(2015) 07 KL CK 0221

In the High Court Of Kerala

Case No : O.P.(C) No. 3453 of 2013

Alamelu APPELLANT

Vs

Pushkala RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:
Payment of Gratuity Act, 1972 — Section 2(h), 6

Citation : (2015) 07 KL CK 0221

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : Babu Cherukara, Sevi Varghese, Rosamma Mathew, P.A. Salim, Anzar Basheer and K.S. Gireesan, for the Appellant; P.V. Anil, M. Anilprasad and T.R. Ravi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Kemal Pasha, J—An application for succession certificate was filed by the legal heirs of deceased Venkiteswaran, who was working as an employee at the Sree Chithira Thirunal Institute of Medical Sciences and Technology, Thiruvananthapuram. He died while in service. He has nominated his sister, who is the petitioner herein, as the person entitled to receive his gratuity. An application for succession certificate was filed by the wife and children of the deceased for availing the death cum retirement benefits of the deceased. The petitioner filed I.A. 1492 of 2013 in the succession O.P. for getting herself impleaded as the additional 2nd respondent. Through Ext. P10 order, the court below has dismissed the I.A. The said order is under challenge.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. According to the learned counsel for the petitioner, the 1st respondent/wife was leading an adulterous life and thereby the marital life of deceased Venkiteswaran and the first respondent fell apart. Thereafter, he was residing

along with his sister, who is the petitioner herein, and he has changed the nomination to the person to whom the gratuity has to be paid, into the name of the petitioner. Therefore, according to the learned counsel for the petitioner, the legal representatives have no role in the matter and the application for succession certificate itself is not maintainable, when the petitioner has been nominated as the nominee to receive the amount.

4. Per contra, the learned counsel for the respondents has argued that the nominee can only collect the amount at the most, and cannot appropriate it. Even if a valid nomination is made, the nominee can only collect the amount and has to pay the amount to the concerned persons who are entitled to succeed the deceased. Over and above it, it has been pointed out that in this case, the nomination of the petitioner itself is not valid. As per S. 6 of the Payment of Gratuity Act, 1972, if an employee has a ''family'' at the time of making a nomination, the nomination shall be made in favour of one or more members of his ''family''. ''Family'' is also defined under S. 2(h), which says:

"family" in relation to an employee, shall be deemed to consist of -

(i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents[and the dependent parents of his wife and the widow] and children of his predeceased son, if any:"

In this particular case, there is no case for the petitioner that a valid divorce was effected by dissolving the marriage of the deceased and the first respondent. Even though they were allegedly residing separately, the status of the first respondent as the wife of the deceased still continues. As far as the children are concerned, nobody can say that they are not members of the family of the deceased.

5. The question as to whether the deceased was being looked after and maintained by the wife and children, does not assume any importance at all. Even if it is admitted that the deceased was not being looked after and maintained by his wife and children, the right to succession cannot be denied to the wife and children.

6. The learned counsel for the respondents has relied on the decisions in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, (1984) 2 ACC 377 : AIR 1984 SC 346 : (1984) 55 CompCas 214 : (1984) 1 CompLJ 1 : (1983) 2 SCALE 869 : (1984) 1 SCC 424 : (1984) 1 SCR 992 : (1984) 16 UJ 866 and Shri Vishin N. Kanchandani and Another Vs. Vidya Lachmandas Khanchandani and Another, AIR 2000 SC 2747 : (2000) 102 CompCas 340 : (2000) 4 CTC 115 : (2000) 246 ITR 306 : (2000) 9 JT 321 : (2000) 5 SCALE 592 : (2000) 6 SCC 724 : (2000) 2 SCR 415 Supp : (2000) 2 UJ 1309 : (2000) AIRSCW 2932 : (2000) 5 Supreme 574 wherein the question relating to nomination was considered. In the aforesaid cases it was held:

"The nominee of the National Savings Certificates has a right to be paid the sum due on such savings certificates/after the death of the holder, yet he retains the said amount for the benefit of the persons who are entitled to it under the law of succession applicable in the case."

The law is that a nominee does not acquire any right to appropriate the amounts; whereas the nominee can only collect the amount for and on behalf of the legal representatives of the deceased. A nominee cannot appropriate the amount unless the nominee is the sole legal representative or the nominee is given a right to have testamentary succession. In cases wherein the nominee is one of the legal representatives of the deceased, such a nominee can collect the amount for and on behalf of the legal representatives of the deceased, and can appropriate the share of such a nominee alone. In case of a Will in favour of a nominee, thereby bequeathing the amount to the nominee, in such cases, the nominee can appropriate the amount. In other cases, the nominee can collect the amount for and on behalf of the legal representatives or for the benefit of the legal representatives, and has to disburse the amount to the legal representatives. Matters being so, the petitioner cannot claim any substantive right over the amount involved and therefore, she is not a necessary party to the proceedings in the O.P. Therefore, Ext. P10 order does not suffer from any illegality, irregularity or jurisdictional error and hence the same is not liable to be interfered with.

In the result, this Original Petition is dismissed.