

Court No. - 5

Reserved
A.F.R.

Case :- WRIT - A No. - 6031 of 2024

Petitioner :- Rafat Naaz And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ishir Sripat, Siddharth Agrawal

Counsel for Respondent :- C.S.C., Rakesh Kumar Yadav,
Shishir Kumar Tiwari

Hon'ble J.J. Munir,J.

1. The late Mohd. Rashid was appointed an Assistant Teacher in the Education Service of the State way back on 01.01.1990. He went on to hold the position of the Officiating Principal, Government Inter College, Kaulsena, Bulandshahr in course of time. He died in harness on 14.07.2020. The late Mohd. Rashid had a dependent family of five members, to wit, his wife, Rafat Naaz (petitioner No.1), three sons, namely, Mohd. Rehan Khan, Mohd. Rakib Khan, Mohd. Raza Khan (petitioner No.2) and a daughter Rafia Naaz. Rashid's death left his family, as they say, facing a huge financial crisis. They are virtually on the verge of starvation.

2. Rashid's widow, the first petitioner made an application, seeking compassionate appointment for her son, Mohd. Raza Khan, the second petitioner under the Dying-in-Harness Rules applicable. The other dependents of the deceased tendered their no objection through an affidavit dated 18.05.2021. This affidavit was submitted to the District Inspector of Schools, Bulandshahr (for short, 'the DIOS'). The District Magistrate, Bulandshahr issued a certificate dated 30.04.2021, certifying the identities of the family members of the deceased. The DIOS sent a letter dated 25.05.2021 to the first petitioner saying that the family membership certificate issued by the District

Magistrate is valid for an entitlement of money up to the sum of Rs.5000/- and, therefore, the first petitioner has to get a succession certificate in her favour from the Civil Court.

3. Anjum Parveen, who claimed herself to be the second wife of the deceased Rashid, addressed a letter dated 01.06.2021 to the District Magistrate, Bulandshahr, saying that Rashid had divorced the first petitioner in the year 2015. She was no longer his wife. Anjum, who is impleaded as the fifth respondent to the writ petition, requested the District Magistrate to direct the DIOS to stop proceeding with the first petitioner's claim for release of family pension or any other fund in her favour. The DIOS addressed a letter dated 22.02.2021 to the Principal, Government Inter College, Kaulsena, Bulandshahr, saying that no document was submitted by the fifth respondent, the deceased's alleged second wife to support her claim. He further said that petitioner No.1 also failed to produce a succession certificate granted by the Civil Court. It was further remarked in his letter by the DIOS that in case within 30 days, no evidence were produced, Rashid's first wife, that is to say, the first petitioner would have to be treated as his successor. The Principal sent a letter dated 24.02.2021, jointly addressed to the first petitioner and the fifth respondent, Anjum, saying that till date no document had been submitted by either of them in support of their respective cases. In the event no document were received within 30 days, further proceedings would have to be undertaken, treating the first petitioner to be Rashid's successor. A letter dated 06.07.2021 was then addressed by the DIOS to the first petitioner, indicating the estimated figures of post retiral benefits, payable to her, including the family pension.

