



2024:DHC:1396



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

% **Date of order: 6th February, 2024**

+ **W.P.(C) 1031/2024**

SMT. SUNITA

..... Petitioner

Through: Mr.____, Advocate (Appearance not given)

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Raghvendra Shukla, SPC with Mr
Kautilya Birat, GP
Mr.Shlok Chandra, Standing Counsel
for ESIC

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 4254/2024 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

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1. The instant writ petition under Articles 226/227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs: -

"i) To pass a writ of Mandamus thereby directing respondent no.3 to set aside the order dated 20/11/2023

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ii) To pass a writ of Mandamus by way of directing the respondent no.2 & 3 to release the gratuity/family pension, GPF, Insurance, Encashment of leave etc and all other benefits of the deceased husband of the petitioner on the basis of surviving member certificate (SMC) issued vide certificate no. 90660000209520 in favour of the petitioner and his minor daughter.

iii) Pass any such writ/order or direction, as is deemed fit and proper under the facts and circumstances of the case."

2. The relevant facts necessary for the adjudication of the instant petition are as follows:

- a. The petitioner is the wife of the deceased namely Late Sh. Manoj Kumar. The petitioner's husband/Late Shri Manoj Kumar was working as Assistant Section Officer in Ministry of Labour & Employment, Chief Labour Commissioner Office, New Delhi/ respondent no. 3.
- b. On 28th April 2022 the husband of the petitioner passed away and the death certificate was issued on 4th of June 2022. Subsequently the petitioner obtained the surviving member certificate from the office of District Magistrate on 25th October 2023. Since the father and mother of Late Sh. Manoj Kumar had already deceased, the petitioner being his Class I Legal Heirs survival member submitted to the respondent no. 3 an application seeking release of retiral/terminal benefit i.e. payment of gratuity, GPF, Insurance, Encashment of Leave and Family Pension etc on 30th October 2023.



- c. The respondent no.3 passed the impugned order dated 20th November, 2023 objecting to the petitioner's request for want of succession certificate and requested the petitioner to submit the succession certificate and not the survival member certificate.
- d. Therefore, being aggrieved by the impugned order, the petitioner has assailed the same by way of the instant petition under Article 226/227 of the Constitution of India.
3. The learned counsel on behalf of the petitioner has submitted that impugned order is passed in total violation of the petitioner's legal rights since the petitioner has already furnished surviving member certificate issued in the favour of the petitioner and her daughter by the Office of the District Magistrate. Hence, there is no need to furnish Succession Certificate which the respondent no. 3 is seeking to be furnished by the petitioner.
4. It is submitted that the impugned order seeking submission of succession certificate when surviving member certificate is already submitted is arbitrary and is in violation of petitioner's fundamental right conferred under Article 21 of the Constitution of India.
5. It is submitted that the demand of submitting succession certificate by the Respondent no. 3 is arbitrary, unfair and unjust and therefore, violates the 'reasonable, fair and just' procedure provided and protected under law.
6. It is submitted that there is no alternative efficacious remedy is available with the petitioner.



7. In light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the reliefs be granted, as prayed.

8. *Per contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that the impugned order has been passed after duly consideration of the facts and circumstances, and there is no illegality or infirmity thereto.

9. It is submitted that the respondents are acting as per the statutory rules and accordingly, it demanded the succession certificate vide the impugned order. Hence, the respondent did neither act contrary to any law nor violated any legal right of the petitioner.

10. It is submitted that the respondent cannot carve out any exception for the petitioner and exempt her from submitting the succession certificate.

11. In light of foregoing submission, the learned counsel appearing on behalf of the respondent seeks that the instant petition may be dismissed, being devoid of any merits.

12. Heard the learned counsel for the parties and perused the record.

13. It is the case of the petitioner/ wife of Late. Sh. Manoj Kumar that the respondent No. 3's is seeking submission for succession certificate *vide* the impugned order for releasing the retiral benefits of her husband, despite the fact that the petitioner has already submitted the survival member certificate issued by the competent authority to the respondent no. 3, who was wrongfully seeking furnishing of succession certificate.



14. The aforesaid act of the respondent no. 3 is unfair, unjust and unreasonable, therefore, violating the petitioner right under Article 21 which ensures 'fair, just and reasonable' procedure.

15. In rival submissions, the respondent no. 3 has contended that the respondent cannot accept the survival certificate as the statutory rules do not provide for the same. It is further contended that the respondent no. 3 has acted in due compliance with the statutory rules and no legal right of the petitioner is violated by passing of the impugned order.

16. At this juncture, this Court shall discuss the importance of furnishing of the Succession Certificate for claiming the retiral benefits of a deceased person.

17. As per Paruck, The Indian Succession Act,¹ the preamble of the Succession Certificate Act 7 of 1889 emphasizes facilitating the collection of debts on succession and protecting parties paying debts to the representatives of deceased persons. The purpose of the aforesaid Act is to streamline debt collection and provide security to parties settling debts with the deceased's representatives. Pertinently, the grant of a succession certificate does not settle disputes over title or property ownership; it merely authorizes the certificate holder to collect debts or securities owed to the deceased.

18. A succession certificate can encompass both debts and securities, including shares which enable the holder of the said certificate to transfer shares in their name if entitled. The Act discusses about the succession

¹ 12th Edition, Lexis Nexis, page no. -1213 onwards



certificate as a certificate which is issued by a Court of law to the legal heirs of a deceased to establish the authenticity of the heirs and give them the authority to inherit debts, securities and other assets of the deceased.

19. The purpose of a succession certificate is limited in respect of debts and securities such as provident fund, insurance, deposits in banks, shares, or any other security of the Central government or the State Government to which the deceased was entitled. Its main objective is to facilitate collection of debts on succession and afford protection to the parties paying debts to the representatives of the deceased person.

