

S.Vijayakumar Vs. Raichal

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Court : Kerala

Decided On : Feb-04-2013

Judge : Honourable Mr.Justice Pius C.Kuriakose

Appellant : S.Vijayakumar

Respondent : Raichal

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE PIUS C.KURIAKOSE & THE HON'BLE MR. JUSTICE P.D.RAJAN MONDAY, THE 4TH DAY OF FEBRUARY 2013 15TH MAGHA 193 WP(C).No. 25894 of 2004 (G) -----
PETITIONER(S): ----- 1. S.VIJAYAKUMAR, AGED 5 YEARS, S/O. SAVARIMUTHU, HOUSE NO.116, MANAVA NAGAR, PALKULANGARA P.O., PETTAH, THIRUVANANTHAPURAM. (DIED). *ADDL.P2 &P3 IMPLEADED 2 UTHAMI, AGED 3 ,W/O.LATE S.VIJAYAKUMAR HOUSE NO.116, MANAVA NAGAR, PALKULANGARA PO PETTAH, THIRUVANANTHAPURAM 3 LAVANYA KUMAR(MINOR),AGED 1 YEARS, D/O.UTHAMI, RESIDING AT HOUSE NO.116, MANAVA NAGAR, PALKULANGARA PO, PETTAH,THIRUVANANTHAPURAM. (REP.BY THE 2ND PETITIONER WHO IS THE NATURAL, GUARDIAN MOTHER ARE IMPLEADED AS ADDL.P2 & P3 AS PER ORDER DTD. 28.6.2006 IN IA. 7929/05. BY ADV. SRI.P.CHANDRASEKHAR RESPONDENT(S): ----- 1. RAICHAL, W/O.VIJAYAKUMAR ALIAS AUGUSTINE, T.C.NO.36/382, DRAINAGE ROAD, PALKULANGARA P.O., PETTAH,

TRIVANDRUM.

2. DIRECTOR, FINANCE, PAY & ACCOUNTS BUILDING, AIR INDIA, MUMBAI.

3. DIRECTOR (HRD) AIR INDIA, KALINA, SANTA CRUZ EAST, BOMBAY.

4. MANAGER, AIR INDIA, VELLAYAMBALAM, TRIVANDRUM.

5. MANAGER, AIR INDIA, BANK ROAD, CALICUT. R1 BY ADV. SRI.B.JAYASURYA R2 & R5 BY ADV. SRI.JOSEPH MARKOSE THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-02-2013, ALONG WITH WPC. NO.19368 OF 200.THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: tss W.P.(C) NO.25894/2004 APPENDIX PETITIONER'S EXHIBITS:- P1:- COPY OF THE MEDICAL BILLS ISSUED BY MALABAR INSTITUTE OF MEDICAL SCIENCES LTD. P2:- COPY OF THE DISCHARGE SUMMARY ISSUED BY MEDICAL COLLEGE HOSPITAL, KOZHIKODE. P3:- COPY OF THE ORDER DTD. 7.4.2003 PASSED BY THE FAMILY COURT, KOZHIKODE IN OP. 62/2002. P4:- COPY OF THE CERTIFICATE OF MARRIAGE DTD. 9.1.2004. P5:- COPY OF THE PETITION P NO.756/2004 FILED BY THE FIRST RESPONDENT BEFORE THE FAMILY COURT, TRIVANDRUM DTD. NIL. P6:- COPY OF THE IA.1787/2004 IN OP. 756/2004 FILED BY THE FIRST RESPONDENT BEFORE THE FAMILY COURT, TRIVANDRUM DTD. NIL. P7:- COPY OF THE ORDER IN IA. 1787 OF 200.N OP. 756/2004 PASSED BY THE FAMILY COURT, TRIVANDRUM DTD 21.5.2004. RESPONDENT'S ANNEXURES R2(a):- COPY OF ORDER DTD. 19.6.2012 ISSUED BY THE HON'BLE PRINCIPAL MUNSIFF, THIRUVANANTHAPURAM TO THE 2ND RESPONDENT. R2(b):- COPY OF THE LETTER DTD. 22.5.2010 WRITTEN BY THE COUNSEL APPEARING FOR THE CORPORATION. R2(c):- COPY OF THE DEMAND DRAFT DTD. 25.6.2010 DRAWN ON THE HDFC BANK IN FAVOUR OF MR.SUDHIR KUMAR. //TRUE COPY// P.S. TO JUDGE PIUS C.KURIAKOSE & P.D.RAJAN JJ.