4. The first petitioner appears to have instituted a petition for

the grant of a succession certificate in the Court of the Civil Judge (Sr. Div.), Bulandshahr, which is numbered as Case No.83 of 2020. The fifth respondent has contested the first petitioner's case for grant of succession certificate. It is the case of the first petitioner that she is the lawfully wedded wife of Rashid, who had no other wife, besides her. He never divorced her nor he ever married Anjum. He resided with the first petitioner in the same house till his last breath. The fifth respondent had ulterior motive to come up with a baseless claim, saying that she was Rashid's second wife. The first petitioner has brought on record a host of representations that Rashid made to the Additional Director of Education, U.P., the Chief Secretary of the State, the Chief Minister and the Director of Education, dated 23.12.2016, 06.06.2018, 07.07.2018 and 02.08.2018, respectively, where he requested for a transfer to his home district as his wife, the first petitioner was suffering from cancer and he had to take care of her. It is then averred by the first petitioner that she is suffering from cancer for fifteen years past. It is also pleaded that Rashid's profile, uploaded on the Human Resource Management Portal for Government Employees (*Manav Sampada Sansadhan Prabandhan Pranali Ke Liye Kaarmik Vivaran*), shows the first petitioner in column No.90 as Rashid's nominee to receive the proceeds of his GPF. She is described as his wife in the relationship column. Likewise, in column Nos.92 and 93, the person entitled to receive pension and gratuity, if the employee was alive, is Rashid himself and in the event of his death, it is the first petitioner, shown to be his wife. Both the post retiral benefits, that is to say, pension and gratuity have been indicated to be payable to the first petitioner in its entirety in the last column. It must be remarked that a photostat copy of the said document is

on record.

5. There are then pleadings to the effect that the first petitioner and the deceased's dependents are going without any family pension and other funds for nearly four years past. They are unable to pay installments of the housing loan, the deceased had raised from the LIC Housing Finance Limited. The first petitioner is unable to pay her medical bills for the treatment of her cancer. The family are going through extreme financial hardship. The inaction of the respondents in delaying disbursement of the deceased's death-cum-retirement benefits have been castigated as serious infraction of the first petitioner's right to life and it is also said that the respondents have no right to ask the first petitioner to produce a succession certificate, which the service rules do not mandate.

6. So far as the case of the second petitioner is concerned, he claims compassionate appointment under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (for short, 'the Rules of 1974'), his father having died while in service. It is pleaded that the second petitioner is eligible for appointment on compassionate ground. He has made an application through proper channel within time. The respondents have been loath to consider the second petitioner's claim and their inaction calls for a direction. The family are struggling to meet their basic needs and placed in dire financial straits.

7. In the face of these facts, this writ petition has been instituted by the petitioners on two separate causes of action and for different reliefs, both arising from Rashid's untimely demise. While the first petitioner seeks a mandamus to the respondents to pay her the death-cum-retirement benefits

admissible under rules by virtue of being Rashid's widow, the second petitioner seeks a direction to consider his claim for appointment to a suitable post under the Rules of 1974.

8. When this writ petition came up for admission on 22.04.2024, we directed the petitioners to implead Anjum as a party-respondent to the petition.

9. Notice was issued to respondent Nos.1 to 4 and also to Anjum. The newly added respondent was directed to be served by registered post. As it later transpired, she could not be served through registered post and the cover was returned with a remark dated 29.04.2024 that reads: *Incomplete address. Therefore, returned* (translated from Hindi into English). This Court then directed service of notice upon the fifth respondent through the learned Civil Judge (Sr. Div.), Aligarh *vide* order dated 29.04.2024. The learned Civil Judge (Sr. Div.), Aligarh submitted a report to the Registrar (Compliance) through the learned District Judge, Aligarh dated 09.05.2024, saying that the Process Server, who went to serve the fifth respondent, had reported that on 03.05.2024, when he went to effect service, he searched Anjum Parveen daughter of Mohd. Sharif, but her whereabouts could not be known. He, therefore, returned the process unserved. The Civil Judge too failed to secure service upon the fifth respondent. This Court *vide* order dated 09.05.2024 expressed our disapproval of the Process Serving Agency's slackness and issued notice to the fifth respondent to appear in person, directing the notice to be served upon her through the Chief Judicial Magistrate. The Senior Superintendent of Police was ordered to ensure that the process routed through the Chief Judicial Magistrate was duly served. The learned Chief Judicial Magistrate, Aligarh *vide* his report dated 16.05.2024 reported service upon the fifth

respondent at the same address, where the Postal Agency and the Civil Court's Process Serving Agencies had failed with reports of 'incomplete address' or 'untraceable whereabouts'. We have incorporated these details in order to emphasize the fact, though very well known, that one of the biggest challenges in the commencement of any legal proceedings before any Court, particularly when exercising civil jurisdiction or something akin to it, is effecting service upon the defendant/ respondent/ opposite party. And, even if that is accomplished, securing the said party's presence or representation in Court still poses difficulties. It is one of the biggest causes for all the Court's delays at the incipient stages of any civil proceeding. We must emphasize that the Process Serving Agency of the District Courts, who are sufficiently staffed by trained men, need to be galvanized for effective service and Postal Agencies warned about not casually dealing with Court processes.

