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**(2014) 04 CAL CK 0050**  
**In the Calcutta High Court**  
**Case No : WPST 79 of 2014**

Parash Chandra Ghosh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 28-04-2014

**Acts Referred:**

Life Insurance Corporation Act, 1956 — Section 39

**Citation :** (2014) 2 CALLT 511 : (2014) 3 CHN 304 : (2014) 142 FLR 715 :  
(2014) 3 LLJ 173 : (2015) 4 WBLR 1122

**Hon'ble Judges :** Tapash Mookherjee, J; Nishita Mhatre, J

**Bench :** Division Bench

**Advocate :** D.N. Roy, Mr. Soumyajit Bhatta and Mr. Rajesh Kr. Shah, Advocate for the Appellant; Joytosh Majumder and Mr. S. Bandyopadhyay, Advocate for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Nishita Mhatre, J.—The issue which arises in the present petition is whether a person who is not a member of the family of a deceased employee of the State of West Bengal as defined under the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 [hereinafter referred to as "D.C.R.B. Rules"] is entitled to the death-cum-retirement benefits due under these Rules. Would the mere fact that a person who is a relative of the employee and has obtained the succession certificate entitle him to such benefits although he is not a part of the family of the deceased employee under the aforesaid Rules?

2. The facts which give rise to this petition are as follows:

One Ramesh Chandra Ghosh was working as a Work Assistant in the office of the Public Health Engineering Directorate, Kalyani, Government of West Bengal. He died on 13th August, 2006 prior to reaching the age of superannuation. He was unmarried and had nominated his nephews to receive the benefits under the D.C.R.B. Rules.

3. On the death of Ramesh Chandra Ghosh, his brother, the petitioner, obtained a succession certificate from the competent Court. Ramesh Chandra had three sisters and the petitioner was his only brother. It appears that the succession certificate has been issued on 22nd August, 2010 only in favour of the petitioner, to the exclusion of the sisters of Ramesh Chandra, although they were parties to the application made for issuance of the succession certificate.

4. Armed with this succession certificate the petitioner approached the respondents to claim the Death Gratuity of Rs. 1,97,625/- (Rupees one lac ninety seven thousand six hundred and twenty five), an amount of Rs. 62,223/- (Rupees sixty two thousand two hundred and twenty three) payable under the Group Insurance Scheme and Rs. 2,17,054/- (Rupees two lacs seventeen thousand and fifty four) with the accumulated interest lying to the credit of Ramesh Chandra in the General Provident Fund. As the authorities did not respond to his request to release the amount, the petitioner preferred the Original Application no. 1203 of 2012 before the West Bengal Administrative Tribunal. This application was disposed of on 17th June, 2013 by the Tribunal directing the State to decide the claim of the petitioner within three months of the communication of the order.

5. The petitioner submitted the requisite documents which were sought by the respondents. However, the respondents communicated to the petitioner that since Ramesh Chandra nominated his nephews as required under the D.C.R.B. Rules, the petitioner was not entitled to any amount.

6. Aggrieved by that decision, the petitioner moved the Tribunal once again by preferring Original Application no. 1330 of 2013. The Tribunal decided the application in the absence of the representative for the State as nobody had appeared for the State before the Tribunal, though served. The Tribunal was of the view that a nominee is the only person who can receive the amount payable under the D.C.R.B. Rules on the death of a Government employee. The succession certificate secured by the petitioner would be of no avail in the case of a nomination made under the aforesaid Rules, held the Tribunal.

7. The petitioner has impugned this order of the Tribunal in the present petition. Mr. D.N. Roy, learned Counsel appearing for the petitioner, submits that once there is a succession certificate issued in favour of a person, the nomination made in favour of another would have no relevance, as it is only the person who is issued a succession certificate who can avail of the amount. The learned Counsel also pointed out that the nomination in favour of the nephews was found to be defective by the authorities and therefore the petitioner was entitled to the amount. The learned Counsel has relied on the judgment in the case of Shipra Sengupta Vs. Mridul Sengupta and Others, to fortify his submission that with the grant of a succession certificate, the nomination would not be relevant as the succession certificate recognises the petitioner as the legal heir of the deceased. He has drawn our attention to the relevant Rules under the D.C.R.B. Rules.

8. Mr. Joytosh Majumder, the learned Counsel appearing for the State submits that the petitioner may have been entitled to the amount had he been the nominee. According to Mr. Majumder, the nomination having been made in favour of the nephews of the deceased employee, the succession certificate would not be of any assistance to the petitioner.