----- W.P.(C) . NO.25894 OF 200.& W.P.(C) 19368 of 2005

----- Dated this the 5th day of February, 2013 JUDGMENT Pius C.Kuriakose,J The judgment we have passed in W.P.(C) No.25894/2004 on

4/2/2013 is suo motu recalled in view of the compromise petition - I.A. No.1895/2013 filed by the parties in W.P.(C) No.19368/2005.

2. We have carefully gone through the compromise petition (I.A. No.1895/2013) in W.P.(C) No. 19368/2005. We do not find anything illegal about the terms of the compromise. We record the compromise petition which will form part of this judgment.

3. M/s. Air India, respondents 2 to 5 in W.P.(C) No.25894/2004 has filed a statement on 31/1/2013 under which it is stated that presently only a sum of Rs.8,25,322/- is outstanding with them towards terminal benefits payable to S.Vijaya Kumar, the original petitioner in W.P.(C) No. W.P.(c)Nos.25894/2004 & anothe

25894. 2004. In the absence of materials, we become obliged to accept the above statement. But, we notice that this amount was remaining with Air India from 12/1/2005 and has obviously been utilised by the Air India, an organisation which carries on commercial activities. They did not feel like paying this admitted amount to who they are recognised as the legal heirs of late S.Vijaya Kumar. They could have deposited this amount before this court so as to enable this court to release payment to the legal heirs of Vijaya Kumar. This amount was due to Vijaya Kumar at the time of his retirement which was on voluntarily retirement which became effective in 2004 itself. The writ petitioner claims realisation of the amount due to him with 18% interest. We are of the view that Air India should pay interest at least at the rate of 8.5% per annum from 12/7/2005 i.e. six months after the demise of the writ petitioner (Vijaya Kumar). Thus, we find that the total amount on account of the terminal benefits due to late S.Vijayakumar, the writ petitioner in W.P.(C) No.25894/2004, comes to Rs. 8,25,322/- plus Rs.5,27,142.77 as on 12/7/2013. The total amount comes to Rs.13,52,464.77/-.

4. In view of the compromise petition, a sum of W.P.(c)Nos.25894/2004 & another 3 Rs.6,44,813/- from out of the total amount due to Vijaya Kumar from Air India is to be released to the writ petitioner in W.P.(C) No.19368/2005 and the entire balance amount is to be released to additional petitioners 2 and 3 in W.P.(C) No. 25894/2004. We therefore dispose of both the writ petitions issuing the following

directions: i). M/s. Air India-respondents 2 to 5 in W.P.(C) No. 25894/2004 are directed to release a sum of Rs. 6,44,830/- to Sri.Rachal Gnanadeepam, the writ petitioner in W.P.(C) No.19368/2005(the first respondent in W.P.(C) No.25894/2004) immediately i.e. within a period of one month from today, failing which those respondents will become liable to release the amount with interest at the rate of 9% p.a. till the date of the payment. ii). M/s.Air India- Respondents 2 to 5 in W.P. (C) No.25894/2004 are directed to release the balance amount of Rs.7,06,634.77 (Rs.13,51,464.77 - 6,44,830/-) to the additional petitioners 2 and 3 in W.P.(C) 25894/2004 within a period of one month W.P.(c)Nos.25894/2004 & another 4 from today, failing which those respondents will become liable to pay the amount to the additional petitioners 2 and 3 with interest at the rate of 9% per annum till the date of payment. It is clarified in the light of the compromise petition that the writ petitioner in W.P.(C) NO.19368/2005 will not not have any right or interest over the properties- immovable or movable left behind by late Vijayakumar. The petitioner in W.P. 19368/2005 is directed to do the needful for implementing the assurances she has given in paragraphs 2 and 3 of the compromise petition. The writ petitions are disposed of as above. The parties will suffer their respective costs. Sd/- PIUS C.KURIAKOSE, JUDGE Sd/- P.D.RAJAN JUDGE. dpk /True copy/ P.A to Judge. W.P.(c)Nos.25894/2004 & another 5