
(2013) 07 PAT CK 0072

In the Patna High Court

Case No : LPA No. 1517 of 2012 in CWJC No. 1151 of 2010

Madhavi Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 4 PLJR 367

Hon'ble Judges : Rekha Manharlal Doshit, C.J;Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Ganpati Trivedi, for the Appellant; S.R. Sharan for the Respondent Nos. 1-4 and Mr. Jai Shankar Barnwal for the Respondent No. 5., for the Respondent

Final Decision : Allowed

Judgement

Rekha Manharlal Doshit, C.J.—This Appeal under Clause 10 of the Letters Patent has been preferred by the respondent No. 5 against the judgment and order dated 26th June, 2012 passed by the learned single Judge in CWJC No. 1151 of 2010, Reported in 2012 (3) PLJR 567. The matter, at dispute is the amount of General Provident Fund (hereinafter referred to as "the GPF") credited in the name of one Binod Kumar, a Junior Engineer in the State of Bihar.

2. The aforesaid Binod Kumar joined the service of the State of Bihar as Junior Engineer in 1987. At the time, he being a bachelor, in respect of GPF account, made nomination in favour of his father one Basudeo Prasad, the writ petitioner. Since then, the said Binod Kumar married the appellant on 18th May, 1989. Nevertheless, he did not make any alteration in the nomination in respect of the GPF account. The writ petitioner continued to be the nominee of the said Binod Kumar. It further appears that the appellant was estranged from the said Binod Kumar and the matrimonial disputes ensued and were pending since 1990.

3. Pending the said proceedings, a departmental proceeding was initiated against

the said Binod Kumar for contracting marriage with one Rashmi Gupta while his marriage to the appellant was subsisting. Pursuant to the said enquiry, under order dated 18th March, 2008, the said Binod Kumar was dismissed from service. Thereafter, the said Binod Kumar died on 29th April, 2009.

4. Pursuant to the death of the said Binod Kumar, the writ petitioner, being the nominee of the said Binod Kumar, applied for recovery of the GPF amount standing to the credit of the said Binod Kumar. The appellant also lodged a claim to the said GPF amount as the sole family of the said Binod Kumar. The State Government directed the writ petitioner to obtain succession certificate in respect of the GPF amount.

5. Feeling aggrieved, the writ petitioner approached this Court under Article 226 of the Constitution in above CWJC No. 1151 of 2010. The learned single Judge has considered the provisions contained in the Bihar General Provident Fund Rules, 1948 (hereinafter referred to as the Rules) and has upheld the action of the State Government in calling upon the writ petitioner to obtain succession certificate. Feeling aggrieved, the respondent No. 5, the wife of the late Binod Kumar has preferred this Appeal.

6. Learned Advocate Mr. Ganpati Trivedi has appeared for the appellant. He has submitted that the State Government had already agreed to remit the GPF amount to the appellant on condition that the appellant gave indemnity bond. The learned single Judge should, therefore, have directed the State Government to accept the claim of the appellant. In support of his submissions, Mr. Trivedi has relied upon Rule 2(c) and Rule 31 of the Rules.

7. Rule 2(c) of the Rules defines "Family" in respect of a male subscriber and a female subscriber. Clause (i) thereof defines "Family", in case of a male subscriber to mean "the widow or widows, and children of a deceased son of the subscriber". Note 1 thereunder provides "Children" to mean legitimate children".

8. Thus, it is apparent that the parents and the illegitimate children are not considered to be the family of the subscriber.

9. Rule 8 of the Rules provides for "Nomination". Sub-rule (1) thereof enjoins the subscriber to make a nomination. Sub-rule (2) thereof enjoins the subscriber to make nomination in favour of one or more members of his family. Sub-rule (3) thereof permits the subscriber to make nomination in favour of any other person in case he does not have a family. The proviso thereof provides that such nomination shall be valid so long as the subscriber has no family. Sub-rule (5) thereof enjoins the subscriber to make the nomination in favour of the member of his family and to cancel the previous nomination.

10. The conjoint reading of Rule 8 of the Rules and the definition of the word "Family" contained in Rule 2(c)(i) of the Rules discloses one and only one intent that a subscriber to the General Provident Fund is required to make nomination in favour of the member of his family alone, Only in case where the subscriber

does not have the family nomination in the name of any other person is permitted that too so long as the subscriber does not acquire the family. The moment he acquires the family he is enjoined to cancel the earlier nomination and to make nomination in the name of the member of his family.

