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**(2008) 04 MP CK 0014**  
**In the Madhya Pradesh High Court**

Smt. Girijabai

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision :** 08-04-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 125

Penal Code, 1860 (IPC) — Section 198

Succession Act, 1925 — Section 370, 372, 383

**Citation :** (2008) 118 FLR 308 : (2008) ILR (MP) 1167 : (2008) 3 MPHT 83 :  
(2008) 3 MPJR 187 : (2008) 3 MPLJ 407

**Hon'ble Judges :** S.K. Gangele, J

**Bench :** Single Bench

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## Judgement

S.K. Gangele, J.

Petitioner has filed this petition with regard to payment of retiral benefits, gratuity, family pension amount and LIC of her late husband. The husband of the petitioner had been working as driver in Health Department at Khaniadana, District Shivpuri. He died on 10-11-2006 during service. As per the petitioner she is wedded wife of Mr. Raghuwar Dayal. They had been living together. There was no child from Raghuwar Dayal. The petitioner submitted applications for payment of retiral benefits of her Late husband, however the department directed the petitioner to submit a succession certificate in favour of the petitioner. Thereafter petitioner applied for succession certificate and obtained the succession certificate. Copy of the succession certificate received by the petitioner has been filed alongwith documents. Initially Civil Judge Class I refused to grant succession certificate but subsequently District Judge granted the same vide order dated 5-3-2008. The respondent Nos. 1 to 4 in the return stated that Raghuwar Dayal nominated Smt. Maya Devi as nominee. Thereafter Smt. Maya Devi was granted Rs. 25,000/- for the purpose of performance of last customary rites of Raghuwar Dayal. The respondents further submitted that the petitioner was directed to submit a succession certificate and Smt. Maya Devi also claimed pensionary benefits of Raghuwar Dayal. The respondent No. 5 Smt. Maya Devi in

her return stated that the petitioner is not legally wedded wife therefore, her name was not recorded as nominee by Raghuwar Dayal. It has further been stated that respondent No. 5 Smt. Maya Devi had three children from the wedlock of Raghuwar Dayal namely Kushbu Sahu, Rekha Sahu and Dinesh Sahu. The petitioner did not make the answering respondent as party in the succession proceedings and got the succession certificate. The answering respondent also applied for succession certificate.

The learned Senior Counsel stated that only a legally married wife and family members of the deceased employee are entitled to receive pension. It has further been stated by Senior Counsel that there is succession certificate in favour of the petitioner. Hence she is entitled for pension.

Contrary to this, the learned Counsel for the respondent No. 5 stated that the succession certificate received by the petitioner is not in accordance with law. The answering respondent No. 5, was not added as a party before the Court by the petitioner in succession proceedings and nomination is in favour of answering respondent, hence she is entitled for retiral benefits. The learned Counsel relied on the judgment Vidyadhari and Others Vs. Sukhrana Bai and Others, .

Undisputed facts of the case are that the petitioner is claiming benefit and retiral benefits of Late Shri Raghuwar Dayal as his legally wedded wife. Raghuwar Dayal died on 10-11-2006 and he made nomination in favour of the respondent No. 5 with regard to his retiral benefits. Earlier the petitioner also filed an application u/s 125, Cr.PC for grant of maintenance. The Trial Court granted maintenance of Rs. 250/- per month in favour of the petitioner. The High Court also in revision upheld the order of the Trial Court. From the aforesaid facts it is clear that the petitioner has some substantiative cause and she has interest in the retiral benefits of Late Shri Raghuwar Dayal.

Rule 47 of M.P. Civil Service (Pension Rules), 1976 (hereinafter called as "Rules of 1976") provides contributory family pension and as per Rule 47 (6) the following persons are entitled for contributory pension which is as under:

47. (6) The period for which family pension is payable shall be as follows:

- (i) in the case of a widow or widower, up to the date of death or remarriage whichever is earlier;
- (ii) in the case of a son, until he attains the age of 21 years; and
- (iii) in the case of an unmarried daughter, until she attains the age of 24 years or until she gets married, whichever is earlier.

Rule 47(14)(b) describes family in relation to Government servant which is as under:

(b) "family" in relation to the Government servants means:

- (i) [\* \* \*]

(ii) son or an unmarried or widowed or divorced daughter till such son or daughter attains the age of twenty five years or upto the date of his/her marriage/remarriage as the case may be, whichever is earlier, subject to the income criteria as prescribed by the State Government for time to time including such son or daughter adopted legally before retirement.