9. It would be appropriate at this stage to advert to certain provisions of the D.C.R.B. Rules which are relevant for determining the issues before us. These Rules are applicable to all Government servants employed by the State of West Bengal except certain categories of persons who have been named in the Rules. The Rules have been framed for the purpose of payment of pension which includes gratuity unless the term is used in contradiction to the word "gratuity". Chapter X of the Rules applies to claim for Death Gratuity and Family Pension. The Rules require a Government servant to submit a nomination for the purpose of receiving Death Gratuity. Rule 100 reads as follows:

100 Nomination - (1) Any Government servant to whom these rules apply may, provided he has completed five years qualifying service, make a nomination conferring on one or more persons the right to receive the death gratuity that may be sanctioned under rule 98:

Provided that if, at the time of making nomination the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family.

(2) ... ..

(3) ... ..

(4) ... ..

(5) ... ..

(6) ... ..

(7) ... ..

(8) Every nomination made, and every notice of cancellation given, by a Government servant under this rule shall be sent, to the appropriate authority who shall, immediately on receipt of a nomination, countersign it indicating the date of receipt and keep it under his custody.

(9) Every nomination made, and every notice of cancellation given by a Government servant shall to the extent that it is valid, take effect on the date on which it is received by the authority mentioned in sub-rule (8).

Note.-The procedure for application, sanction and payment of death gratuity will be as follows:

(i) ... ..

(ii) ... ..

(iii)... ..

(iv) ... ..

(v) Lapse of death gratuity when a Government servant dies without leaving any family. - In the case of a Government servant who dies while in service or after retirement without leaving any family as defined in items (i) to (vii) of sub-clause (1) of clause (e) of sub-rule (1) of rule 7 and without nominating any one or the nomination made by him subsist the amount of death gratuity admissible under rule 98 shall lapse to Government.

[Provided that the death gratuity payable under rule 98 shall be payable to the person in whose favour succession certificate in respect of the gratuity in question has been granted by a Court of Law.]

(vi) Debarring a person from receiving gratuity.

(a) ... ..

(b) ... ..

(c) The provisions of clauses (a) and (b) shall also apply in the case of payment of gratuity as referred to in rule 99.

Rule 98 stipulates the rate of Death Gratuity payable as follows:

98. The rate of death gratuity. - (1) When a Government servant referred to in rule 97 who has completed five years" qualifying service dies while in service, a death gratuity as prescribed below shall be paid to the person or persons to whom the right to receive the gratuity is conferred [by means of a nomination] under rule 100.

[Provided that -

(a) ... ..

(b) the right of a female of the family, or that of a brother of a Government servant who dies while in service, to receive the share of gratuity shall not be affected if the female member marries or re-marries, or the brother attains the age of eighteen years, after the death of a Government servant and before receiving her or his share of the gratuity;

(c) ... .. ]

(2) ... ..

(3) ... ..

Rule 99 reads as follows:

99. In case of death the balance shall be paid to the nominee.- When a

government servant who has become eligible for pension and retiring gratuity under rule 67 dies within five years after he has retired from service and the sum actually received by the deceased payable to his legal heirs on account of pension and retiring gratuity is less than the amount which would have been admissible as death gratuity under rule 98 had he died on the date of retirement; the balance shall be paid as gratuity to the person or persons on whom the right to receive the gratuity is conferred under rule 100 or if there be no such person [in the manner indicated in the proviso to sub-rule (1) of rule 98.] This benefit shall not be admissible if the officer had commuted a portion of his pension.

10. Rule 7(e) defines "family" for the purpose of receiving of Death Gratuity and Family Pension as follows:

7(e) "family" includes the following relatives of Government servant namely:

(1) for the purpose of death gratuity,

(i) wife in the case of a male officer,

(ii) husband in the case of female officer,

(iii) sons including stepsons,

(iv) unmarried and widowed daughters (including stepdaughters),

(v) brothers below the age of 18 years and unmarried or widowed sisters,

(vi) father

(vii) mother

(2) for the purpose of a family pension-

(i) wife in the case of a male officer,

(ii) husband I the case of a female officer,

(iii) minor sons including adopted sons,

(iv) unmarried minor daughters including adopted daughters,

(v) dependant parents.