10. On the 17th of May, 2024, the fifth respondent appeared in person and instructed Mr. Shishir Kumar Tiwari, Advocate to appear for her. Mr. Tiwari identified her on the basis of papers produced in his chambers. Her personal appearance was exempted. He sought a short time to obtain moreful instructions on that day. On 24.05.2024, to which the cause was next adjourned, Mr. Shishir Kumar Tiwari did not appear, because the fifth respondent had changed Counsel. She had now instructed Mr. Rakesh Kumar Yadav to appear on her behalf. He sought further time to file a counter affidavit. This too is a practice prevalent amongst litigants in the State, particularly in the District Courts, where adjournments are secured by repetitively instructing new Counsel and withdrawing instructions from those earlier instructed. In this matter, this malpractice was brought to this Court, since evading the Court's

process for a long time could not be managed. A counter affidavit on behalf of respondent Nos.1, 2 and 3 was filed on 09.05.2024, to which the petitioner filed a rejoinder dated 31.05.2024. A counter on behalf of respondent No.5 was filed on 29.05.2024 after service upon the petitioners. On 31.05.2024, the parties having exchanged affidavits, the petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

11. Heard Mr. Siddharth Agrawal, learned Counsel for the petitioner, Mr. Pawan Kumar Srivastava, Advocate holding brief of Mr. Rakesh Kumar Yadav, learned Counsel appearing on behalf of respondent No.5 and Mr. R.P. Dubey, learned Additional Chief Standing Counsel appearing on behalf of respondent Nos.1, 2 and 3. No one appears on behalf of respondent No.4.

12. So far as the case of the second petitioner is concerned, the relief that he seeks is simple, and, ideally speaking, should not have been combined in one petition with the first petitioner, who seeks an absolutely different relief. The second petitioner claims compassionate appointment under the Rules of 1974 on account of his father's death in harness. He prays that a mandamus be issued to the respondents to consider his claim under the Rules of 1974 as he has applied promptly and within time. He says that he is entitled. There is no contest apparently to the second petitioner's claim by the fifth respondent either. In the circumstances, there is no impediment whatsoever in issuing a direction to the DIOS to consider the second petitioner's claim, either himself if he be empowered, or cause it to be laid before the competent Authority, who would be obliged to consider and decide the same in accordance with the second petitioner's entitlement under the Rules of 1974, or whatever

other rules be applicable.

13. This brings the principal issue to the fore, that is to say, the first petitioner's claim to the death-cum-retirement benefits due on account of the late Rashid's service. The fifth respondent has contested the first petitioner's claim, saying that Rashid and the first petitioner were divorced on 19.12.2015 and the fifth respondent and Rashid married according to Muslim rites on 01.05.2016. She has annexed a copy of the *Nikahnama* to the counter affidavit as Annexure No. CA-1. It is also said by the fifth respondent that she has not only appeared in the petition for grant of a succession certificate instituted by the first petitioner before the Civil Judge (Sr. Div.), Bulandshahr, but filed her counter-claim on 16.09.2022. She has asserted herself to be the lawfully wedded wife of the late Rashid, claiming a marriage for herself, that was solemnized after the deceased's divorce with the first petitioner. The fifth respondent has asserted that she has no children and lives by herself. She has no source of income of her own. She is entitled to receive the General Provident Fund, Group Insurance, Gratuity and Pension, and not the first petitioner, as she is a divorced wife of the deceased. The fifth respondent has also produced and annexed to the counter affidavit a photostat copy of the certificate dated 28.10.2022 from the Village Pradhan, Gram Panchayat, Hathmabad, Block and District Bulandshahr, saying that Rashid, who was the Headmaster of the Government Inter College, Kaulsena, lived on rent in the house of Prabha Gupta daughter of Ved Prakash Gupta, because the College was close-by, located at a distance of one kilometer. It is also said that the fifth respondent, Smt. Anjum wife of Rashid and Rashid would stay happily together in the said house. The Village Pradhan has said that she knew both the husband and wife

