
(2012) 08 OHC CK 0006
In the Orissa High Court
Case No : Writ Petition (C) No. 9882 of 2009

Kabiraj Sethi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 4(1), 6(1)

Citation : (2012) 135 FLR 682

Hon'ble Judges : B.N. Mahapatra, J

Bench : Single Bench

Advocate : Deepali Mohapatra, for the Appellant; S.D. Das, Asst. Solicitor General of India and Y. Sahoo, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Mahapatra, J.—This writ petition has been filed by one Kabiraj Sethi claiming himself to be one of the sons of late Jagadish Sethi with a prayer for issuance of a direction to opposite parties to pay the service benefits in favour of the legal heirs of the deceased-Jagadish Sethi. Petitioner's case in a nut-shell is that his deceased-father Jagadish Sethi while working as a Coal Worker under opposite party No. 2-Chief Legal Manager, Central Coalfield Limited, At Darbhanga House, Dist : Ranchi, Jharkhanda died on 18.5.2008 leaving behind his wife, four sons and four married daughters. After death of father of the petitioner, it came to knowledge of the family members that they are entitled to get arrear salary and other benefits of late Jagadish Sethi from opposite party No. 2. Hence, two of the brothers of the petitioner with an intention to take away all the benefits of their father have approached the authority with all service papers which came to their hands at the time of death. The said two brothers taking advantage of the old age of their mother have taken thumb impression on the blank papers. Petitioner is one of the sons of his father and only to deprive him of getting the death-cum-retiral benefits these two brothers with their mother are trying to avail all the benefits of their father. Therefore, the petitioner

approached the opposite parties-authorities through his Counsel on 2.5.2009 with a prayer to give the emoluments of his father. After receipt of the letter, opposite party No. 1 requested opposite party No. 2 to take necessary action vide letter dated 15.5.2009. Since no action was taken by opposite party No. 2 for disbursement of the amount in favour of the petitioner, the present writ petition has been filed.

2. Miss Deepali Mohapatra, learned Counsel appearing for the petitioner submitted that opposite party Nos. 1 and 2, who are public authorities are expected to act as per law. In this case, they are not discharging their duties in accordance law. The petitioner's father died since May, 2008 and in the meantime more than one year has elapsed. The legal heirs of deceased Jagadish Sethi are running from pillar to post to get their legitimate dues.

3. It was further submitted that the petitioner has equal share in the death-cum-retiral benefit payable on the death of his father; but the gratuity amount has been illegally paid to the widow of the deceased.

Miss. Mohapatra, placing reliance upon the judgment of the Hon"ble Supreme Court in the case of Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, judgment of this Court in the case of Smt. Bhanumati Behera v. The Life Insurance Corporation Limited, Sambalpur Division and others, 2002 (I) OLR-200 and judgment of the Karnataka High Court in the case of Sharadamma Vs. Jayashree, submitted that the nomination only indicates the head, who is authorized to receive the amount and on payment of the amount the insurer or the person responsible to pay gratuity, as the case may be, gets a valid discharge of its liability and the amount, however, can be claimed by the heirs in accordance with law of succession.

4. After going through the writ petition and hearing Miss Mohapatra, learned Counsel for the petitioner, this Court is of the view that the writ petition is not entertainable and the reliefs claimed in the writ petition cannot be granted to the petitioner for following reasons.

5. It may be relevant to extract here paragraphs 4 and 5 of the writ petition.

4. That it is humbly submitted that after death of the father of the petitioner it came to knowledge of the family members that they are entitled to get arrear salary and other benefits from the opp. party No. 2. Hence two of the brothers of the petitioner with an intention to take away all the benefits of their father have approached the authority as at the time of death they have taken all the service papers with them.

5. That it is respectfully submitted that these two brothers taking advantage of the old age of their mother have taken thumb impression in blank papers. The petitioner is the elder son of his father only to deprive him from the benefit these two brothers with their mother is now trying to take away all the benefits of their father. It is further submitted that the petitioner has a equal share with other

legal heir.

6. A plain reading of paragraphs 4 and 5 reveals that there exists dispute among the sons and wife of deceased Jagadish Sethi with regard to getting the death-cum-retiral benefit. The writ petitioner raises serious allegations against his two brothers and mother. These are purely disputed questions of fact, which cannot be adjudicated by a writ Court.