(iii) the parents, provided they were wholly dependent on the Government servant when he/she was alive and the deceased employee had left behind neither a widow nor a child subject to the dependency criteria as prescribed by the State Government from time to time;

(iv) son, unmarried or widowed or divorced daughter and parents, as the case may be, shall provide an annual certificates of income/dependency criteria as fixed by the State Government from time to time.

With regard to grant of family pension nomination is not necessary it has also been held by the Hon''ble Supreme Court in the case reported in (1999) 5 SCC 237, G.L.Bhatia v. Union of India . After considering Rule 54 of the Central Civil Service (Pension) Rules as under:

"2. The sole question that arises for consideration in this appeal is whether the appellant, who happens to be the husband of the deceased Government servant, is entitled to family pension under the provisions of the Central Civil Services (Pension) Rules (for short "the Rules") notwithstanding the fact that the deceased wife in her nomination did not include the husband. The forums below have taken the view agreeing with the authorities that since the nomination was not in favour of the husband and the husband was staying separate from the wife, the husband would not be entitled to family pension in question. This view cannot be sustained in view of the provisions contained in Rule 54 of the Rules. It is too well settled that where rights of the parties are governed by statutory provisions, the individual nomination contrary to the statute will not operate.

Under Rule 54, Sub-rule (14)(b)(i) the expression "family" has been defined thus:

54. (14)(b)(i) Wife in the case of a male Government servant, or husband in the case of female Government servant....

Sub-rule (8) (II) of Rule 54 states that:

54. (8) (II) If a deceased Government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child.

In the light of the aforesaid provisions and there being no divorce between the husband and wife even though they might be staying separately, the appellant husband would be entitled to the family pension in terms of the Rules as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nominations made by the deceased wife of the appellant. The impugned order is, accordingly set aside and this

appeal stands allowed.

Similar is the provision in the Rules of 1976, however the Hon''ble Supreme Court in Vidhyadhari and Ors. v. Sukhrana Bai and Ors. (supra), quoted earlier judgments of the Hon''ble Supreme Court where it has been held that the children born out of second marriage were legitimate and they would be entitled for pension. The Hon''ble Supreme Court has held as under:

13. This Court in Rameshwari Devi case has held that even if a Government servant had contracted second marriage during the subsistence of his first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Court therefore, went on to hold that such children would be entitled to the pension but not the second wife. It was, therefore, bound to be considered by the High Court as to whether Vidhyadhari being the nominee of Sheetaldeen could legitimately file an application for succession certificate and could be granted the same. The law is clear on this issue that a nominee like Vidhyadhari who was claiming the death benefits arising out of the employment can always file an application u/s 372 of the Succession Act as there is nothing in that section to prevent such a nominee from claiming the certificate on the basis of nomination. The High Court should have realised that Vidhyadhari was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and whose names were also found in Form A which was the declaration of Sheetaldeen during his lifetime. In her application Vidhyadhari candidly pointed out the names of the four children as the legal heirs of Sheetaldeen. No doubt that she herself has claimed to be a legal heir which status she could not claim but besides that she had the status of a nominee of Sheetaldeen. She continued to stay with Sheetaldeen as his wife for long time and was a person of confidence of Sheetaldeen who had nominated her for his provident fund, Life cover Scheme, pension and amount of life insurance and amount of other dues. Under such circumstances she was always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen as his wife and who had gone to the extent of claiming the succession certificate to the exclusion of legal heirs of Sheetaldeen. In the grant of succession certificate the Court has to use its discretion where the rival claims, as in this case, are made for the succession certificate for the properties of the deceased. The High Court should have taken into consideration these crucial circumstances. Merely because Sukhrana Bai was the legally wedded wife that by itself did not entitle her to a succession certificate in comparison to Vidhyadhari who all through had stayed as the wife of Sheetaldeen, had borne his four children and had claimed a succession certificate on behalf of children also. In our opinion, the High Court was not justified in granting the claim of Sukhrana Bai to the exclusion not only of the nominee of Sheetaldeen but also to the exclusion of his legitimate legal heirs.

Therefore, though we agree with the High Court that Sukhrana Bai was the only

legitimate wife yet, we would choose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children, she would have the equal share in Sheetaldeen's estate which would be 1/5th. To balance the equities we would, therefore, choose to grant succession certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the Trial Court to the satisfaction of the Trial Court.

