

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,

Case No. - OA 118 OF 2023

MADHUMITA MISTRY - Vs - THE STATE OF WEST BENGAL & OTHERS

Serial No. and
Date of order

For the Applicant : Mr. Goutam Pathak Banerjee
Advocate

05

12.12.2024

For the State Respondents : Mr. Manujendra Narayan Roy
Advocate

For the Principal Accountant : Mr. Biswanath Mitra
General (A&E) West Bengal (Departmental Representative)

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

In this matter, the applicant being the widow of the deceased employee was asked to refund Rs. Six lakhs which was the revised gratuity paid erroneously to her. Such order of refund was advised by the Principal Accountant General (A & E) West Bengal by a reference dated 29th December, 2022. Submissions of the State respondents and Mr. Mitra for the Principal Accountant General respectively is that as per the nomination, the son of the deceased employee, Souvik Mistry being the nominee, was to receive this amount, which erroneously was paid by the office of Principal Accountant General to the applicant, though being the widow and mother of respondent no. 8.

Submission of Mr.G.P.Banerjee is that such an order to refund this amount is not only illegal but arbitrary due to the fact that as the widow of the deceased employee, she is entitled to receive the entire amount of gratuity despite her name been not recorded as nominee.

Disagreeing with the response of Mr. Banerjee, Mr. M.N. Roy for the State respondent and Mr. Mitra argues that as per Rule 100 of W.B. (DCRB) Rules, 1971, the right to nominate a family member for death gratuity lies fully with the employee. In this case, the deceased employee exercising his right and by conscious choice had nominated his son to receive the death gratuity, instead of his wife. Mr. Banerjee argues that the respondent authorities have ignored the widow's right to receive such death gratuity which she is entitled to as per i (e) of Note 2 of Rule 7 of WB (DCRB) rules, 1971.

Further, Mr. Banerjee also relies on the judgement of the Hon'ble Apex Court in (2009) 10 SCC 680 (SHIPRA SENGUPTA -versus-MRIDUL SENGUPTA AND OTHERS) at page 27 para 17.

Having heard the submissions of the learned counsels and after examination of the records, the Tribunal has observed that such a decision to direct the applicant to refund Rs. 6 lakhs which was paid to her by "oversight" is not in reference to any rules. Though during the submission, Mr. M.N.Roy and Mr.B.Mitra, have referred to Rule 100 of W.B. (DCRB) Rules, 1971. However, the Tribunal has not been shown any rule by which the applicant, being the mother is not a beneficiary of death gratuity. It is also a fact that earlier the private respondent, Souvik Mistry, being son of the deceased employee had received the original death gratuity of Rs. 6 lakhs. It would be useful if the judgement in (2009) 10 Supreme Court Cases 680, the relevant part of the Supreme Court judgement is referred as guidance. The relevant paragraphs are as under:

17. The controversy involved in the instant case is no longer res integra. The nominee is entitled to receive the same, but the amount so

received is to be distributed according to the law of succession. In terms of the factual foundation laid in the present case, the deceased died on 08-11-1990 leaving behind his mother and widow as his only heirs and legal representatives entitled to succeed. Therefore, on the day when the right of succession opened, the appellant, his widow became entitled to one-half of the amount of the general provident fund, the other half going to the mother and on her death, the other surviving son getting the same.

18. In view of the clear legal position, it is made abundantly clear that the amount under any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with the law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case the amounts so received are to be distributed according to the Hindi Succession Act, 1956.

Flowing from the above judgement, the Tribunal is clear in its impression that the applicant, being the widow of the deceased employee, is also entitled to receive a part of gratuity. As made clear by the Supreme Court judgement referred above, by the very definition of the word, 'nominee', a person is the custodian. The private respondent being the nominee had received the original gratuity of Rs. 6 lakhs, but in the spirit of law, such amount was required to be shared with the other legal heirs of the deceased employee proportionately, in particular, with the applicant, who is the widow of the deceased employee and also his mother. But he had not done so. Now when the revised death gratuity amount was sanctioned according to the Principal Accountant General's Memo. it was granted to the applicant, being the widow due to oversight. In view of the judgement above, the Tribunal is not inclined to agree

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with the observation of the Principal Accountant General. The applicant being the widow of the deceased employee and Class I heir under the Hindu Succession Act, 1956 is entitled to 50 % of the share. Since the amount of Rs. 6 lakhs earlier sanctioned and received by the private respondent as son has been kept by himself, it is therefore, imperative that the second sanction of Rs. 6 lakhs, as a revised death gratuity should be in the name of the applicant as her share.

In the face of the observations and directions given by this Tribunal as recorded above, the following impugned Memo. Nos. 51 dated 06.06.2022, Memo. 389890 dated 29.12.2022, Memo. 390526 dated 03.01.2023 and Memo. 158 dated 31.01.2023 are untenable and therefore, these are quashed and set aside. The respondent No. 7, the Principal Accountant General (A&E) is directed to comply with the above direction.

The application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON AND MEMBER (A)

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