very well and so did other natives of the village. The certificate is also signed by some other members of the Gram Sabha.

14. The stand taken in the counter affidavit filed by respondent No.1, 2 and 3 is that in the late Rashid's GPF Passbook, the name of his wife recorded is that of the first petitioner. It is then emphasized that on 11.09.2020 when the matter relating to family pension and retiral dues was sent for verification to the Finance and Accounts Officer, Secondary Education in the office of the DIOS, he scrutinized the matter and by his report dated 11.09.2020 opined that the parties be required to submit a succession certificate granted by the Court of competent jurisdiction. On the basis of the report of the Finance and Accounts Officer, the DIOS *vide* letter dated 16.09.2020 directed the Principal of the Institution to obtain a succession certificate from both the adversely claiming parties. In compliance with the letter of the DIOS, the Principal of the Institution addressed a letter dated 20.09.2020, both to the first petitioner and the fifth respondent to submit certificates of succession obtained from the Court of competent jurisdiction. The further plea taken by the DIOS is that none of the parties have submitted a succession certificate from the Court of competent jurisdiction, as a result of which, none of them could be given family pension and other death-cum-retirement benefits, such as, G.P.F., Gratuity, Group Insurance due on account of the deceased, Mohd. Rashid's services.

15. Upon a careful consideration of the matter, what this Court finds is that while neither we nor the respondent Education Authorities, who hold funds of the deceased in trust for his lawful successors can decide, who that successor is, as between the first petitioner and the fifth respondent, the settled position of the law is that these benefits must be given to the

nominee in the service records. The insistence by the DIOS and the other Education Authorities upon the first petitioner or the fifth respondent securing a succession certificate is of no consequence. A succession certificate even if granted in favour of the first petitioner, or for that matter, the fifth respondent does not create any beneficial interest in the funds or moneys paid to either of them by the respondent Authorities. A succession certificate gives valid discharge to a third party, who holds funds for another, no more in the mortal world, by certifying the person entitled to receive the funds or moneys or other movable properties owned by the deceased. It does not declare title for the person in whose favour the succession certificate is issued. The holder of a beneficial interest in movable property or money received under a succession certificate would have to establish it, if he is a person, other than the holder of the certificate, by establishing that right in a duly constituted suit. A petition for succession is by no means a suit; nor the succession certificate a decree, declaring title or beneficial interest in favour of the one, who holds it.

16. In this connection, reference may be made to **Banarsi Dass v. Teeku Dutta (Mrs) and another, (2005) 4 SCC 449**. The question involved in the appeal by special leave in **Banarsi Dass** (*supra*) before their Lordships was if a DNA Test could be directed in proceedings for grant of a succession certificate under Section 372 of the Indian Succession Act. Dwelling upon the nature of the right conferred by a succession certificate, it was held:

