
(1998) 12 J&K CK 0025
In the Jammu And Kashmir High Court
Case No : O. W. P. 610 Of 1998

Simla Kumari

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 03-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) KashLJ 499

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : K.N.Sapolia, B.S.Salathia, Advocates appearing for the Parties

Judgement

1. The husband of the petitioner was working with the Border Security Force. He died. The widow is claiming pensioner benefits

2. The respondents have filed objections. It is stated that the late husband of the petitioner had signed nomination form in this nomination form he

had nominated his mother as the person who was to receive service benefits it is further submitted that the service benefits were released in favour

of the mother before the issuance of succession certificate. The succession certificate is said to have been issued on 28th Sept 1996. It is on

account of the nomination form having been filed by the husband of the petitioner, the respondents submit that pensioner benefits were released in

favour of the mother. At the same time it is admitted that the petitioner had approached the respondents even before 28th Sept 1996. This is

evident from the stand taken in Para 4 of the objections. This Para reads as under: ""Contenteofpara4 area also admitted. It is further submitted that

the replying respondents through letter dated 26 12 1895 sent to the petitioner the approximate amount which was entitled to the deceased so that

she may obtain Succession certificate from the competent court of law. It is further submitted that on receipt, family pension case was taken up

with the Pay and Accounts Division BSF New Delhi and after that family pension in favour of petitioner(r) Rs. 510 per month with admissible DA

was sanctioned we. f. 10. 09 1995 along with other benefits. "" 3, thus the respondents were aware of the fact that the petitioner is also an heir to

the estate of her husband. 4 I am of the opinion that the stand taken by the respondents is not justified. The widow is a heir under the Hindu

Succession Act. Merely because a person is nominated as the person entitled to receive some amount does not mean that the claim of the other

heir is to be ignored whenever any nomination is made this is only made for facilitating the making of payment. The nominee does not become the

sole heir. Such is the view expressed by the Supreme Court in the case reported as 'Smt. Sarbati Devi and another v Smt Usha Devi' AIR 1984

SC 346, The relevant observation are as under:

The nomination only indicates the hand which is authorized to receive the amount on the payment of which the insurer gets a valid discharge of its

liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing

them.

5. it is thus apparent that the Supreme Court in the aforementioned case has made it clear distinction between nomination and assignment. In case

there is assignment, the position is different In case there is mere nomination then all the claimants remain entitled to the benefits. In this case the

petitioner had informed the respondents that she is one of the heirs, in view of the above the claim of the petitioner could not be ignored. The

petitioner is, therefore, held entitled to 50% of the pensionary and other benefits. The respondents are left free to take steps with a view to recover

the amount from the mother. They would, however, see to it that 50% of the amount is paid to the widow. The above observation regarding

recovery from the mother would however not operate to the prejudice of the petitioner. The petitioner would independently of the steps to be taken

for recovery be entitled to the 50% of the amount. Let the payment be made within two months. If the payment is not made within the period the

petitioner would be entitled to interest. The rate of interest would be at 12%.

The period of two months would begin from the date, a copy of this order alongwith a copy of writ petition and annexures thereof are made avialable to the respondents by the petitioner.