benefits of the deceased, the petitioner filed a petition under Section 372 of Indian Succession Act on 08.12.2011 for obtaining succession certificate, which was later-on withdrawn on 13.10.2012 as the Electricity Department had

issued a letter No.67584 dated 12.09.2012 which clearly stated that the gratuity and leave encashment benefits have to be issued to the petitioner. To claim the benefits, the petitioner approached the concerned department number of times, but no reply has been received in this regard. Hence this writ petition.

3. Learned counsel for the petitioner submits that petitioner's father, namely, Teja Singh was employed as Lineman with Punjab State Power Corporation Ltd.(P.S.C.P.L), Patiala, who died on 19.08.2011. He further submits that the deceased-Teja Singh executed a registered Will dated 22.06.2011 in favour of the petitioner, therefore, she is entitled to receive his service benefits. In this regard he has drawn the attention of the Court to Annexure P-1 i.e. the petition under Section 372 of Indian Succession Act for grant of succession certificate. He prays that the petitioner be declared as legal heir of Teja Singh for the purposes of receiving the retiral benefits. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment passed by this Cout in "***Mrs. Manju Malhotra Vs. State of Haryana etc", 2006 (3) S.C.T.538*** and another judgment passed by the Hon'ble Madhya Pradesh High Court rendered in "***Smt.Sundariya Bal Choudhary Vs. Union of India and others", 2008 (4) S.C.T.730***.

4. Pursuant to the notice of motion issued on 19.02.2016, reply dated 16.10.2019 by way of affidavit of Engineer Tarlochan Singh Brar, Additional S.E.,D.S.Division, PSPCL, Kotkapura on behalf of respondent Nos.2 and 3 has been filed.

5. Learned counsel representing respondent Nos.2 and 3 while referring to the reply submits that deceased-Teja Singh married thrice and has four children, therefore, there is dispute between the legal heirs as to the

pension and other retiral benefits. She further submits that Kamalpreet Kaur wife of deceased-Teja Singh has also laid her claim to the gratuity, therefore, the same cannot be paid to the petitioner.

6. I have heard learned counsel for the parties and have gone through the case file.

7. In present case the question which arises is that whether the petitioner is entitled to the retiral benefits of her deceased father, who executed a registered will dated 22.06.2011 in her favour vide which he bequeathed his retirement benefits in favour of the petitioner, whereas respondent Nos. 2 and 3 had already released the leave encashment of deceased employee on 03.03.2016 and now petitioner is entitled to get benefit of her father according to the Will dated 22.06.2011. Learned counsel for the petitioner has placed reliance upon the judgement rendered by Madhya Pradesh High Court in "***Smt.Sundariya Bai Chaudhary Vs. Union of India and others", 2008(4) S.C.T.730***, wherein similar issue has been dealt with and it has been observed as under:-

> *"14. At this juncture, we may further add that family pension cannot be held to be an "estate" because the same is paid to the widow and dependent children only after the death of the employee.*
>
> *15. In case of* ***Secretary of State v. Khemchand Jeychand, (1880) ILR 4 Bombay 432*** *p. 436 it has been held that the ordinary and well-known meaning of a pension is 'a periodical allowance or stipend granted, not in respect of any right, privilege, perquisite, or office, but on account of past services or particularly merits or as compensation to dethroned princes, their families, and dependents.' Therefore, according to us, the family pension cannot be said to be an 'estate' and since it is non-transferable, the same cannot be bequeathed by Will also.*
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> *16. In Corpus Juris Secundum Volume 31 Clause (1) at page 8 the term "Estate" has been defined which reads thus :*
>
>> *"a. Estate"*
>>
>> *In legal usage it is of more restricted meaning, ordinarily as indicating the position in which a person stands with respect to the ownership, possession, and control of his property, or as meaning the property itself.*

> *Further on page 8 it has been clarified that the word 'estate' is also defined as meaning the interest which a person has in lands or in any other subject of property; the degree, quality, nature, and extent of one's interest in, or ownership of, property, real or personal; the quantity of interest which a person has, from absolute ownership down to naked possession.*

17. It has been further mentioned on page 9 that the "estate" may include personal, as well as real, property of every kind. It may, however, be limited either to personality or reality.

18. In the same Volume 31 of Corpus Juris Secundum at page 36 Clause 14, it has been mentioned about 'Estate in Possession' which reads thus :

> *"14 ....Estates in Possession*
>
> *An estate in possession is one whereby a present interest passes to, and resides in, the tenant, independent of any subsequent circumstances or contingency."*

19. Clause 15 of Corpus Juris Secundum Volume 31 defines about the "Estates in Expectancy" which is again in two parts, the first part is in general and second part speaks about future estates and interests. The definition of "In General" of Estates in Expectancy reads as under:

> *"a. In General*
>
> *An estate in expectancy in one where the right to possession or enjoyment is postponed to a future period. It is subject to descent, devise, or alienation."*

Thereafter, the words descent, devise, and alienation have been explained on page 37 that under some statutes, expectant estates, including expectant estates in personality, are descendible, devisable and alienable in the same manner as estate in possession. The term "Future Estates and Interests" has also been defined on page 37 which reads thus :

> *"b. Future Estates and Interests*
>
> *A future estate is one limited to commerce in possession or enjoyment in the future. It is vested if there is a person in being who would have an immediate right to possession on the ceasing of the intermediate or precedent estate. It is contingent while the person to whom or the event on which it is limited to take effect remains uncertain".*

On page 38 it has been further explained that the future interest is one limited to commence in use, possession, or enjoyment at some future time.

