(2011) 02 MAD CK 0104

In the Madras High Court

Case No : Writ Petition No. 9619 of 2008

S. Johnson David Gnanaraj — APPELLANT

Vs

The Assistant Commissioner of Labour, cum-Controlling Authority, under the Payment of Gratuity Act, 1972 and The Management, S.R.P. Tools Limited — RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:
Payment of Gratuity Act, 1972 — Section 2, 4(1), 6, 6(3), 7(4)

Citation : (2011) 4 LLJ 54

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Shanmugapriya, for V. Raghavachari, for the Appellant; S. Ravindran, for T.S. Gopalan and Co. for R-2 and R. Murali, GA for R-1, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner filed the present writ petition seeking for a direction to the first Respondent Assistant Commissioner of

Labour-cum-Controlling Authority under the Payment of Gratuity Act to disburse the service benefits payable to one late S. Wilson Sundar Raj,

the deceased workman employed by the second Respondent management together with interest at the rate of 24% lying to his credit as per the

order made by the Appellate Authority under the Payment of Gratuity Act in P.G. Appeal No. 52/92, dated 19.9.1994. In the writ petition, notice

of motion was ordered on 11.6.2008. On notice form this Court, the first Respondent has filed a counter affidavit. Since the counter affidavit was

not satisfactory, this Court directed the original records to be produced. It was also summoned and circulated to this Court.

2. The second Respondent though represented by their counsel informed that pursuant to the order of the authority, they had deposited the amount

and they have been formally made as a party in the writ petition.

3. It is the case of the Petitioner that he was the sole legal heir of his deceased sister Jane Beulah Ponmani, who was the wife of late S. Wilson

Sundar Raj employed by the second Respondent. She had executed the Will in favour of the Petitioner on 12.5.1992 bequeathing all her

properties belonging to her and also those vested in her on account of the death of her husband. The Petitioner''s sister''s husband was employed

as an Operator in the second Respondent company. During his service, he expired on 10.3.1992. The Petitioner''s sister was nominated as his

nominee for succeeding to the benefit of the amount payable to the late S. Wilson Sundar Raj. When she was seeking to claim those amounts and

the second Respondent also was willing to settle it in her favour, one J. Samuel, the father of the Petitioner''s sister''s husband had objected to the

payment of the benefit. In view of the objection received from the father-in-law of his sister, the second Respondent had filed an application u/s

7(4)(b) of the Payment of Gratuity Act before the first Respondent. Section 7(4)(b) reads as follows:

7(4)(b)Where there is a dispute with regard to any matter or matters specified in Clause (a), the employer or employee or any other person raising

the dispute may make an application to the controlling authority for deciding the dispute.

4. u/s 7(5), the power of the Authority is set out, which is as follows:

7(5)For the purpose of conducting an inquiry Sub-section (4), the controlling authority shall have the same powers as are vested in a court, while

trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:

(a)enforcing the attendance of any person or examining him on oath;

(b)requiring the discovery and production of documents;

(c)receiving evidence on affidavits;

(d)issuing commissions for the examination of witnesses.

5. After making the application, the second Respondent had deposited the entire amount to the credit of the said application. The Controlling

Authority who took up the matter as P.G. Case No. 44/92, by an order, dated 13.8.1992 had ordered as follows:

In the result I have no hesitation whatsoever to hold that the I Respondent Mrs. Jane Beulah Ponmani is the rightful legal heir to the deceased

employee and she alone is entitled to receive the gratuity amount of Rs. 30,223/- deposited with this Authority with interest that would have been

accrued by this time in full and award the same in favour of the I Respondent. Therefore the claim of the II Respondent fails.

I pass orders accordingly.

He directed payment of Rs. 30223/- deposited with the first Respondent to be paid to the Petitioner''s sister Jane Beulah Ponmani. But

unfortunately even before receiving the said amount, the wife of late Wilson Sundar Raj died on 3.2.1993. She had left her father Soundararajan

and mother Dora Elizabeth, the Petitioner brother and two younger sisters as legal heirs as per the legal heir ship certificate, dated 10.2.1993. In

the meanwhile, the Petitioner''s sister''s father-in-law J. Samuel, who is the father of late Wilson Sundar Raj had filed an appeal u/s 7(7) of the P.G.