7. In the entire writ petition there is no pleading as to who are the legal heirs of the deceased-Jagadish Sethi entitled to get the death-cum-retiral benefit, and who is entitled to which retiral benefit and what are their respective shares. No evidence/document showing the name of legal heirs of deceased-Jagadish Sethi, who are entitled to get death-cum-retiral benefit, has been annexed to the writ petition.

8. It is settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas.

9. In *Bharat Singh and Others Vs. State of Haryana and Others*, the Hon''ble Supreme Court has observed as under:--

In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

10. The issues as to who are the legal heirs; whether the parties impleaded in the writ petition are really the legal heirs of deceased; and what are their extent of share in the retiral benefit payable in the event of death of Jagadish Sethi and who is entitled to which retiral benefit cannot be adjudicated by this Court in exercise of its writ jurisdiction in absence of proper pleading and supporting evidence. Even there is no specific pleading in the writ petition with regard to payment of gratuity to the widow, who is the nominee and what is the amount of gratuity paid to the nominee and why such payment to the nominee is not legal.

11. In view of the above, the writ petition is not entertainable and no relief can be granted as claimed by the petitioner, who tried to build a castle on sandy foundation.

12. Needless to say that filing of writ petitions without proper pleadings and annexing supporting documents is not a healthy practice for judicial system and it needs to be immediately remedied.

13. Otherwise also, the contentions advanced by Miss Mohapatra is not sustainable in law. The contention of Miss Mohapatra that opposite party No. 2 has committed illegality in disbursing the gratuity amount in favour of the wife of the deceased is not tenable in law.

14. At this juncture, it is necessary to quote here section 4 of the Payment of Gratuity Act, 1972 which reads as follows:--

4. Payment of gratuity.--(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, --

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

15. In view of the above unambiguous and clear provision of section 4, opposite party No. 2 has not committed any illegality or wrong in disbursing the amount of gratuity to the nominee, who is no other person than the wife of the deceased. Nomination in favour of the wife is not disputed.

16. There is no quarrel over the legal proposition settled by the Hon''ble Supreme Court, this Court and the Karnataka High Court in the cases cited supra.

17. The Hon''ble Supreme Court in the case of Smt. Sarbati Devi (supra) held that a mere nomination made u/s 39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.

18. This Court in the case of Smt. Bhanumati Behera (supra) placing reliance on

the judgment of the Hon''ble Supreme Court in the case of Smt. Sarbati Devi (supra) held that on the death of the policy holder the amount payable under the policy becomes part of his estate which is governed'' by the law of succession applicable to him.

19. The Karnataka High Court in the case of S. Sharadamma (supra), held that it is not possible to hold that a nominee u/s 6(1) read with section 4(1) of the Payment of Gratuity Act, 1972, will be entitled to receive the gratuity amount exclusively in the case of intestate succession depriving the heirs of the deceased. The nominee will be entitled to receive the amount for and on behalf of the heirs of the deceased. The nomination is only intended for payment of gratuity amount immediately on the death of the subscriber.

20. This Court in the case of Smt. Bhanumati Behera (supra) on the consent of rival parties disposed of the writ petition directing the petitioner and opposite party No. 4 in that case to appear before opposite party No. 1, Divisional Manager, L.I.C. of India, Ainthapalli, Sambalpur to comply with the formalities required for the purpose and opposite party No. 1 was directed to hand-over the petitioner and opposite party No. 4 each 50% of the total amount payable under the two policies. Such a direction was given only on the consent of the contesting parties before the Court. Further in that case, there was no dispute as to the legal heir of the deceased policy holder. In the present case, the pleadings in the writ petition reveal that the dispute exists among the sons and wife of the deceased and the petitioner raises serious allegation against the mother and brothers. Therefore, similar direction as has been given by this Court in Smt. Bhanumati Behera (supra) cannot be given in the present case and the said decision is of no help to the petitioner.

21. It goes without saying that on the death of the deceased, the death-cum-retiral benefit including gratuity becomes part of estate of the deceased which is governed by the law of succession, subject to any other special statute applicable to him, for example, payment of family pension under the relevant pension Rules.

22. For the reasons stated above, the writ petition is thoroughly misconceived and liable to be dismissed. However, it is open to the petitioner to seek appropriate remedy available to him in accordance with law. In the result, the writ petition is dismissed. Consequently, the Misc. Cases filed in this writ petition are also dismissed.

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