
(2012) 05 GAU CK 0019

In the Gauhati High Court

Case No : Writ Petition (C) No. 377 (SH) of 2010

Chandra Maya and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Citation : (2012) 5 GLT 10

Hon'ble Judges : Indira Shah, J

Bench : Single Bench

Advocate : A.S. Siddique, Mr. R. Kar and Ms. S.A. Pandit, for the Appellant; R. Debnath, CGC and Mr. S.D. Upadhaya, for the Respondent

Judgement

Dr. (Mrs.) I. Shah, J.—Heard Mr. A.S. Siddique, learned counsel appearing for the petitioners and Mr. R. Debnath, learned CGC appearing on behalf of the respondent Nos. 1 to 4. Mr. S.D. Upadhaya, learned counsel appearing on behalf of the private respondent No. 5. The writ petitioners are the mother and sons of the deceased Ashok Limboo, who was serving in the Office of the Assistant Engineer (Elect.), Shillong (Respondent No. 4) in the capacity of Khalasi. During his life, -the deceased nominated his wife Maya Limboo and his sons as nominees in the official record. However, Maya Limboo predeceased Late Ashok Limboo and after her death the service record of Ashok Limboo was updated notifying the details of surviving family members. After the death of Ashok Limboo, his son Rakesh Limboo (Petitioner No. 3 herein) submitted his application to respondent No. 2 to consider his appointment on compassionate ground as his father died in harness. The petitioner as nominees and legal heirs of deceased claimed debt & securities and other service benefits of the deceased. On repeated request and demand they were informed by respondent No. 3 that their lawful dues cannot be released due to objection from respondent no. 5, who claims to be the widow of the deceased. The petitioners have sought relief of mandamus by this writ petition to direct the respondents to pay the family pension and other service benefits of the deceased to the petitioners and also to consider the appointment

of petitioner No. 3 on compassionate ground.

2. The learned counsels for the respondents have submitted that the writ petitioners are trying to mislead by suppressing the materials facts. As per official record Smti. Maya Limboo was the first wife of the deceased, who expired on 28.10.2004. Later her demise Ashok Limboo submitted his declaration of second marriage vide his letter dated 19.12.2005 and the declaration thereof for updation of nomination and family details as under:-

3. It is further submitted that Late Ashok Limboo during his life time authorized his wife Sabita Limboo (second wife) as nominee with regard family pension, CGEGIS, GPF and death-cum-retirement benefit. Sabita Limboo also submitted an affidavit that her daughter Seema Limboo was born on 01.01.2009 out of her wedlock with Ashok Limboo and requested the respondents to consider her appointment on compassionate ground.

4. Under Clause (b) to Rule 50 of the Central Civil Services Pension Rules ("Rules" in short), if a Government servant dies while in service, the death gratuity shall be paid to his family.

Sub-clause (6) to Rule 5 for the purpose of Rules 50, 51, 52 & 53 says family means-

(i) Wife or wives including judicially separated wife or wives in the case of a male Government servant,

(ii) Husband, including judicially separated husband in the case of a female Government servant,

(iii) Sons including stepsons and adopted sons,

(iv) Unmarried daughters including step-daughters and adopted daughters,

(v) Widowed daughters including stepdaughters and adopted daughters,

(vi) Father,] including adoptive parents in the

(vii) Mother,] case of individuals whose personal law permits adoption.

(viii) Brothers below the age of eighteen years including stepbrothers,

(ix) Unmarried sisters and widowed sisters including stepsisters,

(x) Married daughters, and

(xi) Children of a pre-deceased son.

5. Rule 51 of the Rules says the gratuity payable under Rule 50 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 53 and if there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid if there are one or more surviving members of the family as in clauses (i), (ii), (iii) and (iv) of sub-

rule (6) of Rule 50, to all such members in equal shares.

6. Sub-clause (7) (b) of Rule 54 says that where the deceased Government or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive the time of the death of the Government servant or pensioner. For the purpose of family pension "family" means in sub-clause (14) (b) to Rule 54-

(i) wife in the case of a male Government servant, or husband in the case of a female Government servant.

(ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery,

(iii) son who has not attained the age of [twenty five] years and unmarried daughter who has not attained the age of [twenty-five] years including such son and daughter adopted legally.

7. Here in this case, the deceased on 25.06.2007 gave details of members of his family wherein name of his mother appears in serial no. 5 of the declaration. After the death of his first wife, the details of his family in his service record were updated wherein the respondent no. 5 (second wife) and three sons namely Ravi Limboo, Rakesh Limboo and Rohit Limboo have been shown as family members. Late Ashok Limboo superseding the nomination made by him earlier nominated respondent no. 5, Sabita Limboo to receive the amount payable by Employees Group Insurance, General Provident Fund, and death cum-retirement gratuity admissible to him on his retirement and remain unpaid at his death. Thus, although the petitioner no. 1 who is mother of the deceased, has been shown as family member in the declaration made by the deceased on 25.06.2007, she is not entitled to family pension.

8. From the pleadings and upon hearing of the parties, it is clear that respondent no. 5 widow of the deceased was nominated to receive death cum retirement gratuity amount payable on account of the deceased. The nomination of death cum retirement gratuity, group insurance payable to the deceased is valid and accordingly are payable to respondent no. 5. The petitioner nos. 2 & 3 are the sons of the deceased. The date of birth of the petitioner nos. 3, as it appears from annexure-iv and vi, is 16.10.1990. The date of birth of Robi Limboo (petitioner no. 2) is 10.09.1989 and date of birth of Rohit Limboo another son of the deceased is 20.07.1996. Under sub-rule 7 to Rule 54, they are entitled to family pension being below the age of 25 years. The respondent No. 5 being the widow of the deceased and her daughter, Seema Limboo, born on 01.01.2009 are also entitled to family pension. As regard the appointment of petitioner no. 3. Rakesh Limboo and respondent no. 5 on compassionate ground, the respondents shall consider their eligibility as per the law.

9. In view of above, the State respondents are directed to release the amount of gratuity and group insurance, GPF etc. to respondent No. 5. The pension benefit is to be paid to petitioner nos. 2 & 3 along with Rohit Limboo (youngest son) and respondent No. 5 and her daughter, Seema Limboo, in equal share. The petitioner No. 1 being duly appointed as guardian of minor petitioners can receive the amount of pension on behalf of them. The respondent no. 5 being the mother and natural guardian of her minor daughter shall receive the share of family pension for herself and on behalf of her minor daughter. Petitioner nos. 2 & 3, youngest son of the deceased (Rohit Limboo) and respondent no. 5 and her daughter, Seema Limboo, each are entitled to get equal share i.e. 1/5 (one fifth) share each. This writ petition is accordingly disposed of. No cost.