"14. The main object of a succession certificate is to facilitate collection of debts on succession and afford protection to the parties paying debts to the representatives of deceased persons. All that the succession certificate purports to do is to facilitate the collection of

debts, to regulate the administration of succession and to protect persons who deal with the alleged representatives of the deceased persons. Such a certificate does not give any general power of administration on the estate of the deceased. The grant of a certificate does not establish title of the grantee as the heir of the deceased. A succession certificate is intended as noted above to protect the debtors, which means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a certificate under the Act, or is compelled by the decree of a court to pay it to the person, he is lawfully discharged. The grant of a certificate does not establish a title of the grantee as the heir of the deceased, but only furnishes him with authority to collect his debts and allows the debtors to make payments to him without incurring any risk. In order to succeed in the succession application the applicant has to adduce cogent and credible evidence in support of the application. The respondents, if they so choose, can also adduce evidence to oppose grant of succession certificate. The trial court erroneously held that the documents produced by the respondents were not sufficient or relevant for the purpose of adjudication and DNA test was conclusive. This is not a correct view. It is for the parties to place evidence in support of their respective claims and establish their stands. DNA test is not to be directed as a matter of routine and only in deserving cases such a direction can be given, as was noted in *Goutam Kundu case* [(1993) 3 SCC 418 : 1993 SCC (Cri) 928] . Present case does not fall in that category. The High Court's judgment does not suffer from any infirmity. We, therefore, uphold it. It is made clear that we have not expressed any opinion on the merits of the case relating to succession application."

(emphasis by Court)

17. To the same effect are remarks of the Supreme Court in **C.K. Prahalada and others v. State of Karnataka and others, (2008) 15 SCC 577**. In **C.K. Prahalada (supra)**, it has been held:

"**17.** A succession certificate is granted for a limited purpose. A court granting a succession certificate does not decide the question of title. A nominee or holder of succession

certificate has a duty to hand over the property to the person who has a legal title thereto. By obtaining a succession certificate alone, a person does not become the owner of the property.”

18. These decisions more or less spell out the nature of rights created in favour of the recipient of a succession certificate under Section 372 of the Indian Succession Act. So far as the rights created by nomination in favour of a nominee are concerned, these have been considered under various statutes by the Supreme Court in **Shakti Yezdani and another v. Jayanand Jayant Salgaonkar and others, (2024) 4 SCC 642**. In **Shakti Yezdani (supra)**, the following remarks of their Lordships elucidate the matter:

“40. In an illuminating list of precedents, this Court as well as several High Courts have dealt with the concept of “nomination” under legislations like the Government Savings Certificates Act, 1959, the Banking Regulation Act, 1949, the Life Insurance Act, 1939 (*quaere* Insurance Act, 1938) and the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. It would be apposite to refer to what the Court said on nomination, in reference to these legislations:

<i>Case Law/Precedent</i>	<i>Held</i>
<i>Sarbati Devi v. Usha Devi</i> [<i>Sarbati Devi v. Usha Devi</i> , (1984) 1 SCC 424]	Nomination under Section 39 of the Insurance Act, 1938 is subject to the claim of heirs of the assured under the law of succession.
<i>Nozer Gustad Commissariat v. Central Bank of India</i> [<i>Nozer Gustad Commissariat v. Central Bank of India</i> , 1992 SCC OnLine Bom 481 : (1993) 1 Mah LJ 228]	Nomination under Section 10(2) of the EPF & Miscellaneous Provisions Act, 1952 cannot be made in favour of a non-family person. Relied upon <i>Sarbati Devi</i> [<i>Sarbati Devi v. Usha Devi</i> , (1984) 1 SCC 424] to state that the principles therein were applicable to the Employees Provident Funds Act as well and not merely restricted to the Insurance Act.
<i>Vishin Khanchandani</i> v. N.	Nominee entitled to receive the sum due on the savings

<p><i>Vidya Lachmandas Khanchandani</i> [Vishin N. Khanchandani v. <i>Vidya Lachmandas Khanchandani</i>, (2000) 6 SCC 724]</p>	<p>certificate under Section 6(1) of the Govt. Savings Certificates Act, 1959, but cannot utilise it. In fact, the nominee may retain the same for those entitled to it under the relevant law of succession.</p>
<p><i>Ram Chander Talwar v. Devender Kumar Talwar</i> [Ram Chander Talwar v. Devender Kumar Talwar, (2010) 10 SCC 671 : (2010) 4 SCC (Civ) 313]</p>	<p>Nomination made under the provisions of Section 45-ZA of the Banking Regulation Act, 1949 entitled the nominee to receive the deposit amount on the death of the depositor.</p>

41. A consistent view appears to have been taken by the courts, while interpreting the related provisions of nomination under different statutes. It is clear from the referred judgments that the nomination so made would not lead to the nominee attaining absolute title over the subject property for which such nomination was made. In other words, the usual mode of succession is not to be impacted by such nomination. The legal heirs therefore have not been excluded by virtue of nomination."