It is significant to note that the definition of family varies for the purpose Death Gratuity and Family Pension. Whereas for the payment of Death Gratuity sons including stepsons are entitled to same, only the minor sons including adopted sons are entitled to receive the Family Pension. Furthermore, while a widowed daughter is also entitled to receive Death Gratuity together with unmarried daughter, only unmarried minor daughters including adopted daughters are considered as members of the family for the purpose of Family Pension. The brother of the employee who is below the age of 18 years and unmarried or widowed sisters have been included in the definition of the term "family" for the purpose of payment of Death Gratuity only.

11. Rule 100 of the D.C.R.B. Rules enjoins all Government servants to submit a nomination conferring on one or more persons the right to receive the Death Gratuity that may be sanctioned under Rule 98. The nomination must be made in favour of a person or persons who are members of the employee's family as defined in Rule 7(e) and cannot be made in favour of any other persons. The right of a female member of the family or a brother of the Government servant who died while in service to receive a share of the gratuity is not affected if the female member marries or re-marries before she receives her share or the brother attains the age of 18 years after the death of the Government servant before receiving his share of gratuity.

12. Mr. Roy has sought to emphasise the proviso to sub clause (v) of Clause (f) of Sub-Rule 9 of Rule 100 by contending that the Death Gratuity payable under Rule 98 must be paid to a person in whose favour the succession certificate in respect of the gratuity in question has been granted by a Court of Law. He has submitted therefore that the Rules recognise the validity of a succession certificate and that a nominee should not be a person who receives the entire amount from the Government on the death of an employee.

13. The proviso to Rule 98 makes it clear that if there is no nomination under Rule 100 or if the nomination does not subsist and if there is one more surviving member of the family, the gratuity shall be paid to all such members in equal shares. Sub clause (v) of Clause (f) of Sub-Rule 9 of Rule 100 speaks about lapsing of the Death Gratuity when a Government Servant dies without leaving behind a family. If the Government servant dies while in service or after retirement without leaving behind any family as defined in Rule 7 and without nominating anyone or if the nomination made by him does not subsist, the amount of gratuity admissible under Rule 98 lapses to the Government. However, the proviso to this sub clause enables a person to receive gratuity if a succession certificate has been granted by the competent Court in his favour.

14. In the present facts, the petitioner is not and cannot be considered as a member of the family of the deceased employee under the D.C.R.B. Rules although the deceased employee was his brother. The petitioner was not below the age of 18 years when his brother died. Therefore, he could not be considered as part of the family for the purpose of payment of gratuity. Moreover, even after the amendment to Rule 98 it stipulates that the brother of a Government servant who attains the age of 18 years after the death of Government servant but before receiving his share of gratuity would be entitled to be considered for payment of gratuity. Admittedly, the petitioner was well above the age of 18 years when his brother died, as from the petition it is apparent he is 75 years of age today. Therefore, he is not entitled to receive the death gratuity as a member of the family of the deceased employee. Even considering the fact that the petitioner has a succession certificate in his favour, he is only authorised to receive the Death Gratuity. He does not have a beneficial interest in the same to the exclusion of the other heirs of the deceased employee as the amount enures

to the estate of the deceased.

15. In the case of Lallu Ram and Others Vs. State of U.P. and Another, the Supreme Court, while considering Section 39 of the Life Insurance Act, held that on the death of a policy holder the amount payable under the policy becomes part of his estate which is governed by the Law of Succession applicable to him. The succession may be testamentary or intestate. A nomination made u/s 39 cannot lead to a third kind of succession. The nominee would receive the amount under the policy and this amount can be claimed by the heirs of the assured in accordance with law of succession governing them. The nomination does not confer a beneficial interest in the amount payable under the policy. It only indicates the hand which is authorised to receive the amount.

16. In the case of Shri Vishin N. Kanchandani and Another Vs. Vidya Lachmandas Khanchandani and Another, the Supreme Court considered the rights of the legal heirs of deceased who had invested in Government Savings Certificate and the rights of a nominee. The Supreme Court held that though the nominee is entitled to receive the dues under the Savings Certificates he retains the amount on behalf of the persons entitled to receive the amount under the relevant law of succession.

17. In the case of State of Chhatisgarh and Others Vs. Dhirjo Kumar Sengar, the Supreme Court dealt with a case in which compassionate appointment was sought on the ground that a succession certificate was issued in favour of the persons seeking employment. It was found that the candidate was ineligible as he had committed a fraud on the Government by failing to establish his relationship with the deceased employee. The Court observed as follow:

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. Even otherwise, the respondent and his father were entitled to the said dues being his heirs and legal representatives.

