(2010) 09 DEL CK 0063

In the Delhi High Court

Case No : Writ Petition (C) No. 4704 of 2008

Ragesh Kumar APPELLANT

Vs

National Commission for Schedule Castes RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 50, 50(6), 51, 52, 53
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 108, 53(1), 6, 7, 8(1)
Government of India Act, 1935 — Section 72
Insurance Act, 1938 — Section 39

Citation : (2010) 119 DRJ 51

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Jasvinder Kaur, for the Appellant; R.V. Sinha and A.S. Singh for R-1 and S.C. Phogat, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The petitioner has filed the preset writ petition under Article 226 of the Constitution of India praying for issuance of a writ setting aside the orders dated 18.02.2008 and 07.05.2008 and directing the respondents to release the remaining amount of DCRG & GPF in favour of the petitioner.

2. The brief facts of the case are that late Mr. Ravinder Kumar (herein after referred to as the deceased) was the elder brother of the petitioner and was working as a private secretary to the respondent No. 1/Commission. The deceased was posted in Delhi and according to the petitioner during the course of employment he completed the nominations regarding disbursement of his retirement benefits i.e. DCRG, GPF and other dues that may have accrued during his tenure. At the time of filing the said nominations in the form meant for DCRG under Rule 53(1) of CCS (pension) Rules, 1972 the deceased specifically mentioned that the same be disbursed between his two minor unmarried brothers i.e. the petitioner and Mr. Yatinder Kumar in equal shares and he further

clarified that incase Mr. Yatinder Kumar predecease his share be given to the surviving nominee i.e. the petitioner.

3. In the year 1995 the deceased got married to Mrs. Suman (hereinafter referred to as respondent No. 2) however, according to the petitioner, the relationship between the two was not cordial. On 18.04.2000 the deceased committed suicide and left behind his wife, parents and his two brothers. Immediately after the deceased committed suicide his brother Mr. Yatinder Singh left the house on 22.04.2000 in a state of depression, a missing report was lodged by his family in the local police station but he could not be traced.

4. After the death of the deceased, the respondent No. 1 vide OM No. 44/5/ SCTC/98 - Admn. dated 15.05.2000 sought for legal opinion regarding eligibility for DCRG from the Ministry of Personnel, Public Grievances and Pension. Vide OM No. 38/6/9 - P& PW (F) opined as follows:

2. The matter has been examined in this Department. In a similar case that had been referred to Ministry of Law, the letter advised that DCRG will need to be paid as per the nomination made. In the present case, as late Ravindra Kumar did not revise the nomination consequent upon his marriage, the nomination made by him in favour of his brothers is valid as per CCS (Pension) Rules 1972. The case of late Ravindra Kumar may be settled accordingly.

5. Thereafter on 13.06.2000 respondent No. 1 informed the nominees that as per the nomination they were the nominees for receiving the DCRG amount and asked them to submit a claim for the same. The respondent No. 1 also sent 2 sets of Form No. 12 under CCS (Pension) Rules 1972 to be filled in triplicate, individually to nominees for the purpose of submitting a claim for disbursement of DCRG amounting to Rs. 1,34,136/- only and further sent an OM dated 25.08.2000 bearing No. 18/1/SCST 2000-genl calling upon the petitioner and Mr. Yatinder Singh to complete the formalities.

6. Since one of the nominees namely Mr. Yatinder Sigh had gone missing, therefore, only the petitioner sent his form to claim his 50% share of the DCRG and GPF amount and received Rs. 67,068/- towards 50% of the DCRG and Rs. 2,30,000/- towards 50% of the GPF in the year 2000 itself.

7. According to the petitioner through letter dated 16.05.2001 their father reconfirmed with respondent No. 1 that Mr. Yatinder Singh had gone missing he also enclosed a copy of the report of the concerned police station dated 14.05.2001 and requested respondent No. 1 to release the share of Mr. Yatinder Singh in DCRG of the deceased in favour of the petitioner. However respondent No. 1 did not take any action in this regard and continued to withhold the remaining DCRG amount of the deceased. Even after the repeated requests from the father of the deceased respondent No. 1 did not settle the matter.

8. The petitioner has further stated that after 7 years from the date of release of the first installment respondent No. 1 asked their father to submit the details of

their missing brother Mr. Yatinder Singh and the same were duly supplied on 12.10.2006. The respondent No. 1 then stalled the payment on the ground of non supply of the newspaper advertisement regarding the missing report of Mr. Yatinder Singh.

