
(2019) 01 MAN CK 0003
In the Manipur High Court
Case No : Writ Appeal (WA) No. 97 Of 2007

T. Kimhoilhing minor And Others

APPELLANT

Vs

Donkhanching Alias Chinu And Others

RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:

Citation : (2019) 01 MAN CK 0003

Hon'ble Judges : Ramalingam Sudhakar, CJ;Kh. Nobin Singh, J

Bench : Division Bench

Advocate : N.Umakanta, Kh. Athoubal, S.Samarjit, G.Puspa

Final Decision : Allowed

Judgement

R.S., CJ

Heard Mr. N.Umakanta, learned counsel for the appellants. Also heard Mr. Kh.Athouba, learned Government Advocate for the State respondents, Mr. S.Samarjit Singh, learned CGC for the respondent No.2 as well as Mrs. G.Puspa, learned counsel for the private respondent.

The appellants, 5 in number, are sibling borne out of the wedlock between late T.Jamthenlal Haokip, a resident of Tuibung, P.O. Churachandpur, Manipur and Smt. Donkhanchin, the respondent herein. Out of the wedlock, it is not in dispute that 6(six) girl children were born, out of that, two were born as twins. It is also fairly pleaded by Mr.Umakanta appearing for the siblings that one of the twin sisters, was given away by way of adoption to a family relative and he is not representing that child. The other five sisters are before this Court seeking their shares in respect of terminal benefits of their father, late Jamthenlal Haokip.

The respondent widow earlier filed a petition before the writ Court for a mandamus to direct the official respondents, State to release terminal benefits of her late husband. In her petition filed in the year 1999, W.P(C) No.1633 of 1999, she has clearly shown the paternal grandfather as respondent No.5 and

respondents No.6, 7, 8, 9 and 10 are the minors daughters represented by paternal grandfather, respondent No.5. Therefore it is admitted that the minor children are in the custody, guardianship and control of the grandfather at the time of filing of the petition by respondent widow.

The amount which became due for payment to the deceased husband, Inspector of Sericulture, was not disbursed in view of the claim made by the minor children through the guardian. Consequently, when the writ petition came to be disposed of, the learned Single Judge passed the following order, against which the present appeal has been filed by sibling sisters.

" In my considered opinion, it is not desirable to keep the writ petition pending and issue fresh notice to the objectors. Upon hearing the learned counsel for both the sides, the State respondents are directed to release all the retiral benefits through the office of the Director of Sericulture, Manipur. The Director of Sericulture is directed to disburse 60% of the total money to the writ petitioner and the remaining 40% (in lump sum) shall be kept in a fix deposit in the names of the minor children of the deceased till they attain the age of majority. After attaining the age of majority, the money shall be released to the children through their bank account.

The respondents are further directed to encash the money as expeditiously as possible preferably within a period of three months from the date of receipt of the order. The respondent shall also proceed to prepare the pension papers and disburse the same in accordance with the law."

Mr. Umakanta pleads that on an admitted fact that all the appellants were minor at the time of filing of the writ petition in the year 1999 and the custody was with the grandparents, the respondent, writ petitioner widow, could not have asked for release of the entire amount in her favour forsaking the children interest. On the contrary, the children become equally eligible for their proper care and maintenance of life out of the terminal benefits of the late father.

The learned Single Judge had, in that order, stated that the amount of 40% should be kept in a fix deposits till the minor children attained majority. In effect, the rights of the minors being entitled to a share of the terminal benefits is not in dispute.

The only issue that arises for consideration is the methodology adopted by the learned Single Judge in determining the percentage that the widow and children will get so as to share the terminal benefits.

It is argued by the learned counsel for the appellant that the number of girl children is 5(five) and the mother is the sixth, dependents and beneficiary. There is no justification to divide the terminal benefits at 60% in favour fo the respondent mother and 40% in favour of the 5(five) children. This division is on the face of it inequitable and unfair and it will be to the disadvantage of the girls, who are minors at the time of filing of the writ petition by the mother. It is

irrelevant that by the efflux of time some of them have become major. Their entitlement has been already accepted at the time of filing of the writ petition by the mother. It is the determination of quantum that becomes relevant now.

We find that there appears to be no proper methodology adopted at determining 60% as entitlement of the respondent mother as against 40% to the 5(five) minor children as on 1999 and also at the time of passing the order by the learned Single Judge. The determinative factors to tip the scale in favour of the mother is absent. As to why the five girls are given lesser percentage is not spelt out. While considering the rival claims it has to be noticed that for bringing up the minors after the death of the father and the mother going away on a different path it is a financial burden on the guardian. The girl children deserve to be treated with care and concern keeping their future, their growth and development who have been left alone as minor girls.

The contention of Mrs. Puspa, learned counsel for the respondent mother is that many of these girls have now become major and married is totally irrelevant even as per her pleadings. Even at this point of time, the right of children to get a share of the terminal benefits of the deceased father is already accepted. It is only the quantum which requires to be determined on just and equitable basis and also as per their entitlement in accordance with law.

We hold that each one of the daughters is entitled to a share of the terminal benefits of the deceased employee. There cannot be any differentiation between the mother and daughters unless it is pleaded and proved that the mother is totally taking care of the minor daughters which is not the case. In this case, she herself admitted that the grandfather is the guardian of the minor daughters. That being the case, the percentage of distribution should be equal amongst the appellant daughters and the mother, the respondent herein.

Accordingly, we find merit in the argument of the appellants' counsel who seeks to modify the order of the learned Single Judge. In the result, we hold that all the five daughters and the respondent mother are entitled a share in respect of the terminal benefits of late T. Jamthenlal Haokip.

The five appellants and the respondent mother will be entitled to the terminal benefits of late T. Jamthenlal Haokip, former employee, Inspector of Sericulture @ 16.66% each.

The official respondents are directed to release the equivalent amount forthwith on the basis of the afore stated calculation after discharge of bank deposits, if any made. Interest that may have accrued to be shared in the same manner. Further family pension may be decided by the authority in accordance with the rules applicable.

The appeal stands allowed as above.