

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 118 of 2023.

SMT. MADHUMITA MISTRY - VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

04
28.02.2024

For the Applicant : Mr. G.P. Banerjee,
Learned Advocate.

For the State Respondents : Mr. M.N. Roy,
Learned Advocate.

For the Principal Accountant General (A & E) W.B. : Mr. B. Mitra,
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.

On consent of the learned counsel for the contesting parties, the case is taken up for consideration sitting singly.

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. Mr. Banerjee prays for an interim order

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restraining the respondent authorities not to coerce her to refund this amount.

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) 10SCC 680 (SHIPRASENGUPTA – versus- MRIDUL SENGUPTA AND OTHERS) at page 27 para 17.

After hearing the submissions, the respondent no. 4 – The Sub Divisional Officer, Barrackpore is directed not to execute any order directing the applicant Madhumita Mistry to refund Rs. Six lakhs till outcome of this case.

Let the matter appear under the heading "Further Hearing" on 12th December, 2024 and let reply, if so wished be filed by the respondent authorities on the next date of hearing.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A).

Sk.