

(2005) 06 GAU CK 0039
In the Gauhati High Court
Case No : WP (C) No. 202 (AP) of 2004

Swapna Dhar

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 08-06-2005

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 50, 53, 54, 54(14), 64(4)

Citation : (2005) 3 GLR 693 : (2005) 3 GLT 313

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : C. Baruah, for the Appellant; B.L. Singh, for the Respondent

Judgement

H.N. Sarma, J.—Heard Mr. C Barua, learned senior counsel appearing on behalf of the petitioner, and also heard Mr. B.L. Singh, learned senior Govt. advocate, Arunachal Pradesh on behalf of the State-respondents. None appeared for the respondent No. 5 at the time of hearing.

2. The petitioner has approached this Court challenging an order No. LD/PF-170/02-03/4450 dated 19.2.2003, issued by the Executive Engineer, Longding Division, PWD, Longding informing the petitioner that the service benefit payable to on account of her husband Late Ratan Dhar is payable to his father Gopal Dhar only in terms of the legal heir certificate, issued by the competent authority. The further challenge of the petitioner is another letter No. LD/PF/170/03-04/9574 dated 8.4.2003, by which the Executive Engineer, Longding PWD Division, has informed the petitioner that the petitioner's name not having been declared as heir in the declaration given by Late Ratan Dhar, and as per the order passed by the SDJM, Kalyani, Nadia in Misc. Case No. 77/2001, the petitioner is not entitled to the service benefit payable on account of her deceased husband Late Ratan Dhar.

3. The case of the petitioner is that, her husband Late Ratan Dhar, while was serving as a Junior Engineer under the Longding Division under the respondent

No. 4, expired OB 11.3.2002 at St. Luke's Hospital, Tinsukia. After the death of Ratan. Dhar, the petitioner laid necessary claim for getting service benefits payable on account of her husband. In support of her claim, the petitioner has also submitted an affidavit, sworn before the Magistrate, 1st Class, Kalyani District, Nadia, West Bengal as well as a legal heir certificate issued by the Judicial Magistrate, 1st Class, Kalyani, Nadia District. In the meantime, the father of Late Ratan Dhar has also laid his claim for getting the service benefit payable to his son Late Ratan Dhar and it was brought to the notice of the concerned authority that the name of the petitioner is not mentioned in the Form under Rule 54 of the Central Civil Service (Pension) Rules, 1972 (in short, the CCS (Pension) Rules, 1972). In the said nomination filled up by Late Ratan Dhar, while he was in service, the name of Sri Gopal Dhar, the father of the petitioner and the respondent No. 5 herein, Mrs. Malina Dhar, mother, Ms. Gita Dhar, Sister, Master Subrata, Dhar and Master Samir Dhar, both are brothers, have been included as the members of the family. The respondent No. 4 vide impugned letter dated 19.2.2003 intimated the petitioner that the authority is not in a position to process the pension case of Late Ratan Dhar in her favour due to non-availability of the legal heir certificate and it was also stated therein that, Sri Gopal Dhar, father of Late Ratan Dhar has submitted a certificate issued by the competent authority to the effect that: all the pensionary benefit payable to Late Ratan Dhar are payable to Gopal Dhar only. Again vide letter dated 5.4.2003, the Executive Engineer further informed the petitioner that, there is no nomination entitling the petitioner to get the family pension and in terms of the order passed by the Judicial Magistrate Kalyani, Nadia in Misc. Case No. 77/2001, they are not in a position to process the said pensionary benefit in favour of the petitioner. It is pertinent to note here that, Late Ratan Dhar by his writing dated 5.3.2002, just few days before his death expressed that his wife Smt. Swapna Dhar, the petitioner is no more his wife and requested the Executive Engineer, WD, Longding Division to pay all due payable to him from the Government such as Pay, GPF amount, pension money etc. to his father Sri Gopal Dhar. Situated, thus, the petitioner approached this Court by way of this writ petition for necessary direction to pay the service benefits payable to her husband Late Ratan Dhar, in her favour.

4. An affidavit in opposition has been filed on behalf of the State-respondents where in it is stated that in the nomination for submitted by the deceased at the time of entering into the service as required under the Central Civil Services (Pension) Rules, 1972, the name of the petitioner does not find as the family member of the deceased and accordingly, the petitioner is not entitled to be paid the service benefit payable in respect of Late Ratan Dhar.

5. Mr. C. Barua, learned senior counsel has submitted that in terms of Rule 54 of the CCS (Pension) Rules, 1972, the petitioner being the wife of Late Ratan Dhar and there having a minor boy born out of the wedlock, both are legally entitled to get the family pension amount and is to be disbursed in her favour irrespective of the fact whether her name is included in the list of family

members in the Form. 3 under Rule 54 of the CCS (Pension) Rules. Mr. Baruah has also submitted that as it is an undisputed fact that the petitioner is the wife of Late Ratan Dhar, she is also entitled to get the death cum retirement gratuity payable on account of the death of her husband in terms of Rule 50 & 53 of the CCS (Pension) Rules.

6. Mr. B.L. Singh, learned senior Govt. advocate on the other hand referring to the statements made in the affidavit in opposition and documents submitted therewith has submitted that the petitioner has no right to get the family pension or the death cum retrial gratuity in her favour in as much as tier name has not been included as a members of family in the statutory form submitted by the husband of the petitioner. It is further submitted that even after the marriage the husband of the petitioner Late Ratan Dhar has not intimated the office regarding the same and accordingly she is not entitled to get the service benefit payable to the deceased.