11. In the present case, it is not in dispute that at the relevant time, Late Binod Kumar did not have a family. He, therefore, had made nomination in the name of his father, the writ petitioner. Since then the subscriber married the appellant and thus acquired a family. The earlier nomination made in favour of his father, the writ petitioner, therefore, stood automatically cancelled by operation of the above referred proviso to Rule 8(3) of the Rules. It is also not in dispute that late Binod Kumar did not make nomination in favour of his family, the wife, the appellant as required under Rule 8(3) of the Rules at any point of time. Hence, in our view, on the date of his death, no legal nomination in respect of his GPF amount was in existence.

12. Rule 31 of the Rules has been reproduced by the learned single Judge in extenso. The said Rule 31 of the Rules provides for remittance of the GPF amount on the death of the subscriber. Clause (i) thereof deals with the situation where the subscriber leaves a family. Sub-clause (a) thereof provides for payment to the nominee if the nomination is made in accordance with Rule 8 of the Rules. Sub-clause (b) thereof provides for the contingency when such nomination does not subsist. The said sub-clause (b) provides, inter alia, for distribution of the GPF amount amongst the members of the family in equal share. It also provides for the members of the family who would not be entitled to a share in the GPF amount. The said Clause (b) reads as under:--

If no such nomination in favour of a member or members of the family of the subscriber, subsists; or if such nomination relates only to a part of the amount standing to his credit in the Fund, the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall notwithstanding any nomination purporting to be in favour of any person or persons other than a member or members of his family, become payable to the members of his family in equal shares:

Provided that no share shall be payable to(1) sons who have attained legal majority;

(2) sons of a deceased son who have attained legal majority;

(3) married daughters whose husbands are alive;

(4) married daughters of deceased son whose husbands are alive if there is any member of the family other than those specified in clauses (1), (2), (3), and (4):

Provided further that the widow or widows and child or children of a deceased son shall receive between them in equal parts only the share which that son would have received if he had survived the subscriber and had been exempted from the provisions of clause (1) of first proviso.

13. The words "shall notwithstanding any nomination purporting to be in favour of any person or persons other than a member or members of his family. occurring in above sub-clause (b) of Clause (i) of Rule 31 makes the legislative intent clear and explicit. Once the subscriber has a family as defined in Rule 2(c) of the Rules, only valid nomination would be in favour of the member of the family and none else.

14. The legislature did not Intend that the P.F. amount of the subscriber be paid to any person other than the member of his family irrespective of the nomination made by the subscriber in the name of any other person. Hence, although late Binod Kumar had made nomination in favour of his father and the said nomination was existing at the time of his death, the said nomination cannot be said to be a nomination made in accordance with Rule 8 of the Rules. Notwithstanding the nomination existing in the name of his father, late Binod Kumar having been survived by his wife (the family), the amount of G.P.F. would become payable to the wife of late Binod Kumar, as provided in the above referred sub-clause (b) of Clause (i) of Rule 31 of the Rules.

15. In our opinion, in absence of a valid nomination subsisting on the date of the death of the subscriber, the State Government is enjoined to distribute the GPF amount amongst the members of the family of the subscriber in the manner prescribed under the above referred sub-clause (b) of Clause (i) of Rule 31 of the Rules.

16. In the present case, as we have recorded hereinabove, on the date of the death of the said Binod Kumar, nomination made by him in favour of his father was non est in the eye of law. He having not made nomination in favour of his family, the wife, the appellant, the State Government is bound to remit the GPF amount to the appellant as envisaged by the above referred Rule 31(i)(b) of the Rules.

17. We are informed at the bar that the appellant is the only family left by the said Binod Kumar. Apart from the appellant, there is no other member in his family.

18. Be that as it may, the State Government will consider the application for remittance of the GPF amount made by the appellant. After proper verification of the identity of the appellant, the State Government will remit the G.P.F. amount and the accumulated interest standing to the credit of late Binod Kumar to the appellant. The aforesaid exercise will be completed within eight weeks from today. The Appeal stands allowed in the above terms. Registry will send copy of this order to the respondent Nos. 2 and 3 forthwith.