

(2022) 04 CAL CK 0075
In the Calcutta High Court
Case No : WPST No. 103 Of 2021

Rupali Sen

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 309
West Bengal Service Rule, Vol - I — Section 168B
West Bengal Services (Death-Cum-Retirement Benefit) Rules, 1971 — Rule 7(e), 97, 98, 100, 100(1)

Citation : (2022) 04 CAL CK 0075

Hon'ble Judges : Harish Tandon, J; Rabindranath Samanta, J

Bench : Division Bench

Advocate : Tarapada Das, Chandan Dutta, Jonaki Khan, Biswabrata Basu Mallick, Sayan Ganguly

Final Decision : Dismissed

Judgement

Rabindranath Samanta, J

1. This writ petition has been preferred by the petitioner Rupali Sen being aggrieved by the order dated 06.02.2020 passed by the West Bengal Administrative Tribunal (hereinafter be referred to as the Tribunal) in Miscellaneous Application No. 68 of 2019 arising out of O.A. No. 758 of 2018.

2. The petitioner, in the tribunal application, sought for the following reliefs:-

"A direction do issue, directing the respondent No. 4 to supply the Xerox copy or duplicate service book of the deceased employee and issue the PPO as well as release the dues salary of the service period as well as death benefits of the deceased employee along with interest at the rate of 10% p.a. from the next date of death to the date of actual payment in terms of the application dated 17.06.2003 and 04.05.2018 and its prayer."

3. The Learned Tribunal by the impugned order rejected the prayer on the

following observations:-

"The respondents have brought the service book of the deceased employee and after perusal of the same, it is noted that the name of the applicant is not found as nominee in the service book. Since the name of the applicant is not available in the service book, therefore, the respondents have rightly raised the objection of the identity of the applicant. It is further, noted that the applicant has simply applied before the District Magistrate, Bankura, however, till date no legal heirship certificate has been issued in favour of her. Therefore, identity of the applicant has not been ascertained as a daughter of the said deceased employee. In this background, in our considered opinion the applicant has no locus standi at present to claim the retrial benefits of the deceased employee as a daughter unless she can prove herself as a daughter of the said deceased employee. Therefore, we do not find any reason to entertain the application. Accordingly, both the M.A. & O.A. are dismissed with the above observation."

4. Shorn of details, the facts which are necessary for adjudication, may be stated as under:

Santipada De, the father of the petitioner Rupali Sen was an Amin under the office of the respondent No. 4, the District Land and Land Reforms Officer, Bankura, and respondent No. 6, the Sub Divisional Land and Land Reforms Officer, Bishnupur, Bankura. From the records and papers as available it is found that the father of the petitioner remained absent for a long time due to his illness and in that regard he submitted medical reports before the concerned authority, but the authority concerned passed no order on such medical reports. Her father, ultimately, died on 28.05.2003 at the age of 52 years. Before the death of her father the petitioner got married with Bipad Taran Sen on 01.05.2000.

After the death of her father, the petitioner made an application on 17.06.2003 before the concerned authority for a job under died-in- harness category, but to no effect. By the same application the petitioner sought for release of the death benefits of her deceased father to her as his sole legal heir. The mother of the petitioner died before the death of her father.

5. Getting no reply to her representation dated 17.06.2003 the petitioner made an another application before the concerned respondent authority on 04.05.2018 seeking the same relief as sought for by her in her representation dated 17.06.2003. But, the concerned authority turned deaf ear to her representations. Before hand, the petitioner made a prayer to the District Magistrate, Bankura, for issuance of legal heir-ship certificate in her favour on demise of her father and she is yet to receive the certificate.

6. Being frustrated with the inaction on the part of the respondent authorities, the petitioner preferred the aforesaid application before the Tribunal.

7. The respondents by affirming affidavit-in-opposition, admit that the father of the petitioner Santipada Dey was an employee (Amin) under the respondent

No.4, District Land and Land Reforms Officer, Bankura and respondent No.5, District Land and Land Reforms Officer, Burdwan and while he was in service he died on 28.05.2003 at the age of 52 years. It is their contention that Santipada Dey absented from duties unauthorizedly from March 1983 till his death. He completed 9 years, 8 months and 14 days of service which is less than 10 years of qualifying service to enable him to get pensionary benefits. The respondents deny that the petitioner is the daughter and sole legal heir of the deceased and she is entitled to get gratuity on the demise of the deceased. However, the petitioner in her affidavit in reply denies the contention of the answering respondents.

8. Admittedly what we find from the documents on record, the father of the petitioner was an employee (Amin) under the respondent Nos. 4 and 5 and while he was in service he died on 28.05.2003 at the age of 52 years. Undisputedly, the father of the petitioner completed 9 years 8 months and 14 days of service.

9. As rule 97 of West Bengal services (Death-cum-Retirement Benefit) Rules, 1971 postulates, gratuity was admissible to the aforesaid deceased employee considering the period of service rendered by him.

