



CWP-5296-2024

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

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CWP-5296-2024

Date of Decision: 15.05.2024

Harpreet Kaur and another

...Petitioners

Versus

Union of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Onkar Singh, Advocate for the petitioners
Mr. Ashish Chaudhary, Senior Panel Counsel,
for Union of India-respondent Nos.1 to 4
Mr. Rishu Mahajan, Advocate for respondent No.5
Mr. Chandeeep Singh, Advocate for respondent Nos.6 and 7

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Article 226 of the Constitution of India are seeking setting aside of order dated 01.02.2024 (Annexure P-6) to the extent that petitioner No.1 and minor son (petitioner No.2) have not been extended terminal benefits including death-cum-retirement gratuity and Golden Jublee Seema Prahari Kalyan Kawach (for short 'GJSPKK').

2. Petitioner No.1 solemnized marriage with Neeraj Bharaj on 13.10.2018 and a son (petitioner No.2) was born from this wedlock. Neeraj Bharaj was working with Border Security Force (for short 'BSF') as Constable since September' 2013. He had filed nomination Form wherein he



had disclosed his dependents as well as person who is entitled to gratuity in case of his death. After marriage, Neeraj Bharaj added name of his wife in the list of dependents, however, did not change nomination Form with respect to gratuity. The amendment was carried out on 28.12.2018. Unfortunately, the said employee passed away on 10.09.2023. The respondent-BSF conducted an enquiry with respect to cause of his death. The respondent in terms of Central Civil Services (Pension) Rules, 2021 (for short '**2021 Rules**') disbursed service/terminal benefits of the deceased employee. The respondent released death-cum-retirement gratuity, CGEGIS as well as GJSPKK to mother of the deceased employee.

3. Mr. Onkar Singh, Advocate submits that respondent has released family pension, leave encashment, CPF of deceased employee in favour of his wife i.e. the petitioner No.1, however, gratuity and GJSPKK have been wrongly released in favour of his mother. Petitioner No.1 and her son (petitioner No.2) are entitled to benefit of gratuity and GJSPKK.

4. Mr. Rishu Mahajan, Advocate appeared and filed his Power of Attorney on behalf of respondent No.5. The same is taken on record. Registry is directed to tag at an appropriate place.

5. Written statement filed on behalf of respondent No.5 is taken on record. Registry is directed to tag the same at an appropriate place.

6. Mr. Amit Chaudhary, Advocate and Mr. Rishu Mahajan, Advocate submit that as per Rule 46 of 2021 Rules, a government servant, on his initial appointment, has to file nomination Form conferring on one or more



persons the right to receive retirement gratuity and death gratuity payable under Rule 45. As per Rule 47, in case nomination Form is filed, gratuity is payable to nominee and in the absence of nomination Form, gratuity is payable to surviving members of the family. Similarly, GJSPKK is payable to nominee of deceased employee.

7. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

8. The dispute is confined to entitlement of death-cum-retirement gratuity and GJSPKK. Rules 46 and 47 of 2021 Rules deal with mode and manner of distribution of gratuity of a deceased employee. The relevant extracts of Rules 46 and 47 are reproduced as below:-

“46. Nominations.- (1) A Government servant shall, on his initial appointment in a service or post, make a nomination in Form 3 conferring on one or more persons the right to receive the retirement gratuity and death gratuity payable under rule 45.

XXXX XXXX XXXX XXXX

(6) Nomination made by an unmarried Government servant, under clause (i) of sub-rule (2), in favour of any member of his family specified in the explanation below sub-rule (6) of rule 45 shall not become invalid on his or her marriage, unless the Government servant cancels the earlier nomination and files a fresh nomination in accordance with sub-rule (7).

XXXX XXXX XXXX XXXX

47. Persons to whom gratuity is payable.- (1)(a) The gratuity payable under rule 45 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under rule 46.



(b) In case there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner indicated below.

(i) if there are one or more surviving members of the family as in clauses (i), (ii), (iii), (iv) and (v) of the explanation below sub-rule (6) of rule 45, to all such members in equal shares; or

(ii) if there are no such surviving members of the family as in sub-clause (i) above, but there are one or more members as in clauses (vi), (vii), (viii), (ix), (x) and (xi) of the explanation below sub-rule (6) of rule 45, to all such members in equal shares.”

9. From the conjoint reading of aforesaid rules, it is quite evident that gratuity is payable to nominee and in the absence of nominee, it is payable to the family members. Petitioner No.1 and his son are family members of the deceased employee, however, none of them is nominee as per nomination Form filed by the deceased employee. It is only the mother who is nominee in the nomination Form. Any other Form/application/document disclosing that petitioner No.1 or her son are family members of the deceased cannot override mandate of Rules 46 and 47 of 2021 Rules especially when no challenge is laid to the aforesaid rules. The deceased employee indubitably had disclosed petitioner No.1 as his wife, however, in the nomination Form, he had disclosed his mother as nominee.

In view of afore-stated rules, this Court is of the considered opinion that petitioner No.1 and her son are not entitled to benefit of death-cum-retirement gratuity. Similar is case of GJSPKK.



10. In view of above discussion and findings, this Court is of the considered view that present petition deserves to be dismissed and accordingly dismissed.

11. It is apt to notice here that respondent has decided to release all other terminal benefits to petitioner No.1 and her son and this Court is sanguine of the fact that respondent would release those benefits to petitioners at the earliest.

(JAGMOHAN BANSAL)
JUDGE

15.05.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No