

(2005) 02 GAU CK 0050
In the Gauhati High Court
Case No : WP (C) No. 6769 of 2004

Chakreswar Duarah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 16-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 3 GLR 95 : (2006) GLT 864 Supp

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : D.K. Das, G. Kakati, N. Upadhaya and B. Devi, for the Appellant; R. Chakraborty, P.C. Goswami, A.J. Das and M. Sarma, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—The petitioner's wife late Nirupama Gogoi was working as Assistant Teacher in Gohain Gaon M.E. School, Sarupathar. Under the salary savings scheme, she had taken three policies (Policy No. 441541269 dated 28.9.2001, No. 441541268 dated 28.9.2001 and No. 441541379 dated 28.9.2001) under the salary savings scheme from the LIC. The Headmaster of the School as per contract was to deduct the premium from her salary each month and to remit the same to the Life Insurance Corporation of India. She fell seriously ill and was under treatment of SDM and HO Dhansiri Sub-Division with effect from 22.3.2003 to 31.5.2003. During that period, she was also not paid her salaries for want of sanction and retention of post. She being seriously ill was not in a position to know as to what had happened about the payment of premium. Eventually, she expired on 16.7.2003 leaving behind the petitioner (husband) and three minor children. On her death, the petitioner along with the death certificate issued by the Sub-Divisional Officer (Civil), Dhansiri, Sarupathar and other connected documents claimed the sum assured. The Headmaster of the School also by the letter dated 29.9.2003 informed the Branch Manager, LIC that the salaries for the period 1.4.2003 to 30.7.2003 was not disbursed as the e

budget was not available. The policies, thus, lapsed for non-payment of premium, though it was paid subsequently. Hence, this petition for issue of a writ of mandamus directing the Insurance Company to pay the sum assured in respect of above three policies and for other consequential reliefs.

2. The Insurance in their affidavit submitted that the wife of the petitioner obtained the policies by the salary savings scheme, and the Headmaster of the School where she was working was to deduct the premium from her salary and remit the same to the Insurance. There is no obligation on the part of the Insurance to inform the policy holder ? that the premium due was not paid, rather the petitioner ought to have deposited the premium of her own. It is further submitted that in the event the Headmaster deducted the premium and did not remit the same to the Insurance, they would have been liable for payment.

3. I have heard Mr. D.K. Das, learned Counsel for the petitioner and also heard Ms. R. Chakraborty, learned State counsel and Mr. P.C. Goswami, learned Counsel for the Insurance.

4. From the pleadings reproduced above, it is clear that there is no dispute that the petitioner's wife obtained three Life Insurance Policies under the salary savings scheme and the premium for 1.4.2003 to 30.7.2003 could not be paid due to non-payment of salary for want of budget and/or retention of the post. It is also not in dispute that the petitioner's wife was seriously ill during that period and, eventually, she died on 16.7.2003.

5. Admittedly, the petitioner's wife was working under the State Government. Her immediate employer was the Headmaster of the School. As per tripartite agreement, the Headmaster took the responsibility upon himself to deduct premium amount from the salary of the petitioner and to remit the same to the Insurance. The policies are, under different schemes of the Insurance Company, namely, New Janaraksha Policy with provision for profits and accident benefit, Marriage Endowment/Educational Annuity Plan and Asha Deep Policy. The policies are designed to protect the interest of the members of the family including the children.

6. The hon'ble Supreme Court in Chairman, Life Insurance Corporation and Others Vs. Rajiv Kumar Bhasker, dealt with a almost similar situation. The decision/ratio available therein would set at rest the controversy brewed in this petition. The excerpts relevant for the purpose of this case is quoted below:

32. The Scheme clearly, provides that in the event of cessation of employment the employee concerned if continues his employment under a new employer, the former employer has to inform the Corporation thereabout. Furthermore, upon retirement or in situations other than taking up of any job with any other employer, the employee, would be entitled to continue with the policy but therefor, he will have to pay a higher premium. Even at that stage, the

Corporation would have a duty to inform the employee concerned towards his right. Even in case of non-payment of premium for any reason whatsoever, in view of the object the Scheme seeks to achieve, it was the duty of the insurer to inform the employee about the consequences of non-receipt of such premium from the employer. The Corporation has failed or neglected to do so. In that view of the matter, we do not find any reason to take a different view.

33. In terms of the Scheme, significantly, the employee for all transactions was required to contact his employer only. In view of our findings aforementioned, the Corporation, thus, cannot be permitted to take a different stand so as to make the employee suffer the consequences emanating from the default on the part of the employer. If for some reasons, the employer is unable to pay the salary to the employees, as for example, its financial constraints, the employee may be held to have a legitimate expectation to the effect that his employer would at least comply with its solemn obligations. Such obligations having been undertaken to be performed by the employer at the behest of the Corporation as its agent having the implied authority therefor, the Corporation cannot be permitted to take advantage of its own wrong as also the wrong of its agent. In any event, the employer was obligated to inform the employee that for some reason, he is not in a position to perform his obligation whereupon the latter could have paid the premium directly to the appellants herein.

7. That apart, the Hon^{ble} Supreme Court also observed that a third party has no role to play when a contract of insurance is entered into by and between the insurer and the insured with in exception to the salary savings scheme which provide for a tripartite arrangement. The Supreme Court further observed that in a scheme of the nature, the employer is to make all endeavour to improve the service condition for the employees and discharge the social obligation towards them. The employees cannot approach the insurer directly and, thus, for all intents and purposes, their employer is an agent. From the above decision, it is apparent that non-payment of salary for financial reason also casts an obligation on the employer to inform the insured. The Headmaster of the School also did not inform the employee that her salary could not be drawn for want of retention and budget provision. That apart, this has also not been done by the Life Insurance Corporation of India. The other feature of the case is that the wife of the petitioner was seriously ill and she expired during the relevant period. It is not expected from a person in such a state of health to be vigilant and to ensure payment either by employer or by herself.

8. Mr. P.C. Goswami, learned Counsel for the Insurance relying upon the decision in Life Insurance Corporation of India and Ors. v. Smt. Kiran Sinha reported in AIR 1985 SCC 1265 argued that the writ petition is not maintainable and the petitioner may seek remedies before a civil court by filing a suit. The Supreme Court in the above case observed that the High Court could not have in the circumstances of this case directed payment of the money claimed by the Insurance Company in question in a petition filed under Article 226 of the

Constitution and the only remedy available was a suit before a civil court. The circumstances of the case in Kiran Sinha (supra) are not reflected in the judgment. Therefore, the said judgment, in my opinion, is of no consequence in so far the petitioner's case is concerned.

9. In the result, the writ petition is allowed and the Insurance represented by the respondent Nos. 4 and 5 are hereby directed to make payment of the sum assured in respect of above three policies to the nominee of the policy holder along with interest accrued thereon, on payment of premium if any due.

No costs.