20. Thus on testing the term "family pension" on the anvil and touchstone of the above said different definitions of "estate", we are of the view that "family pension" is not an "estate" and if the terms "estate in possession", "estate in expectancy", "estate in general" and "future estate and interest" are given liberal meaning even then 'family pension' would not be included in above said terms.

21. In Law Lexicon by P. Ramanatha Aiyar 2nd Reprint 1999 Edition at page 654 the meaning of word 'estate' has been stated to be thus :

> *'The word 'estate' has undoubtedly in law a diversity of meaning and a variety of signification. It may mean the property of a living man or that of a deceased person which passes to his*

> *administrator. Generally speaking, this word may mean the property of every character but ordinarily it is applied to the property of a deceased person or a ward or a lunatic or a bankrupt etc. according to which meaning it conveys an idea of property which is administered by administrators or executors or in Courts."*

On page 655 the word 'estate' has been explained to be as under :

> *"Estate. The 'estate' of a deceased person is the bundle of rights, powers, immunities and liabilities which survive him. With reference to a living person, 'estate' means the interest he has in lands and other subjects of property; it designates property real or personal, in which he has a right or interest."*

If we apply the explanation of term "estate" as mentioned hereinabove in the present case even then the term 'family pension' would not fit in the slot of 'estate' as explained in the aforesaid book. Thus, judging from all the angles, the family pension cannot be said to be an 'estate' and hence the same is not transferable and cannot be bequeathed by Will.

22. Since the family pension is not an estate of an employee, the same cannot be bequeathed by executing Will because the Will can be executed only in respect of an estate which the testator possess or/and may acquire in future during his lifetime. Needless to say an employee cannot enjoy his family pension during his lifetime and the same is enjoyable by his wife only after his death.

23. Shri Satish Shrivastava, learned counsel for respondents Nos. 3 to 6 has submitted that the Will has been duly proved and the requirement of Section 63(c) of the Act has been proved by G.S. Thakur, Advocate AW4 who is the attesting witness to the Will. By placing reliance on Section 59 of the Act, it has been contended by learned counsel that the family pension would come under the ambit and sweep of the property and, therefore, there can be a Will of the same.

24. We are not at all impressed by the submission of learned counsel for respondents Nos. 3 to 6 that family pension would come under the ambit and sweep of property, it may be a property of the widow of the deceased employee but it cannot be equated with that of estate of that employee even after his death. Since it is not an estate, according to us, in view of Section 6(g) of the Transfer of Property Act as well as according to Para 13 of clarification given by Government of India while explaining Rule 54(7)(a) of Central Civil Services (Pension) Rules, 1972, the deceased respondent Girja Bai is not entitled for the family pension. No doubt, the other pensionary benefits like provident find, gratuity etc. and other retiral dues excluding family pension and extra remuneration (E.R.) would be estate of the deceased and that can be bequeathed by him."

8. As per Rule 6.16 of the Punjab Civil Services Rules which defines family which includes relatives enumerated in the said Rule, including the mother and daughter as well. The same is reproduced herein below:-

> *6.16-AA. (1) An employee who has become eligible for pension or gratuity under the rules applicable to him and has completed five year"s qualifying service, may, on his retirement from service, be granted a gratuity not exceeding the amount specified is sub-rule (3).*
> *(2) (a) If an employee, dies while in service, a gratuity, not exceeding the amount specified in sub-rule (3), may be paid to the person or persons on whom the right to receive the gratuity is conferred under rule 6.16-B or if there is no such person, it shall be paid in equal shares to those surviving members of a Government employee"s family as detailed in rule 6.16-B who belong to categories (i) to (iv), mentioned therein except widowed daughters. Where there are no such surviving members, but there is/are surviving widowed daughters and/or one or more members of the family of the Government employee who belongs to categories (iv) to (ix), in the definition, the gratuity may be paid to all such persons in equal shares.*
> *XXXXXX*
> ***6.16-B.*** *(1) For the purpose of this rule:– (a) "family" shall include the following relatives of the officer:–*
> *(i) wife or wives including judicially separated wife or wives, in the case of male officer;*
> *(ii) husband including judicially separated husband, in the case of female officer;*
> *(iii) sons; (including step-children*
> *(iv) unmarried and widowed daughters and adopted children)*
> *(v) brothers below the age of 18 years and unmarried and widowed sisters, including step brothers and sisters;*
> *(vi) father; (including adopted parents in case of individuals*
> *(vii) mother; whose personal law permits adoption.*
> *(viii) married daughters; and (ix) children of a predeceased son.*
> *(b) "persons" for the purpose of these rules shall include any company or association or body of individuals, whether incorporated or not.*
> *(2) An officer shall, at any time after confirmation, make a nomination conferring on one or more persons, the right to receive any gratuity that may be sanctioned under sub-rules (2) and (4) of rule 6.16-AA and any gratuity which having become admissible to him under sub-rule (1) of that rule has not been paid to him before death:*
> *Provided that if at the time of making the nomination the*

officer has a family the nomination shall not be in favour of any person or persons other than the members of his family.