19. In substance, a nomination in the service records and a succession certificate granted by the Court under Section 372 of the Indian Succession Act are at par; neither confers any beneficial interest upon the recipient of the proceeds. As already said, a person who asserts title or beneficial interest in moneys or movable property received by another under a succession certificate, or for that matter, a nomination can always institute a suit for declaration or other appropriate consequential relief in order to establish his beneficial interest or entitlement. At the same time, once there is a nomination left by the deceased in his service records in favour of a person, who is his wife, there is no reason for the respondents or any employer to withhold payment of the post retiral benefits in favour of the nominee in the service records. It is for the other person, not so nominated, to establish his/ her claim through suit. As already said, here the fifth respondent is certainly not a

nominee of the deceased in any of the service records. Her name does not appear in those records as the deceased's wife. Before this Court she has filed a photostat copy of a *Nikahnama* dated 01.05.2016 and a photostat copy of the certificate issued by the Gram Pradhan, without occasion, about the deceased and the fifth respondent living together as man and wife.

20. So far as divorce between the first petitioner and the deceased goes, there is not a shred of evidence produced by the fifth respondent. The evidence about the fifth respondent's marriage to the deceased at this stage is not of a kind, upon which this Court in the exercise of writ jurisdiction may act to accept her case even *prima facie*, defeating the first petitioner's claim founded on a nomination entered in the service records of the deceased. We do not wish to say that the fifth respondent cannot establish her claim at all to the whole or a share of the moneys that the first petitioner would be entitled to receive on account of the nomination in her favour in the service records. She can do that by moving the competent Court of original civil jurisdiction through a suit for appropriate relief. She can also seek appropriate interim injunctions/ interim orders. But, so far as respondent Nos.1, 2, 3 and 4 are concerned, they are not entitled to deprive the first petitioner of the post retiral benefits, regarding which there is a nomination in her favour in Rashid's service records. The fact that the nomination is there is admitted in paragraph No.5 of the counter affidavit filed by respondent Nos.1, 2 and 3. Also, the information posted on the *Manav Sampada Sansadhan Prabandhan Pranali* Portal carries a nomination in favour of the first petitioner relating to the General Provident Fund, Gratuity and Pension in the event of Rashid's death and shows her relationship to Rashid as his

wife. None of these postings on the official portal disclose the fifth respondent's name, even by remote mention.

21. In the circumstances, this writ petition succeeds and is **allowed**. A *mandamus* is issued to respondent Nos.1, 2, 3 and 4 to ensure amongst themselves immediate sanction and payment of family pension to the first petitioner, including arrears, General Provident Fund, Gratuity, Dues on account of Leave Encashment, Group Insurance and any other death-cum-retirement benefit, admissible under the Rules. A *mandamus* is further issued to each of respondent Nos.1, 2, 3 and 4 to ensure amongst themselves consideration and decision of the second petitioner's claim for compassionate appointment in accordance with rules within a period of eight weeks of the receipt of a copy of this order.

22. Let a copy of this judgment be communicated to the Additional Chief Secretary, Ministry of Education, Government of U.P., Lucknow through Civil Judge (Sr. Div.), Lucknow and the District Inspector of Schools, Bulandshahr, the Principal, Government Inter College, Kaulsena, District Bulandshahr through Civil Judge (Sr. Div.), Bulandshahr by the Registrar (Compliance).

Order Date :- 29.11.2024
Anoop

J.J. Munir
Judge