Act with the appellate authority-cum-Deputy Commissioner of Labour. The said appeal was taken on file as P.G.(A). No. 52/92. Even during the

pendency of the appeal, the Petitioner''s sister died and therefore, the Petitioner filed an affidavit as the legal heir of his sister. But the Petitioner''s

sister''s father-in-law Samuel had opposed the impleading application and stated that for his son Wilson Sundar Raj, he and his son''s wife Jane

Beula Ponmani alone are legal heirs. Since he being the only surviving legal heir and that the wife of Wilson Sundar Raj though was nominated

having died, he alone should be paid the amount. In the light of the contentions raised by the Petitioner''s sister''s father-in-law, the appellate

authority held that such question cannot be gone into under the provisions of the Act. The rival claims have to be settled only through the Civil

Court. Therefore, in its order, dated 19.9.1994, the authority had passed the following order which is as follows:

In view of the above, the appeal is dismissed. The gratuity deposited before the Controlling Authority shall be paid to the person in whose favour

the Civil Court decided the issue of succession.

6. It now transpires that the first Respondent even after the direction by the

appellate authority to retain the amount pending rival claims regarding

the line of succession to be sorted out through the Civil Court, had issued a notice on 20.2.1996 informing the second Respondent as well as J.

Samuel to come and receive the amount of Rs. 30,223/- as per the order of the Deputy Commissioner of Labour-cum-Appellate Authority in P.G.

Appeal No. 52/92, dated 19.9.1994. It is not clear as to where the first Respondent got the authority to disburse the amount especially quoting the

order of the appellate authority when the appellate authority himself held to the contrary. The appellate authority had stated that there is serious

dispute relating to succession and that it will have to be decided only on the basis of the decree from the Civil Court. Further, the first Respondent

himself in its earlier order, dated 13.8.1992 had decided the claim in favour of the wife of late Wilson Sundar Raj and the appeal filed by J. Samuel

against that order was dismissed by the appellate authority.

7. In the original files produced, there is nothing on record to show that the first Respondent has made any decision to pay the person who is not

authorized either by him or by the appellate authority. On the other hand, the first Respondent on his own had distributed the amount of Rs.

36368/- to J. Samuel and informed the second Respondent management by letter, dated 24.4.1996. A receipt was issued by the said J. Samuel

having received the amount of Rs. 36368/- by way of cheque drawn on Indian Overseas Bank, Chennai. The receipt was also signed by two

witnesses, one Srinivasan and Krishnamurthy, 14, Law Chambers, Chennai-104.

8. It is now brought to the notice of the court that the said Samuel subsequently died on 12.2.2001. A death certificate has also been produced.

With reference to the action in settling the amount in favour of J. Samuel, the father of late Wilson Sundar Raj, in the counter affidavit, the first

Respondent had stated as follows:

In view of the above the Appeal is dismissed. The gratuity deposited before the Controlling Authority shall be paid to the person in whose favour

the Civil Court decides the issue of Succession.

The Appellate Authority having given clear cut directions it was up to the parties to have the issue of succession decided in a Civil Court.

However either of them have produced any such order from the civil deciding the issue of succession.

It also appears that no further appeal has been filed by either claimants on the orders of the Appellate Authority.

Therefore the question of succession still being undecided, the death of the rival claimant alone will not entitle the Petitioner (S. Johnson David

Gnanaraj) as the legal heir/successor.

The Petitioner (S. Johnson David Gnanaraj) has to abide by the orders of the Appellate Authority in P.G.(Appeal)52/92 & produce an order from

the Civil Court on his succession before the Controlling Authority. As the order of the Appellate Authority has not been challenged by either

claimants the order of the Appellate Authority in P.G.(Appeal)52/92, has become final and absolute and the Controlling Authority can disburse the

Gratuity amount deposited only on production of a final order by the claimants on the issue of Succession decided by a Civil Court.

9. But while having sworn to the affidavit on 15.2.2010, the first Respondent did not explain as to how the amount was disbursed to J. Samuel

even without an order of any Civil Court. This action of the first Respondent is clearly reprehensible and amounting to disobedience of the order of

the appellate authority as well as disregarding the law on the said issue.

10. Before going into the merits of the case, it is necessary to see certain legal provisions which will have a bearing on the said issue. The second

proviso to Section 4(1) reads as follows:

[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.]