From the above facts, it is clear that the claim of the petitioner and children of the respondent No. 5, with regard to entitlement of family pension of the deceased Raghuwar Dayal prima facie appears to be true. However, respondent No. 5 will not be entitled to receive family pension because prima facie from the proceedings filed by the petitioner for grant of maintenance before the Court of law, which was maintained upto the High Court. It has been held that the petitioner was the legally wedded wife of Raghuwar Dayal. The aforesaid findings have become final.

With regard to gratuity and other benefits there is a provision of nomination in the Rules of 1976. Rule 45 (a) prescribes the provision for payment of gratuity, which is as under:

45. Persons to whom gratuity is payable.- (1) (a) The gratuity payable under Clause (b) of Sub-rule (1) or Sub-rule (2) of Rule 44 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under Rule 46.

(b) If there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid to the legal heirs of the Government servant.

and Rule 46 of Rules of 1976 provides nominations, which is as under:

46. Nominations.- (1) A Government servant shall, on his initial appointment in a pensionable service or post, make a nomination in Form 1 or Form 2 as may be appropriate in the circumstances of the case, conferring on one or more persons the right to receive the death-cum-retirement gratuity payable under Clause (b) of Sub-rule (1) or Sub-rule (2) of Rule 44:

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 persons 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 a body of individuals, whether incorporated or not.

It is clear from the aforesaid provisions of Rules that gratuity is payable to the nominee, however Rules 46 (1) provides that the nomination shall not be in favour of any person or persons other than the member of family of employee in the present case. It cannot be said that the children could be excluded from the family members.

The other hurdle in the present case is that the petitioner has been granted succession certificate by the District Judge, Shivpuri and the respondent No. 5 applied for succession certificate before the Civil Judge, Pichore. Admittedly the petitioner had not impleaded the respondent No. 5 as party before obtaining succession certificate. However, a Competent Court granted succession certificate in favour of the petitioner with regard to retiral benefits of Late Shri Raghuwar Dayal.

Section 372 of Indian Succession Act, 1925 prescribes application for succession certificate which is as under:

372. Application for certificate.- (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased and their respective residences;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment u/s 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence u/s 198 of the Indian Penal Code, 1860 (45 of 1860).

and Section 383 for revocation of succession certificate which is as under:

383. Revocation of certificate.- A certificate granted under this Act may be revoked,:

- (a) that the proceedings to obtain the certificate were defective in substance;

(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;

(c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(d) that the certificate has become useless and inoperative through circumstances;

(e) that a degree or order made by a Competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

From the perusal of Section 372 of Indian Succession Certificate it is clear that it was mandatory for the petitioner to implead the respondent No. 5 as a party in the succession application because she was nominated by Raghuwar Dayal as nominee. Admittedly the petitioner did not implead respondent No. 5 as a party.

In such circumstances, it cannot be said that the petitioner putforth the facts before the Court correctly, hence prima facie the succession certificate obtained by the petitioner cannot be said to be as per law. This Court, in such circumstance cannot pass order of payment of retiral dues of Late Raghuwar Dayal in favour of the petitioner because respondent No. 5 also pleaded that she had got three children from Raghuwar Dayal. Hence, the petition of the petitioner is disposed of with the following directions:

(i) The respondent No. 5 may file application before the Competent Court for revocation of succession certificate granted in favour of the petitioner. Thereafter the Competent Court may decide the application after considering all the facts of the case and legal position as narrated above in the order with regard to succession certificate and grant succession certificate in accordance with the provisions of Pension Rules, 1976. Upto that period the retiral benefits of the deceased Raghuwar Dayal be not paid to any person.

(ii) Looking to the facts of the case if the application for revocation is filed within one month from the date of the receipt of the copy of the order, the Court may pass the appropriate order expeditiously as early as possible.

(iii) The respondent Nos. 1 to 4 are directed to grant family pension of Late Raghuwar Dayal to the petitioner and children of respondent No. 5 at the ratio of 50-50.

(iv) After receiving proper succession certificate the respondent Nos. 1 to 4 shall grant other post retiral benefits of Late Raghuwar Dayal in accordance with certificate.

Before parting with the case this Court appreciate valuable contribution provided by Shri R.D. Jain, Senior Advocate in assisting the Court on request. No order as

to costs.