

Gopalan and Others Vs. the Additional Chief Secretary (Finance) Secretariat and Others

Gopalan and Others Vs. the Additional Chief Secretary (Finance) Secretariat and Others

SooperKanoon Citation : sooperkanoon.com/947482

Court : Kerala

Decided On : Aug-20-2011

Reported in : 2011(3)KLT914; 2011(3)ILR(Ker)914; 2011(4)KLJ54

Judge : C.T. Ravikumar

Appeal No. : WP.(C).No.18475 of 2011 (H)

Appellant : Gopalan and Others

Respondent : The Additional Chief Secretary (Finance) Secretariat and Others

Judgement :

While working as Forest Guard one Murukesan who is the son of petitioners 1 and 2 and the brother of the third petitioner died on 9.1.2010. Subsequently, the petitioners submitted Ext.P3 representation on 18.2.2011 with the requests to disburse the retrial benefits due on account of death of the said Murukesan to petitioners 1 and 2 and to grant appointment under Dying-in-harness scheme to the third petitioner. The 4th respondent informed the first petitioner that the aforesaid requests could not be acceded to. It is in the said circumstances that this writ petition has been filed mainly with the prayers to quash Ext.P5 and to issue a writ of mandamus commanding respondents 1 to 4 to take a decision on Ext.P3 and pass appropriate orders after hearing the petitioners and the 5th respondent.

The further prayer is for issuance of a writ of mandamus commanding respondents 1 to 4 to disburse the death-cum-retirement benefits to petitioners 1 and 2 and to appoint the third petitioner under Dying-in-harness scheme in Government service.

2. There is no dispute with regard to the status of the fifth respondent as the legally wedded wife of the deceased Murukesan. The contention is that the said Murukesan died of snake bite and at that point of time the 5th respondent was carrying. Shortly after the death she got it aborted at Co-operative Hospital, Palakkad, it is contended. According to the petitioners, the 5th respondent was not inclined to participate in the obsequies of Murukesan. Evidently, as per letter No.E-50/10 dated 29.1.2010 the 5th respondent was informed to submit necessary applications and documents including Death Certificate, legal heirship certificate, for getting insurance benefits, appointment under the Compassionate Employment Scheme and also the retrial benefits. However, according to the petitioners, on account of the aforesaid actions on the part of the 5th respondent she is not entitled to get the Death-cum-retirement benefits and petitioners 1 and 2 are entitled to get the same and the third petitioner is entitled to get appointment under Dying-in-harness scheme, on account of the death of the said Murukesan.

3. I have heard the learned counsel appearing for the petitioners and also the learned Government Pleader.

4. The learned counsel appearing for the petitioners relied on Rule 67 of Part III of the Kerala Service Rules (for short 'the Rules') to contend that the petitioners are entitled to get the DCRG and such other benefits. Rule 67(i) and (ii) of the Rules are relevant for the purpose of deciding the issue involved in this writ petition. They read thus:

“67. If any employee who has completed five years of qualifying service dies while in service, a gratuity not exceeding the amount specified in Rule 68 below may be paid to the person or persons on whom the right to receive the gratuity is conferred under Section V or, if there is no such person, to the surviving members of the family as defined in Rule 71 in the manner indicated below:-

(i) If there are one or more surviving members of the family as in items (a), (b), (c) and (d) of Rule 71, it may be paid to all such members, other than any such member who is a divorced/widowed daughter in equal shares.

(ii) If there are no such surviving members of the family as at (i) above, but there are one or more surviving divorced/widowed daughters and/or one or more surviving members of the family as in items (e), (f), (g), (h) and (i) of Rule 71, it may be paid to all such members in equal shares.”

The learned counsel for the petitioners relied on Rule 67(ii) to contend that the petitioners are entitled to DCRG benefits. Per contra, the learned Government Pleader contends that what is relevant is Rule 67(i).

5. I may now, advert to the relevant provisions. Rule 67(i) would make it clear that if there are one or more surviving members of the family of the deceased as in items (a), (b), (c), and (d) of Rule 71, the DCRG benefits have to be paid to all such members other than any such member who is a divorced/widowed daughter, in equal shares. In that context, Rule 71 also assumes relevance. Rule 71 defines ‘family’. It reads thus:-

“71. “Family” for the purpose of this Section will include the following relatives of the employee:-

(a) Wife, in the case of a male employee;

(b) Husband, in the case of a female employee;

(c) Sons

(d) Unmarried/divorced (widowed daughters);

(e) Brothers below the age of 18 years and unmarried or widowed or divorced sisters;

(f) Father;

(g) Mother;

(h) Married daughter; and

(i) children of a pre-deceased son;”

Thus, the inevitable impact of survival of eligible family members, one or more, under items (a), (b), (c) and (d) of Rule 71 is the ouster of the family members in items (e) to (l) of Rule 71. Indisputably, the 5th respondent who falls under item (a) under Rule 71 is surviving. In the case of the third petitioner, she falls under item (e) of Rule 71 and in the case of the first and second petitioners they fall under items (f) and (g) of Rule 71. In view of the aforesaid indisputable position obtained in this case, being the surviving member of the deceased employee falling under item (a) of Rule 71 the 5th respondent's right to receive DCRG cannot be defeated by raising the aforesaid allegations. Eligibility to receive the amount or share of DCRG should be determined with reference to the facts as they stand on the date of death of the Government employee as is obvious from Note 1 under Rule 67(iii) of Part III of the Kerala Service Rules. Allegations that the widow was not inclined to participate in the obsequies of the deceased Government employee and that she is likely to get married are not sufficient to make her dis-entitled to receive the amount or share of DCRG. In view of the said unambiguous position obtained in this case the petitioners cannot claim for DCRG.

6. Now, I may consider the entitlement of the 3rd petitioner who is the unmarried sister of the deceased Government employee to claim appointment under the Compassionate Employment Scheme in preference to his widow, the 5th respondent. For deciding the said issue it is relevant to refer to the Compassionate Employment Scheme; G.O.(P)No.24/99/Pand ARD dated 18.11.1999 whereby para 14(a) of G.O.(P)No.12/99 Pand ARD dated 24.5.1999 was substituted as follows:-

“14.(a) Only one dependent will be given employment assistance under the scheme in the event of the death of a Government servant. Employment assistance shall be given to the widow/widower, son, daughter in the said order of priority. Son and daughter shall include adopted son and adopted daughter, respectively and will rank after son/daughter.

However, in the case of unmarried Government employee dying in harness, father/mother, unmarried sister/unmarried brother shall also be eligible for employment assistance.

No other dependent shall be eligible or given appointment under the scheme.”

A perusal of paragraph 14(a) as extracted above would undoubtedly reveal that as the deceased Government employee was a married man the unmarried sister is not eligible to employment. That apart, the eligible dependent viz., the 5th respondent who is the widow of the deceased Government employee is very much alive and eligible. Going by Exts.P2/3 she was only 28 years as on 13.3.2010. The petitioners cannot be heard to contend that she is likely to get remarried as a reason to claim appointment of the 3rd petitioner. The 5th respondent alone can be the rightful claimant for appointment under the Compassionate Employment Scheme. In view of the aforesaid position, the petitioners are not entitled to the reliefs sought for in this writ petition and the respondents have to disburse and extend such benefits arising on account of death of Murukesan, in accordance with law. The other retrial benefits payable shall also be paid in accordance with law. In this circumstances, this writ petition is liable to fail. Accordingly, it is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com