11. Therefore, under the said provisions, the gratuity will have to be paid to the nominee after the death of the employee. In the present case,

obviously late Wilson Sundar Raj had nominated his wife Jane Beulah Ponmani. Therefore, the first Respondent in his order, dated 13.8.1992 in

P.G. Case No. 44/92 had correctly held that the amount should be paid to her. It was during the pendency of the appeal, she died. Since the

appeal itself was dismissed and the amount had already deposited with the first Respondent, he ought to have decided the issue in terms of Section

7(4)(b) (as already extracted above). He was also given power of the civil court for deciding such issue u/s 7(5) to obviate any doubt relating to

the members comprising family. Section 2(h) defines the term ""family"" and it reads as follows:

2(h)""family"", in relation to an employee, shall be deemed to consist of-

(i) in the case of 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,

(Emphasis added)

12. The underlined portion has been brought in after substituting the term ""widow"" and introducing the term ""dependent parents of his wife and

widow"". Therefore, in case of a male employee, not only his dependent parents, even the dependent parents of his wife have been now brought in

within the expanded definition of family, so that the parents of both sides are kept in equal pedestal. Since the Act itself provides for payment to

nominee, failing which the amount will have to be paid to the legal heirs as set out in the second proviso to Section 4(1), it does not require

determination of any line of succession under the personal law. Since the Act itself is defining the term ""family"" u/s 2(h), if the authority is satisfied

the nature of relationship, he himself can order payment of such amount.

13. u/s 6 of the Payment of Gratuity Act, the nomination as to how it should be made is clearly set out. In order to avoid a nominee being outside

the family, Section 6(3) obliges that nomination should be made either in favour of one or more members of family. It is only in case no member of

family is available, then the nomination can be made in favour of any person. Even in such circumstances, if the employee acquired a family, the

earlier nomination stands cancelled. It is for this purpose, the term ""family"" is also defined u/s 2(h).

14. In the present case, if the first Respondent has correctly held that the amount will have to be paid only to the wife of late Wilson Sundar Raj

and even as per the nomination, if she received the amount, than there is no further work to be done by the Controlling Authority as the Act obliges

the nominee to be paid the entire amount. It is only when there is quarrel among the legal heirs that will have to be fought outside the provisions of

the Act. When the wife of late Wilson Sundar raj who was the nominee also died during the pendency of the appeal and when the authority had

correctly rejected the claim by stating that the parties should approach the civil court, then there will be no order that the amount should be paid to

Samuel, who also after receiving the amount now died. Therefore, the first Respondent''s conduct in paying the amount to late Samuel disregarding

the claim made by any other person is clearly illegal. Since the said Samuel is no more, he cannot be brought in to decide the question of

succession. Therefore, with the available facts, this Court is inclined to decide the issue once and for all so that the controversy can be set at rest.

15. The expanded term ""family"" u/s 2(h) defined the term in wider sense that not only dependent parents of the employee, but also the dependent

parents of the wife and widow are also brought in by the subsequent amendment made by the Central Act 22/87. Therefore, after the death of the

wife of late Wilson Sundarar Raj, her legal heirs were on one side and the employee''s father Samuel was on the other side as the legal heirs. As

per the legal heir ship certificate produced, the parents of Jane Beulah Ponmani, i.e., Soundararajan and Dora Elizabeth are the two legal heirs still

surviving. Hence 50% of the amount has to be paid to the father of the employee late J. Samuel and the other 50% is to be paid to M/s.

Soundararajan and Dora Elizabeth. But, in the present case, the first Respondent had paid without any authority the entire amount of Rs. 36368/-

to J. Samuel and that this act is clearly condemnable and illegal. He ought to have verified the other legal heirs as per the provisions of the Act and

paid the amount to those persons. J. Samuel was entitled to only 50% of the amount i.e., Rs. 18184/- and the balance should be given to the family

of Jane Beulah Ponmani. The Petitioner did not come within the legal heirs of either employee or his wife, though he claimed succession through

Will, in which case he ought to have moved the Civil Court as directed by the appellate authority.

16. Insofar as the second Respondent management is concerned, they had already deposited the entire amount. Therefore, there is no liability to

be fixed on them. But since the entire amount has been given without the authority of law, it is the first Respondent who has to bear the loss caused

by his act. Therefore, the first Respondent is hereby directed to pay a sum of Rs. 18184/- to M/s. Soundararajan and Dora Elizabeth, who are the parents of late Jane Beulah Ponmani. The amount has to be paid from the funds available with the first Respondent. The officer who disbursed the

amount, i.e., K. Balaraman, the then Assistant Commissioner of Labour, if still in service, the amount can be recovered from his personal pay and

credited it to the State account. But, on that ground, payment to the parents of the Petitioner cannot be delayed. This exercise shall be carried out

within a period of eight weeks from the date of receipt of copy of this order. Accordingly, the writ petition will stand allowed to an extent indicated

above. However, there will be no order as to costs.