7. I have carefully considered the rival submissions made by the parties. The present dispute in question is relating to the entitlement of the family pension on account of death of Late Ratan Dhar and Rule 54 of the Rules and the death cum retirement gratuity payable under Rule 50 of the CCS (Pension) Rules.

8. Let us take in the first the entitlement of the family pension by the petitioner as claimed by her. It is an undisputed fact that her husband while in service, in submitting the statutory form under Rule 54 has not mentioned her name as a family member in stead of the said form contains the names of father (respondent No. 5), mother, sister and two younger brothers of the deceased. Sub-rule 14(b) of Rule 54 of the CCS (Pension) Rules, 1972 defines family in the following terms : "Family" in relation to a Government servant means --

(i) Wife in the case of a male Government servant, or husband in the case of a female Government servant, [***]3

(ia) A judicially separated wife or husband, such separation not being granted on the ground of adultery, and the person serving was not held guilty of committing adultery.

(ii) son who has not attained the age of (twenty five) 7 years and unmarried daughter who has riot attained the age of (Twenty five) 6 years, including such son and daughter adopted legally before retirement [***]. 8

9. Section 54 is an independent provision and under this Rule, a family of a deceased Government servant is entitled to family pension on or after the 1st January, 1964 in terms of the said rule. In no uncertain terms the word family has been defined under Sub-rule 14 of Rule 54 in the manner, as aforesaid. That apart in the statutory form, to be submitted at the time of entering into service declaring the name of the members of the family, at Note 1 it is provided that "family" for that purpose means family as defined in Clause (b) of Sub-rule 14 of Rule 54 of CCS (Pension) Rules, 1972. Hence, there is no escape from the

conclusion that the wife and son who has not attained the age of 17 years are also entitled to get the family pension. Under the said rule, the father, mother, sister or brother of the Government servant has not been included as beneficiary. Accordingly, the counter claim made by the respondent No. 5 is against, the provisions of Statute. Non-mentioning the name of the petitioner in the form will not disentitle the petitioner from getting the statutory benefit provided by Rule 54 of the Rules. That apart, the writing of deceased Late Ratan Dhar dated 5.3.2002, addressed to the respondent No. 4 authorising his father to get the family pension payable to him is not a valid authorisation under the law so far as family pension is concerned. Such a family pension is not a benefit for right over an estate of the deceased, but it is a service benefit and such service benefits are regulated and guided by the aforesaid rules and the aforesaid rules specifically refers the persons who are entitled to get the family pension. In this connection Mr. Baruah, learned senior counsel for the petitioner has drawn the attention of this Court to a decision reported in Smt Violet Issaac and Others Vs. Union of India (UOI) and Others, in which the Apex Court has, inter alia, held that "the Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other people except those designated under the Rules are entitled to receive family pension. The employee has no title nor any control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition".

10. In this connection, we may refer to another decision of the Apex Court reported in (1999) 5 SCC 237, G.L.Bhatia v. Union of India where in the Apex Court at Para 5 held as follows ; "5. 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 nomination made by the deceased wife of the appellant. The impugned order is, accordingly, set aside and this appeal stands allowed",

11. Relating to the payment of death cum retirement gratuity payable under Rule 50 of the CCS (Pension) Rules, 1972, it is submitted by Mr. Singh, learned senior Govt. advocate that even before filing of the present writ petition, by producing the relevant record with the respondent No. 4 vide letter No. LD/PF-170/02-03/4450 dated 19.2.2003, sanctioned on amount of Rs. 90,00 under the provisions of Rule 50 and 64(4)(ii) and under Sub-rule 3 of CCS (Pension) Rules, 1972 sanctioned to make payment of the provisional gratuity in favour of Sri Gopal Dhar, the father of deceased Late Ratan Dhar, the respondent No. 5 it is submitted by Mr. Singh on the basis of the record that the said amount has

already been paid to Sri Gopal Dhar on 14.3.2003. This Court also while issuing rule vide order dated 23.5.2003 has directed that the pensionary benefits in respect of deceased Late Ratan Dhar shall not be disbursed to the respondent No. 5, but no restriction is there in respect of the gratuity amount. That apart, in the petition, the petitioner has not challenged the sanctioning the payment of provisional gratuity in favour of Sri Gopal Dhar, the father of the deceased. Mr. Baruah in his usual fairness has agreed not to contest this part of service benefit of gratuity paid to the father of the deceased.

12. From the narration of the aforesaid facts it is absolutely clear that Sri Gopal Dhar, father of the deceased was nominated to receive the death cum retirement gratuity amount payable on account of the deceased. The writing of Late Ratan Dhar dated 5.3.2003 will be valid so far nomination of death cum retirement gratuity, payable to the deceased, but that is not valid as regards the family pension in question.

13. In view of the aforesaid discussions, I hold that the petitioner, who is the wife of Late Ratan Dhar and his son would be jointly entitled to receive the family pension payable in respect of the deceased and Sri Gopal Dhar, and the father of the deceased would be entitled to get the death cum retirement gratuity so payable.

14. With the aforesaid direction, the writ petition is partly allowed.

15. No order as to costs.