

(1998) 11 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : O.W.P. 610 Of 1998

Bimla Kumari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:

Citation : (1999) KashLJ 500 : (1999) 1 SCT 819 : (1999) 2 SriLJ 526 : (1999) SriLJ 526

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : K.N.Sapolia, B.S.Salathia, Advocates appearing for the Parties

Judgement

1. The husband of the petitioner was working with the Border Security Force. He died. The widow is claiming pensionary benefits.

2. The respondents have filed objections. It is stated that the late husband of the petitioner had signed nomination form. In this nomination form he

had nominated his mother as the person who was to receive service benefits. It is further submitted that the service benefits were released in favour

of the mother before the issuance of succession certificate. The succession certificate is said to have been issued on 28th September, 1996. It is on

account of the nomination form having filled by the husband of the petitioner, the respondents submit that Pensionary benefits were released in

favour of the mother. At the same time it is admitted that the petitioner had approached the respondents even before 28th Sept., 1996. This is

evident from the stand taken in para 4 of the objections. This para reads as under:

Contents of para4 are also admitted. It is further submitted that the replying respondents through letter dated: 26121995 sent to the petitioner the

approximate amount which was entitled to the deceased so that she may obtain succession certificate from the competent court of law. It is further

submitted that on receipt, family pension case was taken up with the pay and Accounts Division BSF New Delhi and after that family pension in

favour of petitioner @ Rs. 510/ per month with admissible DA was sanctioned w.e.f 10091995 alongwith other benefits.

3. Thus the respondents were aware of the fact that the petitioner is also an heir to the estate of her husband.

4. I am of the opinion that the stand taken by the respondents is not justified. The widow is a heir under the Hindu Succession Act. Merely

because a person is nominated as the person entitled to receive some amount does not mean that the claim of the other heir is to be ignored.

Whenever any nomination is made this is only made for facilitating the making of payment. The nominee does not become the sole heir. Such is the

view expressed by the Supreme Court in the case reported as 'Smt. Sarbati Devi and another Vs. Smt. UshaDevi' AIR 1984 SC 346. The

relevant observation are as under

The nomination only indicates the hand which is authoised to receive the amount, on the payment of which the insurer gets a valid discharge of its

liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing

them.

5. It is thus apparent that the Supreme Court in the aforementioned case has made it clear distinction between nomination and assignment. In case

there is mere nomination then all the claimants remain entitle to the benefits. In this case the petitioner had informed the respondents that she is one

of the heirs. In view of the above the claim of the petitioner could not be ignored. The petitioner is, therefore, held entitled to 50% of the

pensionary and other benefits. The respondents are left free to take steps with a view to recover the amount from the mother. They would,

however, see to it that 50% of the amount is paid to the widow. The above observation regarding recovery from the mother would however not

operate to the prejudice of the petitioner. The petitioner would independently of the steps to be taken for recovery be entitled to the 50% of the

amount. Let the payment be made within two months. If the payment not made

within the period the petitioner would be entitled to interest. The rate of interest would be at 12%. The period of two months would begin from the date, a copy of this order alongwith a copy of writ petition and annuxures thereof are made available to the respondents by the petitioner.