(2015) 11 CHH CK 0004

In the Chhattisgarh High Court

Case No : WP (227) No. 356 of 2010

Lakhan Bai APPELLANT

Vs

Rambai and Others RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Government Savings Certificate Act, 1959 — Section 6, 7, 8
Payment of Gratuity Act, 1972 — Section 4, 4(1), 7(7)
Succession Act, 1925 — Section 372

Citation : (2016) LabIC 366

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : S.P. Kale and K.P.S. Gandhi, Advocates, for the Appellant

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J.—Shri Mahettar Lal while working as E.P. Fitter Grade-III in the South Eastern Coalfields Limited, Kusmunda Project, District Korba died on 8.12.1998 leaving behind his widow Smt. Lakhan Bai and other legal representatives. Upon death of Shri Mahettar Lal, Smt. Lakhan Bai as well as Rambai both filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as ''the Act of 1972'') in Form-N claiming a sum of Rs. 1,29,000/- as gratuity in respect of service rendered by Shri Mahettar Lal.

2. On a notice being issued, the respondent No. 2/SECL filed its reply before the competent authority stating inter-alia that petitioner Lakhan Bai cannot be termed as widow of late Mahettar because name of respondent No. 1 Rambai has been entered into in service record, therefore, the respondent No. 1 is entitled for gratuity.

3. Both the petitioner and respondent No. 1 adduced their evidence before the Controlling Authority. The controlling Authority by order dated 22.2.2000

rejected the claim of the petitioner to receive the amount of gratuity and directed it to be paid to Smt. Rambai holding though she is not nominee of deceased Mahettar, but according to service record, her name has been entered into records of SECL and therefore, she is entitled to receive the said amount of gratuity as per service record.

4. Feeling dissatisfied and aggrieved against the order of the Controlling Authority, the petitioner preferred an appeal under Section 7(7) of the Act of 1972 before the Appellate Authority claiming that she is entitled for amount of gratuity. She has also filed succession certificate issued by the Civil Judge Class-I, Katghora on 13.6.2006 before the Appellate Authority, in which she and other four persons were held to be the persons entitled for gratuity and other benefits by the jurisdictional Civil Court exercising the jurisdiction under the provisions of the Indian Succession Ac, 1925 (hereinafter referred to as "IS Act")

5. The Appellate Authority by order dated 3.1.2008 held that respondent No. 1 being the nominee of the employee is entitled to receive the gratuity as per proviso to sub-section (1) of Section 4 of the Act of 1972 and affirmed the finding of the Controlling Authority and dismissed the appeal.

6. Questioning the appellate order passed by the Appellate Authority affirming the order of the Controlling Authority holding the respondent No. 1 to be entitled to receive the amount of gratuity, this writ petition under Article 227 of the Constitution of India has been filed claiming that the petitioner having been obtained succession certificate by the jurisdictional Civil Court under Section 372 of the IS Act, therefore, she is entitled to receive the amount of gratuity and as such, the order impugned be set aside and the Controlling Authority be directed to disburse the amount of gratuity to the petitioner as per succession certificate granted by the Civil Court.

7. Mr. S.P. Kale, learned counsel appearing for the petitioner would submit that the Controlling Authority has committed grave legal error in holding that the petitioner is not entitled to receive the amount of gratuity and illegality committed by the Controlling Authority has been perpetuated by the Appellate Authority by affirming the same ignoring the succession certificate issued by the competent Civil Court under Section 372 of the IS Act. Therefore, the order impugned deserves to be set aside.

8. Notice has been served to respondent No. 1, but no one has appeared on behalf of respondent No. 1 to represent her.

9. Mr. R.K. Gupta, learned counsel appearing for respondent No. 2/SECL would submit that in the service record, name of respondent No. 1 has been entered, therefore, she is entitled to receive the amount of gratuity by virtue of second proviso to subsection (1) of Section 4 of the Act of 1972 and as such, the amount in dispute has already been deposited by the respondent No. 2 before the Controlling Authority and SECL will abide by the order of this Court passed in this writ petition.

10. I have heard learned counsel appearing for the parties, considered their rival submission made herein and perused the relevant record with utmost circumspection.

11. At this stage, it would be appropriate to notice Section 4(1) of the Act of 1972 which reads as under:--

"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.]

Explanation.--For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement."

12. A careful perusal of the aforesaid provisions particularly second proviso to sub-section (1) of Section 4 of the Act of 1972, it would be apparent that in case of death of the employee, gratuity payable to him shall be paid to his nominee and 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. Thus, either nominee or in case no nomination has been made by the deceased employee, the amount of gratuity would be payable to his heirs.

13. The question for consideration would be whether the petitioner holding succession certificate granted under Section 372 of the IS Act is entitled for amount of gratuity or the respondent No. 1 nominee (as held by the Appellate Authority) would be entitled for amount of gratuity?