10. Learned counsel appearing for the petitioner submits that the respondent authorities turned down the prayer of the petitioner on the ground that the deceased employee did not furnish any nomination authorizing the petitioner to receive the retrial benefits. Learned counsel by referring to a decision in the case of Smt. Sarbati Devi & Another-Vs-Smt. Usha Devi reported in (1984) 1 SCC 424 submits that the role of a nominee is to receive the benefits accrued on the demise of the concerned person, but he/she owes the obligation to distribute the benefits among the legal heirs of the deceased according to the relevant law of succession. Citing an another decision in the case of Vishin N.Khanchandani & Another-Vs-Vidya Lachmandas Khanchandani & Another reported in (2000) 6 SCC 724 learned counsel submits that the nominee is entitled to receive the dues under the saving certificates on behalf of the persons entitled to receive the amount under the relevant law of succession. Placing reliance on an another decision in the case of State of Chattisgarh & Ors-Vs- Dhirjo Kumar Sengar reported in (2009) 13 SCC 600 learned lawyer points out that succession certificate issued under the Indian Succession Act, 1925 does not confer any right or status on the certificate holder, rather he only becomes trustee to distribute the amounts, payable to the deceased, to his legal heirs or legal representatives. In the light of the aforesaid decisions of the Hon'ble Apex Court the learned counsel emphasizes that the concerned authority may release the gratuity payable to the deceased to his only legal heir, the petitioner herein in the absence of any nomination or succession certificate.

11. In the decisions reported in (1984) 1 SCC 424 and (2000) 6 SCC 724 it has been held by the Hon'ble Apex Court that a nominee as a trustee of the legal heirs of the deceased holds the dues of the deceased on behalf of the legal heirs and it is his legal obligation to distribute the dues amongst the legal heirs in

accordance with the law of succession. In the decision reported in (2009) 13 SCC 600 it has been held that like a nominee a certificate holder also owes the responsibility to distribute the dues of the deceased among his/her legal heirs.

12. Per contra, learned counsel appearing for the state respondents submits that the learned tribunal by the impugned order has held that the petitioner failed to prove her identity as the daughter and the legal heir of the deceased to get the retrial benefits viz. the gratuity admissible to the deceased. Learned counsel submits that as to disbursement of dues admissible to the deceased employee, the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 occupies the field. Learned Counsel drawing our attention to the definition of family under Rule 7(e) of the Rules, 1971 submits that the petitioner as a married daughter of the deceased employee does not come within the definition of family of the deceased. Learned counsel argues that in the absence of any nomination or succession certificate as required under Rule 100, the concerned respondent authorities cannot release the gratuity as payable to the deceased to the petitioner.

13. Admittedly, gratuity was admissible to the deceased employee considering the period of service rendered by him. Since the deceased employee absented himself from discharging duties from March, 1983 till his death on 28.05.2003, this fact remains disputed whether any leave was due to his credit or not. However, the petitioner has not sought for release of encashment of leave salary.

14. Now the question is whether the respondents authorities may be directed to release the gratuity payable to the deceased to the petitioner as his sole legal heir.

15. Rule 100 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 postulates the mode on disbursement of gratuity to a legal heir of the deceased. Rule 100 (1) provides that 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. A proviso to this Rule enjoins 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.

16. What the legal principles enunciated by the Hon'ble Apex Court in the decisions supra indicate, nominee or succession certificate holder owes a legal responsibility to distribute the dues payable to a deceased amongst his/her legal heirs. In the absence of any statutory rule and in the absence of any nomination or succession certificate, this Court in exercise of its extraordinary power of judicial review may direct the authority concerned to disburse or release the dues payable to a deceased employee to his/ her legal heir if the Court is satisfied with the identity of the legal heir. But, where the statutory rules enacted under Article 309 of the Constitution prescribe the mode of release of the dues

payable to the deceased to his legal heir such mode should strictly be adhered to.

17. The Learned Tribunal after scrutinizing the service book of the deceased has observed that the deceased did not make any nomination authorizing the petitioner to receive the retiral benefits of him. On such observation and not being satisfied with the identity of the petitioner the learned Tribunal turned down the prayer of her.

18. Learned Counsel for the petitioner further submits that after the amendment of Rule 168 B of WBSR, Part- I a married daughter who has been brought to the fold of definition of family of the deceased is entitled to get the payment of the cash equivalent of leave salary of her deceased father. That being so, this Court in exercise of its discretionary power may direct the authority concerned to release the gratuity payable to the deceased to his daughter, the petitioner herein.

19. As indicated above, the law is very clear that in the absence of nomination the death gratuity 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. The definition of family under the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 does not include a married daughter of the deceased. In such situation and as the statutory rules as above clearly indicate, the petitioner, in order to get the dues payable to her deceased father shall have to obtain the succession certificate from the competent Court of Law.

20. In view of the above, we do not find any infirmity in the order passed by the Learned Tribunal.

21. Accordingly, the writ petition is dismissed.

22. No order as to costs.

23. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.