9. The respondent No. 1 issued order dated 18.02.2008 which read as follows:

I am directed to draw your attention on the above subject and to say that the nomination made by Late Shri Ravinder Kumar, P. S for DCRG in your favour is invalid as the same has not been accepted the Head Office.

It is therefore requested that the amount of DCRG amounting to Rs. 67068/- made in favour you may therefore be kindly refunded immediately.

10. The petitioner was further served with the impugned order dated 07.05.2008 which read as follows:

I, am directed to refer to the above subject and to say that the nomination of DCRG & GPF made by Late Shri Ravinder Kumar, Ex.PS has been found invalid. In the absence of any fresh and valid nomination, wife is the natural nominee for DCRG & GPF and 50% of the GPF claim paid to you may kindly be refunded immediately to enable this office to settle the claim in favour of the wife of the deceased Government employee who is the legal nominee.

11. In the counter affidavit filed by respondent No. 1 it is stated that the as per the CCS (Pension) Rules 1972, on initial confirmation to a post every Government servant should make a nomination of one or more persons who in the event of his death have the right to receive the death gratuity. If at the time of making the nomination the Government servant has a family the nomination shall be in favour of one or more members of his family.

12. Late Shri Ravinder Kumar filled up the nomination form in 1982 when he was unmarried and that form was not accepted by the then Head of Office in the Ministry of Defense as well as Ministry of Social Justice and Empowerment. It is an admitted fact that the deceased did not make any nomination after his marriage. When the matter was taken up by the respondent department with the department of Pension and Pensioners Welfare they opined that in view of a similar case decided by Ministry of Law, DCRG be paid as per the nominations made and since the deceased had not filed any fresh nomination after his marriage therefore 50% of his DCRG & GPF was paid to one of the nominees (petitioner) and the remaining 50% could not be paid as the other nominee went missing.

13. Later on when the matter was taken up by the Department of Legal Affairs it was opined that in view of Section 108 of the Indian Evidence Act 1972 the respondent No. 1 was bound to wait for at least seven years before initiating the process of release of the remaining amount of DCRG & GPF. In 2008 it was observed that the nomination form on the basis of which 50% of DCRG & GPF was released to the petitioner is invalid as it had not been acknowledged by the

Head of Office. It was also observed that the deceased had made his brothers nominees as part of his family when they were minor but, as they attained majority they ceased to be part of his family therefore, the nominations automatically became invalid. And in the event of invalid nominations, respondent No. 2 i.e. the wife of the deceased becomes the natural nominee and that is why the respondent No. 1 requested the petitioner to refund the amount of DCRG & GPF paid to him.

14. The relevant rule of CCS (Pension) Rules 1972 with regard to the disbursement of DCRG are referred as under:

Section 53(1): A Govt. servant on his initial confirmation in a service of post, must make a nomination in Form 1 or 2, as may be, as appropriate in the circumstances of the case, conferring on one or more persons the right to receive the retirement/death gratuity payable under Rule 50:

Provided that if at the time of making the nomination-

(i) 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; or

(ii) The Government servant has no family, the nomination may be made in favour of a person or persons, or to a body of individuals, whether incorporated or not.

Further Section 53(4) of CCS (Pension) Rules, 1972 reads, "the nomination made by a Government servant who has no family at the time of making it, or the nomination made by a Government servant under the second proviso to Clause (i) of Sub-rule (3) where he has only one member in his family shall become invalid in the event of the Government servant acquiring a family, or an additional member in the family, as the case be.

15. Learned Counsel for the petitioner has also referred Rule 50(6)(viii) of the Pension Rules which reads as under:

For the purposes of this rule and Rules 51, 52 and 53, ''family'', in relation to a Government servant, means-Brothers below the age of eighteen years including step brothers

16. The main contention of the learned Counsel for the petitioner is that if the said rules are read together, it is clear that the nomination made by the deceased in favour of one or more of the members of his family shall not become invalid in the event of the Government servant acquiring a family or an additional member in the family as the case may be. Thus by no means, after the marriage of a Government servant the nomination made by him becomes invalid nor there exist any requirement to make fresh and valid nomination for disbursement of DCRG. Hence the cancellation of earlier order for payment by the respondent No. 1 in favour of the petitioner is without any basis and absolutely arbitrary and whimsical.