14. The word "nominee" as employed in second proviso to Section 4(1) of the Act of 1972 has not been defined in the Payment of Gratuity Act, 1972. In ordinary and common parlance, nominee is understood as a person selected by the deceased employee in the official record of his employer to receive the terminal

benefits in case of his death and by which nominee is entitled to receive the amount from the employer giving a valid discharge. The nomination made by nominee does not create any right in favour of the nominee except the right to collect it. In other words, he is merely authorized to receive the payment on behalf of legal representatives who are entitled for the amount. According to Black''s Law Dictionary, 8th Ed. At 1076, "nominee" means a person who is proposed for an office, membership, award, or like title or status. An individual seeking nomination, election or appointment is a candidate. A candidate for election becomes a nominee after being formally nominated. A person designated to act in place of another, usu an a very limited way. A party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.

15. In the matter of Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, , the question came up for consideration before the Supreme Court whether a nominee under Section 39 of the Insurance Act, 1938 gets an absolute right to the amount due under a life insurance policy on the death of the assured, in which their Lordship of the Supreme Court after considering all the decisions on issue have clearly held that nominee of life insurance policy does not get absolute right to the amount due. The nomination only authorizes the nominee to receive the amount from the insurer and the amount can be claimed by the heirs of the assured in accordance with law of succession governing them. Paragraph 12 of the report states as under:--

"12............on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act 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 law of succession governing them."

16. The aforesaid statement of law rendered by the Supreme Court in the matter of Smt. Sarbati (supra) came to be considered in the matter of Shri Vishin N. Kanchandani and Another Vs. Vidya Lachmandas Khanchandani and Another, with reference to Sections 6 , 7 and 8 of the Government Savings Certificates Act, 1959 vis-?-vis right of legal heirs of the deceased, in which their Lordship of the Supreme Court after following the matter of Smt. Sarbati (supra) held that nominee is entitled to receive the sum due on the savings certificates, yet he retains the same for the persons entitled to it under the relevant law of succession by observing in paragraph 13 of the report as under:--

"13. In the light of what has been noticed hereinabove, it is apparent that though language and phraseology of Section 6 of the Act is different than the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the national savings certificates, to the nominee of holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions or becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in Sarbati Devi''s case holds field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of national savings certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those, in whose favour law creates beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act."

17. Recently, the aforesaid statement of law rendered by the Supreme Court in the matter of Smt. Sarbati (supra) has reiterated and followed with approval in the matter of Shipra Sengupta Vs. Mridul Sengupta and Others, , in which it has been clearly held by their Lordship of the Supreme Court that amount under any head can be received by the nominee, but amount can be claimed by heirs of the deceased in accordance with law of succession governing them and it has been held in paragraph 18 of the report as under:--

"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 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 Hindu Succession Act, 1956."

18. Thus, there is crystallized legal position as on date is that nominee is a person authorized to receive the amount under any head, but nomination does not confer any beneficial interest on the nominee and said amount can be claimed by the legal heirs of deceased in accordance with law of succession governing them.

19. It is not in dispute that during pendency of the appeal, in an application filed under Section 372 of the Indian Succession Act in Succession Case No. 9/99 (Lakhan Bai v. General Public and others), the jurisdictional Civil Court by order dated 8.5.2001 declared the petitioner Lakhan Bai and four others namely Sitaram, Jagannath @ Jagdish, Ratanbai and Khikbai @ Shitbai as legal heirs of deceased Mahettar and held that they are entitled to receive the amount of gratuity of Rs. 1,29,000/- along with other dues and thereafter issued succession certificate on 13.6.2006, which has been filed along with this writ petition.

20. Once the succession certificate is granted in accordance with law and produced before the competent authority, the legal heirs becomes entitled to receive the amount being legally entitled, therefore, in view of the law laid-down by the Supreme Court in the matter of Smt. Sarbati (supra), followed in the matter of Shipra Sengupta (supra), in which their Lordships of the Supreme

Court have held that in a normal circumstance, amount under any head can be received by the nominee, but amount can be claimed by heirs of the deceased in accordance with law of succession governing them and succession certificate having been issued by the jurisdictional Civil Court under the provisions of the IS Act, I do not have slightest hesitation to hold that the petitioner along with four others namely Sitaram, Jagannath @ Jagdish, Ratanbai and Khikbai @ Shitbai are entitled to receive the amount of gratuity payable to deceased Mahettar Lal by virtue of succession certificate granted by jurisdictional Civil Court under Section 372 of the IS Act. It is also pertinent to mention that finding of the Appellate Authority that the respondent No. 1 is the nominee of deceased Mahettar is also perverse as it is finding of the Controlling Authority that deceased Mahettar made no nomination during his lifetime under the Payment of Gratuity Act.

21. For the foregoing reasons, the writ petition is allowed and order of the Controlling Authority affirmed by the Appellate Authority is hereby quashed. The petitioner is directed to produce original succession certificate before the Controlling Authority and the Controlling Authority after due verification/ identification will disburse the amount of gratuity to the petitioner and four other legal representatives, which are held entitled by a succession certificate granted by the Civil Court in accordance with law within a period of 45 days from the date of production of succession certificate and copy of this order by the petitioner. No order as to cost(s).

