
(2018) 09 UK CK 0067
In the Uttarakhand High Court
Case No : Writ Petition No.475 of 2015 (M/S)

Navin Inder

APPELLANT

Vs

State of Uttarakhand & others

RESPONDENT

Date of Decision : 19-09-2018

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4(1)
Indian Succession Act, 1925 — Section 372

Citation : (2018) 09 UK CK 0067

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Anil Anthwal, C. S. Rawat, R. C. Joshi, B. S. Bisht

Final Decision : Dismissed

Judgement

Alok Singh, J.

1) By means of present writ petition, petitioner seeks following relief, among others:

â??(i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 10.08.2011 passed by the respondent no.1.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to release the gratuity amount of the deceased sister of the

petitioner which was admissible with interest in favour of the petitioner/legal heirs.â??

2) Brief facts of the case are that sister of the petitioner, i.e., Km. Shanti Arya was working on the post of Office Assistant Grade-II in the office of

Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Nainital. She was a spinster and died on 30.11.2010. After

the death of this spinster lady, her brother (i.e. petitioner) and sister (Km.

Beena) being the legal heirs got the amount accrued in GPF account of the deceased. After the death of the deceased, petitioner moved several representations before the authority concerned for payment of gratuity of the deceased.

3) By the impugned order, it was observed that the brother of the deceased (petitioner herein) is not entitled to get the gratuity amount of the deceased.

4) The heart of the matter is that whether the petitioner, being the brother of the deceased-employee, is entitled to get the gratuity amount or not.

5) Petitioner is entitled for gratuity amount if he comes under the definition of "family". For convenience, the definition of "family" as

provided under Chapter (3) & (5) of the U.P. Retirement Benefits Rules, 1961 reads as under:-

(a) Husband / wife

(b) Son

(c) Unmarried daughter & Son

(d) Widow Daughters

(e) Unmarried brother below 18 years and widow sisters

(f) Mother / Father

(g) Married daughter and step-daughter

(h) Legal Heirs of expired son

6) At the first flush, the claim of petitioner appears to be alluring and plausible while looking at afore-mentioned point no.(e), but on a closer scrutiny, it

cannot be accepted since the petitioner is more than 18 years of age. The petitioner does not come under the definition of "family" as provided

under Chapter (3) & (5) of the U.P. Retirement Benefits Rules, 1961. He is 52 years of age according to the affidavit filed by himself in the present

writ petition.

7) At this stage, it would be appropriate to reproduce the provisions of Section 4 (1) of the Payment of Gratuity Act, 1972 (hereinafter referred to as

the Act, 1972), which reads as under:-

4. Payment of gratuity. (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous

service for not less than five years,â?

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is

due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to

his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest

the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority Explanation

.â?" For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of

performing before the accident or disease resulting in such disablement.â??

8) A careful perusal of the aforesaid provisions particularly second proviso to sub-section (1) of Section 4 of the Act, 1972, it would be apparent that

in case of death of the employee, gratuity payable to him shall be paid to his nominee and if no nomination has been made, to his heirs. Thus, either

nominee or in case no nomination has been made by the deceased employee, the amount of gratuity would be payable to his heirs. In the instant case,

it is admitted that there was no nomination of the deceased with regard to her gratuity.

9) In the light of observations made above, this Court is of the view that the petitioner does not come within the zone of consideration under Chapter

(3) & (5) of the U.P. Retirement Benefits Rules, 1961. Therefore, the writ petition is devoid of merit and is hereby dismissed.

10) Before parting, it needs to be mentioned here the rest of the significant submissions of learned counsel for the petitioner. The rest of the

submissions made by learned counsel for the petitioner are that it is a well settled law that the gratuity cannot be forfeited unless the quantum of loss

or damaged caused to the department is established by evidence; admittedly, there were no charges of misconduct, misbehaviour and negligence of

duties against the deceased-employee; second proviso to Section 4(1) of the Act, 1972 says that in case of death of the employee and there is no

nomination, the gratuity payable to the employee shall be paid to her/his heirs; thus, petitioner will be entitled for amount of gratuity after

obtaining/holding succession certificate under Section 372 of the Indian Succession Act and once the succession certificate is granted by the

jurisdictional civil court, under the provisions of the Indian Succession Act, in favour of the heirs of the deceased in accordance with law, they (i.e.

heirs) will be entitled to receive the amount of gratuity.

11) Without going into the merits of above submissions made in preceding para 10 of this judgment, this Court provides that it would be open for the

parties concerned to seek appropriate remedy before the appropriate forum.