17. On the other hand learned Counsel for the respondent No. 2 has argued that the petitioner has no right to claim the death-cum-retirement gratuity and GPF of his own brother. In fact, the brother of the petitioner nominated the petitioner on 26.08.1982 and the respondent No. 2 married Ravinder Kumar (deceased) on 13.05.1995.

18. In the matter of Shri Vishin N. Kanchandani and Another Vs. Vidya Lachmandas Khanchandani and Another, it was held by the apex court:

12. The submission made on behalf of the appellants has no substance in view of Sub-section (2) of Section 8 and the Statement of Objects and Reasons necessitating the passing of the Act. Sub-section (1) of Section 8 provides that if any payment is made in accordance with the provisions of the Act to a nominee, the same shall be a full discharge from all further liabilities in respect of the sum so paid. Section 7 of the Act provides that after the death of the holder of the savings certificates payment of the sum shall be made to the nominee, if any, and Sub-section (1) of Section 8 declares that such payment shall be a full discharge from all further liabilities in respect of the sum so paid. However, Sub-section (2) of Section 8 specifies that the payment made to the nominee under Sub-section (1) shall not preclude any executor or administrator or the legal representative of the deceased holder of a savings certificate from recovering from the person receiving the same u/s 7; the amount remaining in nominee''s hand after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration. In other words though the nominee of the National Savings Certificates has a right to be paid the sum due on such savings certificates after the death of the holder, yet he retains the said amount for the benefit of the persons who are entitled to it under the law of succession applicable in the case, however, subject to the exception of deductions mentioned in the Sub-section. In the Statement of Objects and Reasons of the Act it is stated:

The Post Office National Savings Certificate Ordinance, 1944 (42 of 1944), issued u/s 72 of the Ninth Schedule to the Government of India Act, 1935, as originally enacted and continued in force by virtue of the provisions of the India and Burma (Emergency Provisions) Act, 1940 (3 and 4 Geo. 6, Ch. 33) regulates the sale and discharge of National Savings Certificates issued through the post office. Suggestions have been made from time to time that as the production of legal proof of succession involves considerable delay and expense, the holders of savings certificates may be allowed the right to nominate one or more persons to receive the amounts due in respect of such certificates in the event of their death without the production of succession certificate or other proof of title. In seeking to amend that Ordinance for the above purpose, opportunity is taken to replace it by an Act of Parliament.

13. In the light of what has been noticed hereinabove, it is apparent that though language and phraseology of Section 6 of the Act is different than the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the

same. The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the National Savings Certificates, to the nominee of holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in Sarbati Devi''s case holds field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of National Savings Certificates received by him u/s 6 read with Section 7 of the Act who in turn is liable to return the amount to those, in whose favour law creates beneficial interest, subject to the provisions of Sub-section (2) of Section 8 of the Act.

19. I have considered the rival submissions of the parties, the relevant pension rules as well as the judgment of the apex court referred above.

20. It is not in dispute that when the deceased nominated the petitioner he was unmarried. It is the admitted case of the parties that the respondent No. 2 married the deceased after the expiry of more than 12 1/2 years of the nomination of the petitioner.

21. In view of Rule 53(4) of CCS (Pension) Rules 1957, it is very clear that the nomination if made by a Government servant under the second proviso where he has only one member in his family shall become invalid in the event of Government servant acquiring a family or an additional member coming in the family as the case may be. In the present case, the respondent No. 2 who is the wife of the petitioner is an additional member in the family after the marriage therefore, the nomination of the petitioner became of no use as soon as the deceased Ravinder Kumar got married with the respondent No. 2 on 13.05.1995. As a matter of fact, the right of the petitioner in the nomination ceased to exist and the petitioner under those circumstances has to be considered just a custodian due to the change of circumstances and all the benefits under these circumstances has to be disbursed amongst the legal heirs of the deceased. The respondent No. 2 in the present case is admittedly the legal heir of the deceased therefore, the petitioner is not entitled for any relief to set aside the impugned order dated 18.02.2008 and 07.05.2008 as prayed for.

22. I am of the considered view that the respondent No. 2 is entitled for release of the remaining amount of DCRG and GPF from the respondent No. 1. The writ petition is without any merit and the same is hereby dismissed.