20. It provides indemnity to all persons owing such debts or liable for such securities with regards to all payments made to or dealings had in good faith with a person to whom a certificate is granted. Hence, many organisations and persons request for a succession certificate before settling the debts or securities of the deceased in favour of the person claiming such debts or securities.

21. Succession certificate aims to provide speedy remedy and quick decision in succession matters so that legal heirs of deceased may have their share in movable assets ascertained, allocated and disbursed as there may be a needy family requiring immediate disbursement of amount to meet its merging and day to day needs of life.

22. According to Section 381 and 386 of the Act, a succession certificate is only conclusive of the representative title of the holder thereof as against the debtors. Moreover, Section 381 of the Act, 1925 states that the debtor or



other person liable to pay the amount would be protected if he paid the amount in good faith based on the holder of the succession certificate.\

23. The Hon'ble Supreme Court in the judgment of *State of Chhattisgarh v. Dhirjo Kumar Sengar*, (2009) 13 SCC 600 reiterated the concept of the Succession Certificate and held as follows:

“22. A succession certificate can be granted in favour of any person. It may be granted to an heir or a nominee. By reason of grant of such certificate, a person in whose favour succession certificate is granted becomes a trustee to distribute the amount payable by the deceased to his heirs and legal representatives. He does not derive any right thereunder. The succession certificate merely enabled him to collect the dues of the deceased. No status was conferred on him thereby. It did not prove any relationship between the deceased and the applicant.”

24. The Succession Certificate may be used in situations where banks, financial and private institutions release funds to the nominee (where such nominee is not the legal beneficiary of the asset) and the nominee refuses to cooperate in distribution of the asset to the legal beneficiary. The grant of succession certificate is conclusive against the debtor.

25. Hence, the grant of succession certificate does not determine question of title or what privilege does or does not belong to estate of deceased; it merely enables the party to whom a certificate is granted to collect any debts or securities belonging to deceased.

26. The process of the grant of succession certificate is long and the certificate holder has to go through a tedious process. The legal heir has to



file the petition before the District Judge, if the District Judge is satisfied as to the ground of making the petition, can grant an opportunity of hearing to persons who, in his/her opinion, should be heard. After hearing all parties, the Judge can decide the right of the petitioner to be granted the succession certificate. The District Judge would then pass an order for grant of certificate specifying the debts and securities set forth in the application empowering the person to receive interest or dividend or to negotiate or transfer or do both.

27. Before adjudicating the instant petition, this Court shall peruse the impugned order. The impugned order has been reproduced herein below:

“I am directed to refer to your letter dated 30.10.2023 on above subject and to say that you were requested to furnish the Succession Certificate issued from Court of Law whereas you have submitted the surviving family member certificate issued from Revenue Department, GNCT, Delhi.

2. In view of the above, you are requested to furnish the Succession Certificate issued from Court of Law. It is also requested to furnish your marriage (with Sh. Manoj Kumar) certificate issued from Municipality/ local Government body at the earliest.

3. This issues with the approval of Competent Authority.”

28. Upon perusal of the impugned order, the respondent no. 3 has acted as per mandates of the law and accordingly, directed that the petitioner shall furnish Succession Certificate issued by the Court as well as the marriage certificate with her husband issued by the Municipality of any local



Government body. It is pertinent to note that the impugned order further states that the aforesaid directions are issued with the approval of the Competent Authority.

29. In the instant petition the Succession Certificate shall certify that the petitioner is the legal heir of the deceased who shall be handed over the retiral benefits which accrued in the favor of the deceased person. It also ensures that any other legal heir of the deceased is not entitled to claim retiral benefits and the same shall be paid to the petitioner alone.

30. The aim of ensuring that the succession certificate is furnished before the Court is that the certificate acts as a conclusive proof of that from all the legal heirs of the deceased it is only the legal heir in whose name the succession certificate is issued, is entitled to receive the dues of the deceased and no other legal heir can claim the same from the authority concerned .

31. Succession certificate ensures that the process of debt collection is streamlined and provides security to the concerned authority with regards to settling debts with the deceased's representative. It also helps in ensuring that in the future no other legal heir of the deceased claims any retiral benefits, etc due to the deceased.

32. Moreover, this Court further opines that the Surviving Member Certificate is not sufficient to ascertain that the petitioner's is entitled to the retiral benefits of the deceased, it merely states that the petitioner is one of the legal heir of the deceased. It does not state that the petitioner is the duly



entitled legal heir of the deceased and can claim his retiral benefits as a surviving legal heir of the deceased.

33. This Court is of the view that the directions issued by the respondent no. 3 to the petitioner is as per the mandates of the statutes which makes it mandatory for the petitioner to furnish Succession Certificate issued by the Court as well as the marriage certificate with her husband issued by the Municipality of any local Government body. Hence, the respondent no. 3 has acted as per the statutory rules.

34. Accordingly, this Court is of the view that there is no legal right of the petitioner which has been violated by the impugned order.

35. A prerogative writ, like writ of a Mandamus cannot be demanded *ex debito justitiae*, it may be issued by the Court's discretion. The Courts under Article 226 must refrain from issuing a writ of mandamus in cases there is no such illegality in the functioning of the statutory authorities against which the writ has been preferred.

36. The Court should exercise its power under Article 226 very cautiously and sparingly in exceptional circumstances only in a given case where it is demonstrated that there is something palpably erroneous in the working of the statutory authority.

37. In view of the aforesaid submissions, this Court finds no illegality or infirmity in the impugned order. Therefore, this Court does not find any cogent reason to issue a writ of mandamus and to exercise the power of this Court.



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38. Accordingly, the instant petition is dismissed alongwith the pending applications, if any.

39. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 6 , 2024

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Click here to check corrigendum, if any

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