

(1988) 10 KAT CK 0023

Karnataka Administrative Tribunal

Case No: Application No. 6561 of 1986 (T)

Nagalingegowda

APPELLANT

Vs

The Accountant General, II
Karnataka and Others

RESPONDENT

Date of Decision: Oct. 14, 1988

Citation: (1990) 1 KarLJ 17

Hon'ble Judges: K. R. Chamayya, J.M.; R. A. Naik, Vice Chairman

Judgement

@JUDGMENTTAG-ORDER

K.R. Chamayya, Member (Judicial)-One Sri. Veeranagowda, brother of the Applicant died on 17-8-1980 as an unmarried person while working as Teacher in Government High School Hiriyabbe, Chitradurga District. The Applicant requested the authorities to give him the amounts relating to his deceased brother such as Family Benefit Fund, arrears of salary and gratuity. He was asked to produce the Survivorship certificate from the Tahasildar. He produced that certificate. Thereafter, he was asked to get the succession certificate for claiming gratuity amount. The Applicant was paid amounts due relating to Family Benefit Fund and arrears of salary. The Applicant produced the succession certificate but the gratuity amount was not paid. Thereafter, in reply to a legal notice, the Applicant was told that he is not entitled to receive the gratuity amount under Rules 292 (ii) and 302 (i) KCSRs since he is a major brother of deceased Veeranagowda.

2. Sri. Veeranagowda died without making any nomination, as an unmarried person. He has not left behind him any family member as defined in Rule 302 KCSRs. According to Rule 302 (x) if a Government servant dies without making any nomination the gratuity is to be paid to the surviving members of the family in equal shares. However, the rules are silent about to whom the gratuity amount is to be paid if the Government Servant dies without any surviving family member and without making nomination. Rule 302 KCSRs deals with making of nominations. According to Rule 302 KCSRs if a person has no family, as defined therein, he could

nominate any person to receive gratuity amount-vide, Rule 302 (ii) which read thus:

"A Government servant shall, soon after confirmation in Government service, make a nomination conferring on one or more persons the right to receive any gratuity that may be sanctioned under sub-rule (ii) and (iv) of Rule 292: Provided that if, at the time of making the nomination, the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family.

Exception: Where a Government servant has no family, the nomination can be made in favour of any person who is not a member of his family or in favour of a body of persons, whether incorporated or not. Similarly, where the Government servant has only one member in his family in whose favour the original nomination should be made, the alternate nomination can be made in favour of any person who is not a member of his family or in favour of a body of persons, whether incorporated or not."

3. Sri Manjunath, Advocate for the Applicant submitted that if Sri Veeranagowda had nominated the Applicant he would have been eligible to receive the amount of gratuity under Rule 292 (i) & (ii) KCSRs. He submitted that there is difference between "family of a Government Servant as defined in Rule 302 KCSRs and heirs of thai Government Servant under the law of succession, and, in the absence of a family member and nomination, the gratuity amount could be paid to the heirs. He further submitted that the Applicant is an heir of deceased Veeranagowda under the law of succession applicable to him, and as such the amount should be paid to him. He relied upon a decision reported in Madan Mohan v Union, 1978 (2) SCC 50, wherein it is laid down that even chooses of action is property. That decision speaks of chooses of action relating to "unpaid accumulation" of wages, pension, cash grant constitutionally protected privy, purse and bonus. The words "unpaid accumulation" are important. That means amount fallen due but not paid prior to the death of the person. That is not the situation in this case. Hence, that decision is not helpful to the Applicant. He next referred to Sarbati Devi v Usta Devi, (1984) 1 SCC 424. That decision relates to payment of amount due under a policy on the death of the insured intestate. The principle laid down by the court is stated as follows in the head lines thereof.

"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. Under Section 39 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. Therefore, on the death of the policy-holder the amount payable under the policy becomes part of his estate which is governed by the law of

succession applicable to him. such succession may be testamentary or intestate. Section 39 does not operate as a third kind of succession which can be styled as a "statutory testament". A nominee cannot be treated as being equivalent to an heir or legatee. The amount received under the policy therefore, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

The Court took the view that the amount due under the policy becomes the estate of the deceased and that estate is governed by the law of succession. The amount due under policy of insurance becomes payable on death before maturity. In such cases the amount falls due after death. So also in the case of gratuity amount. If amount due under an insurance policy which falls due after the death of the insured could be considered as part of his estate we are of the considered opinion that the gratuity amount which falls due after death also could be considered as part of the estate of the deceased, in cases where there is neither nomination nor surviving family member as defined in Rule 302 KCSRs. We take such a view because the rule making authorities might not have anticipated while making rules that a situation of the type as in the present case would arise. We hope that the Government would provide for situation of this type in KCSRs keeping in view the decision of the Supreme Court in Sarabti Devi's Case. In this case the Applicant appears to have produced a succession certificate granted by the Court.

4. For reasons stated above, we allow the application and direct the Respondents to pay the gratuity amount of deceased Veeranagowda as directed in the succession certificate produced by the Applicant.

5. Time 3 months.

6. No costs. Application allowed.