23. The very fact that the respondent had filed an application for grant of succession certificate along with his father, showing themselves to be the heirs and legal representatives of the deceased, is itself sufficient proof to show that he did not claim any benefit in regard to the debts of the deceased as his adopted son or otherwise.

18. In Shipra's case (supra) the Supreme Court reiterated its earlier judgment in Sarbati Devi (supra) and Vishin N. Khanchandani (supra) that a nominee does not stand on a better footing than a legal heir who is entitled to retiral dues including Provident Fund under the Law of Succession. The nomination does not

confer any beneficial interest on the nominee and the nominee merely can claim the amount in order to distribute the same under the relevant Law of Succession. The Supreme Court observed that on the death of the employee both his widow and his mother were entitled to half a share of the General Provident Fund. The mother who was the nominee could not claim the entire amount for herself.

19. In Delhi High Court in the case of Ashok Chand Aggarwala v. Delhi Administration & Ors., L.P.A. no. 31 of 1985 decided on 27th October, 1998 held that under the Delhi Co-operative Societies Rules, 1973, the nominee could not claim to be the owner of the plot to the exclusion of the legal heirs.

20. In the present case therefore as evident from the decision in the case of Dhirjo Kumar Sengar (supra) a succession certificate does not give a better right to a person to claim the entire amount to the exclusion of the legal heirs of a deceased employee. The succession certificate only facilitates the realisation and disbursement of the amount of Death Gratuity.

21. Would it therefore mean that the Death Gratuity of the employee would lapse because he died without leaving any "family" as defined under Rule 7(e) of the D.C.R.B. Rules? In our view the answer must clearly be in the negative. Gratuity is not a bounty but a property of the deceased employee. It enures to the estate of the deceased. Therefore, when an employee dies, the gratuity must devolve on his legal heirs under the Law of Succession. The mere fact that one of the legal heirs has obtained a succession certificate cannot deprive the other legal heirs from their right to claim the gratuity. In the present case, although the petitioner, who is the brother of the deceased employee, has obtained a succession certificate, he cannot claim the amount to the exclusion of his sisters, who apparently did not appear before the competent Court when the succession certificate was issued, or indeed to the exclusion of any other legal heir of the deceased. As has been held by the Supreme Court, the succession certificate only enables a person in whose favour the certificate is granted to become a trustee of the amount in order to distribute it to the heirs and legal representatives of the deceased. The sisters of the petitioner are also the legal heirs of Ramesh Chandra. They would be entitled therefore to payment of gratuity although they are married.

22. A nomination has to be made in favour of the member of the employee's family as defined under Rule 7(e). Nephews are not considered as members of the family of an employee and therefore, the nomination in their favour is of no consequence.

23. The validity of the provision of Rule (v) Clause (f) of Sub-Rule 9 of Rule 100 has not been challenged by the petitioner either before the Tribunal or this Court. However, Mr. Roy, appearing for the petitioner, did contend that a provision which stipulates that the gratuity would lapse if there was no valid nomination is ultra vires the Constitution and against the Law of Succession. He bases his argument on the premise that gratuity is the property of an employee which enures to his

estate when he dies. Mr. Roy has submitted that any Rule which is contrary to the Law of Succession is ultra vires. It would not be proper in the present case to permit these arguments on behalf of the petitioner. This is because there is no pleading to that effect either before the Tribunal or in this Court. No leave has been sought before this Court to amend the pleadings in order to challenge the vires of that Rule (v) Clause (f) of Sub-Rule 9 of Rule 100. However, in this case we need not go to consider all this question as a succession certificate has been issued in favour of the petitioner in terms of the proviso to Rule (v) Clause (f) of Sub-Rule 9 of Rule 100.

24. Accordingly, the impugned order of the Tribunal is set aside. The State will pay all the legal dues like Death Gratuity, Provident Fund, Group Insurance, Leave Salary, etc. to the petitioner who will collect the amount as a trustee in view of the succession certificate issued to him and distribute it between all the legal heirs of Ramesh Chandra, the petitioner being one of them. The amount must be disbursed as expeditiously as possible and in any event within four months from today.

25. The petition is allowed accordingly. No order as to cost.

26. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.