(1987) 02 DEL CK 0019

Delhi High Court

Case No: None

Om Wati		APPELLANT
	Vs	
Delhi Transport Corporation and others		RESPONDENT

Date of Decision: Feb. 18, 1987

Citation: (1987) 61 CompCas 801

Hon'ble Judges: S.B. Wad, J

Bench: Single Bench

Judgement

1. This civil revision is directed against the order of the Additional Senior Sub-Judge, Delhi, dated 30th January, 1984. The suit was filed by the respondent Smt. Bhatiri, wife of Badan Singh, and Badan Singh, son of Sindhu Ram, against the present petitioner, Smt. Om Wati, widow of Gopi Ram, who was the son of Smt. Bhatiri and Shri Badan Singh. Gopi Ram was working in Delhi Transport Corporation as a conductor. He died on 28th February, 1982. The dispute is regarding the amount of provident fund, gratuity, security deposit, unpaid salary, group insurance and benevolent fund. The plaintiffs as mother and father claimed half share in these amounts standing to the credit of the deceased, Gopi Ram, with the DTC. During his life time, Gopi Ram had filed a declaration for nomination under From 2 of Para 61 of the Provident Fund Scheme framed under the Employees'' Provident Fund Act, 1952. In the said declaration for nomination, he has nominated his wife, Om Wati, for the purposes of the employees'' provident fund. After the death of Gopi Ram, the DTC paid a sum of Rs. 17,182 against the provident fund and benevolent fund to Om Wati after deducting a sum of Rs. 500 which Gopi Ram had taken as a loan against his provident fund. The balance amount towards gratuity, insurance, bonus, security, etc., is Rs. 14,578.53. Except for the provident fund Gopi Ram had not made any nomination for the balance of amount under the various heads stated above. The parents of the deceased claimed that they were entitled to half of the total amount due to the deceased, Gopi Ram. The plaintiffs prayed for a temporary injunction under Order 39, rules 1 and 2, against the DTC from disbursing the said

amounts to the dependents of Om Wati. The trial court granted the injunction but the same was vacated partly by the Add 1. Senior Sub-Judge, by ordering that DTC was restrained from disbursing more than half of the amount in favor of Om Wati.

2. Counsel for the petitioner has raised an interesting question of law as to the rights of the nominee under the scheme framed under the Employees'' Provident Funds Act, 1952. Chapter 8 of the Employees'' Provident Funds Scheme, 1952, provides for nominations, payments and withdrawals from the provident fund. Para 61 provides for nomination which reads as follows :

"61. Nomination. - (1) Each member shall make in his declaration in Form 2, a nomination conferring the right to receive the amount that may stand to his credit in the fund in the event of his death before the amount standing to his credit in the fund in the event of his death before the amount standing to his credit becomes payable, or where the amount has become payable before payment has been made."

3. Counsel for the petitioner argues that para 61 confers "right to receive the amount" standing to the credit in the fund in the event of the death of a person who has been contributing to the provident fund. Counsel submits that the words "right to receive" are borrowed from section 5 of the Provident Funds Act, 1925. He further argues that this right to receive the amount confers an absolute right on the nominee to receive the amount in exclusion of other heirs whether testamentary or otherwise. He has referred to the decisions to this effect u/s 5 of the Provident Funds Act, 1925. He has also referred to some English decisions where the concept of "right to receive the amount" by a nomination has been interpreted so as to mean that such a right is in the nature of beneficiary''s interest in testamentary disposition. Counsel for the respondents, however has contested this interpretation of "right to receive" and relies on the decision of the Supreme Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, . In Sarbati Devi''s case, the Supreme Court considered the rights of a nominee in a life insurance policy u/s 39 of the Insurance Act, 1938. After analysing section 39 in para 5 of the judgment, the Supreme Court held (at page 218 of 55 Comp Cas) :

"But the summary of the relevant provisions of section 39 given above establishes clearly that the policy holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy holder. If that is so, on the death of the policyholder, the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him."

4. Counsel for the petitioner, however, submits that there is material difference between a nomination of a life insurance policy envisaged by section 39 of the Insurance Act and the nomination in a provident fund as required by para 61 of the Scheme. On comparing both the sections, I do not find any material difference in

the concept of "right to receive the amount" by the nominee. I, Therefore, hold that the decision of the Supreme Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, , stated above is fully applicable to nomination under the Scheme and under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952.

5. But, since counsel for the petitioner has referred to section 5(1) of the Provident Funds Act, 1925, and certain English decisions, I would like to advert to them. Section 5(1) of the provident Funds Act, 1925, states :

"Notwithstanding anything contained in any law for the time being in force or any disposition, whether testamentary or otherwise, by a subscriber to, or depositor in, a Government or Railway Provident Fund ..... where any nomination, duly made in accordance with the rules of the Fund, purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber or depositor, occurring before the sum has become payable or before the sum, having become payable, has been paid, the said person shall, on the death as aforesaid of the subscriber or depositor, become entitled to the exclusion of all other persons, to receive such sum or part thereof, as the case may be .....". It is true that the words "right to receive" occur in section 5(1) of the Provident Funds Act, 1925, but if section 5 of the Provident Funds Act is compared with para 61 of the present Scheme, the difference is obvious. There is no non obstinate clause in para 61 of the Scheme similar to section 5 of the Provident Funds Act, 1925. In the absence of such clause "right to receive" occurring in para 61 of the present Scheme cannot be interpreted in the same way as "right to receive" occurring in section 5 of the Provident Funds Act, 1925. Counsel for the petitioner, however, argues that the object of providing the "right to receive" the provident fund amount to a nominee under the Provident Funds Act, 1925, and the Employees'' Provident Funds Act is the same. The object is that a member of a family in whose favor the nomination is made should be straightaway paid the amount of provident fund standing to the credit of the deceased. To my mind, this argument cannot be accepted in view of the legislative history. The Provident Funds Act was passed in 1925 but when the Employees'' Provident Funds Act, 1952, was passed, the Legislature was naturally aware of section 5 of the Provident Funds Act, 1925. In fact, the Objects and Reasons of the 1952 Act make it clear that the Provident Funds Act, 1925, was very much within the awareness of the Legislature. The Employees'' Provident Funds Act, 1952, is a special provision for the benefit of the employees in factories and similar establishments as contemplated by that Act.

6. It is a special Act because the Provident Funds Act, 1925, was applicable only to employees in the Government and the Railways. The Railways are separately mentioned because in 1925 they were not nationalised. Apart from the fact that the Employees'' Provident Funds Act, 1952, is a special Act, in point of time it is a subsequent enactment. Therefore, if the non obstinate clause in section 5 does not find a place in the Scheme framed under the 1952 Act, the departure must be

deliberate. The "right to receive" the provident fund amount by a nominee under the 1952 Act, Therefore, cannot be interpreted in the same way as "right to receive the amount" by a nominee u/s 5 of the Provident Funds Act, 1925. I need not refer to the English decisions cited by counsel for a simple reason. We have a codified law of provident fund different from the English enactment. The provisions in the 1952 Act must, Therefore, be interpreted on its own legislative history. The contentions raised by counsel for the petitioner are, Therefore, without any merit and are rejected.

7. In view of the position of law stated above, I do not find any reason to interfere with the impugned order. The petition is dismissed but, on the facts of the case, there shall be no order as to costs.