(3) If an officer nominates more than one person under sub-rule (2), he shall specify in the nomination the amount or share payable to each of the nominees, in such manner as to cover the whole amount of the gratuity.

(4) An officer may provide in a nomination –

(a) in respect of any specified nominee, that in the event of his predeceasing the officer, the right conferred upon that nominee shall pass to such other persons as may be specified in the nomination, provided that if at time of making the nomination the officer has a family consisting of more than one member, the person so specified shall not be a person other than a member of his family;

(b) that the nomination shall become invalid in the event of the happening of the contingency specified therein.

(5) The nomination made by an officer who has no family at the time of making it, or a provision made in nomination under clause (a) of sub-rule (4) by an officer whose family consists, at the date of making the nomination of only one member, shall become invalid in the event of the officer subsequently acquiring a family or an additional member in the family as the case may be.

(6) (a) Every nomination shall be in such one of the forms Pen. I-C to Pen. I-F as may be appropriate in the circumstances of the case. Note.–The forms provide for only one alternate nominee and it is not open to a Government employee to nominate more than one alternate nominee against any original nominee. (b) An officer may at any time cancel nomination, by sending a notice in writing to the appropriate authority; provided that the officer shall, along with such notice, send a fresh nomination made in accordance with this rule.

(7) Immediately on the death of a nominee, in respect of whom no special provision has been made in the nomination under clause (a) of sub-rule (4), or on the occurrence of any event, by reasons of which the nomination becomes invalid, in 44 pursuance of clause (b) of that sub-rule or sub-rule (5), the officer shall send to the appropriate authority a notice in writing formally cancelling the nomination, together with a fresh nomination made in accordance with this rule.

(8) Every nomination made, and every notice of cancellation given, by an employee under this rule, shall, be sent by him to Head of the Department in the case of a Group „A" or Group „B" employee, and to the Head of his office in the case of Group „C" or Group „D" employee. Immediately on receipt of a nomination from Group „C" or Group „D" employee the Head of the office shall countersign it, indicating the date of receipt, and keep it in

> *safe custody.*
> *(9) Every nomination made, and every notice of cancellation given by an officer, shall, to the extent that it is valid, take effect on the date on which it is received by the authority mentioned in sub-rule (8). Note.–While a nomination as also any change therein will normally be made by an officer during his service, he may be allowed to make a fresh nomination after retirement if such a contingency arise."*

9. In light of the above rule, an employee/official could make nomination conferring on one or more persons the right to receive gratuity that may be sanctioned under sub- rules (2) and (4) of Rule 6.16 (B). The deceased could change nomination in favour of any one or more members of the family as defined under the Rule. Therefore, the execution of the Will have the effect of substituting the nomination, which has been made in terms of the aforesaid Rule. The furnishing of nomination in the prescribed form is only to expedite the payment to the eligible person in terms of the wishes of the employee but such wish can be legitimately expressed in any other manner, which has the effect of superseding the nomination in terms of the aforesaid Rule. The nomination in the prescribed form is only a procedure, which does not affect the legal rights of the members of the family as defined under the Rule. Therefore, the petitioner by virtue of the Will had been nominated by the deceased employee being member of the family as defined under the Rules and even the respondent Nos. 2 and 3 have not disputed the execution of Will dated 22.06.2011 (Annexure P-4) in favour of the petitioner rather recommended the name of the petitioner vide memo dated 12.09.2012 (Annexure P-3) making her eligible for gratuity and leave encashment. As per Will, the deceased employee made entitled the petitioner for any of the due/outstanding amount of pension or any other type of benefit pertaining to him with the Department.

Since as per the explanation of a term 'ESTATE' only the family pension would not fit in the slot of estate the same cannot be bequeathed by executing Will because the Will can be executed only in respect of an estate which the testator possesses or/and may acquire in future during his life time.

10. In view of the same the petitioner shall be entitled for all other benefits excluding family pension and extra remuneration under the law and as mentioned in the Will, but petitioner in the replication dated 27.09.2021 after admitting the fact that the leave encashment has already been paid to the wife of the deceased employee namely, Kamalpreet Kaur, alternatively modified her prayer confining herself to the entitlement of gratuity only by referring the Will and as per pleadings, the said Will is not disputed.

11. Accordingly, the present petition is partly allowed and respondent Nos. 2 and 3 are directed to release the gratuity amount in favour of the petitioner within three months from the receipt of certified copy of this order and in case the same is not released within specified time as directed by this Court, the petitioner shall be entitled for the interest at the rate of 6% on the delayed payment of the gratuity amount till its realization.

12. Pending application(s), if any, also stand(s) disposed of.

(DEEPAK MANCHANDA)
JUDGE

31.10.2023
vanita

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