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THE HIGH COURT OF SIKKIM : GANGTOK

Regular First Appeal No.1 of 2005

In the matter of an appeal under section 30 of
the Workmen's Compensation Act, 1923

and

in the matter of

Principal Secretary,
Transport Department,
Government of Sikkim,
Gangtok

..... Appellant

versus

Smt. Narmaya Das,
M/o Late Kamal Mani Das,
R/o Ranipool,
East Sikkim

..... Respondent

For the appellant : Mr. J. B. Pradhan, Government
Advocate and Mr. Karma
Thinley, Assistant Government
Advocate.

For the respondent : Mr. S. S. Hamal, Advocate
assisted by Mr. Norden T.
Bhutia, Advocate.

***PRESENT: THE HON'BLE MR. JUSTICE N. S. SINGH, CHIEF JUSTICE (ACTING).
THE HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.***

Last date of hearing : 17th June, 2005.

DATE OF JUDGMENT : 12TH JULY, 2005.

J U D G M E N T

A. P. Subba, J.

This appeal is directed against the award/order
dated 23rd August, 2002 passed by learned Commissioner for
Workmen's Compensation, Sikkim at Gangtok in Misc. Case
no.5 of 2002 Smt. Narmaya Das vs. Secretary, SNT.

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2. The brief facts of the case as set out in the memo of appeal are that the deceased Kamal Mani Das was a member of the Sikkim State Mechanical Engineering Service holding the post of an Assistant Engineer (Mechanical) under the Transport Department (SNT Division) of the Government of Sikkim. On 20th January, 2001, while returning after completion of his official work he met with an accident at a place called Lower Martam and died. Upon his death his mother Smt. Narmaya Das, the respondent herein was paid Death-cum-Retirement Gratuity (in short DCRG) amounting to Rs.97,500/-, Leave Encashment of Rs.87,366/- and an amount of Rs.61,132/- under General Insurance Scheme (in short GIS). However, after receiving these payments the respondent filed an application before the learned Commissioner for Workmen's Compensation, Sikkim at Gangtok on 29th August, 2001 claiming payment of workmen's compensation. On the basis of the application so filed, the learned Commissioner for Workmen's Compensation granted death compensation amounting to Rs.4,19,850/-. Aggrieved by this order, the appellant-department has come up in the present appeal.

3. Since there was delay in filing the appeal, an application for condonation of delay under section 5 of the Limitation Act was filed along with the memo of appeal. Since question of law raised in the appeal was important and of far reaching effect, the condonation application was allowed and the appeal was admitted. On admission of the appeal records

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were called for from the Office of the learned Commissioner and hearing was taken up.

4. Mr. J. B. Pradhan, learned Government Advocate assisted by Mr. Karma Thinley, learned Assistant Government Advocate for the petitioner-department and Mr. S. S. Hamal assisted by Mr. N. T. Bhutia, learned counsel for the respondent were heard.

5. It was submitted by Mr. J. B. Pradhan that the deceased Kamal Mani Das was holding the post of Assistant Engineer (Mechanical) in the pay scale of Rs.1820/- to 3200/-in the Transport Department, Government of Sikkim. He was thus a gazetted officer and a member of the Sikkim State Mechanical Engineering Service. On his death, the respondent who is the mother of the deceased was paid Death-cum-Retirement Gratuity as per the Sikkim Services (Pension) Rules, 1990 applicable to the deceased. Besides, the respondent was also paid Leave Encashment and the maturity amount under General Insurance Scheme. Thus, it was the submission of Mr. Pradhan that the deceased was not a "workman" within the definition of section 2(i)(n) of the Workmen's Compensation Act, 1923 and as such, the grant of compensation by the learned Commissioner suffers from serious infirmity and deserves to be set aside. Mr. Hamal, learned counsel appearing for the respondent-claimant on the other hand very fairly conceded that the respondent-claimant had no case and he had no submission to make.



6. We have no doubt in our mind that the stand taken by the learned counsel for the respondent not to contest the appeal is not only fair but is a sound one keeping in view the ambit and scope of the related provisions of Workmen's Compensation Act governing payments of compensation.

7. It is not disputed that the deceased was holding the post of Assistant Engineer which is a gazetted post in the Sikkim State Engineering Service at the time of his death. It is also not in dispute that the respondent was paid the DCRG, Leave Encashment and the GIS after the death of the deceased.

On a perusal of the records which were called for from the office of the Commissioner, it appears that the learned Commissioner did not apply its mind to the issue in hand in proper perspective and thereby misdirected himself in law. The records go to show that after the filing of the application by the respondent no notice along with the copy of the application was issued on the appellant-department as required under Rule 26 of the Workmen's Compensation Rules, 1924 which is a mandatory provision. There was, therefore, no opportunity for the appellant-department to put in appearance and to file a written statement against the claim. The records also show that the learned Commissioner came to the finding without framing any issues and without recording any evidence of the parties. The impugned order, it appears, was passed solely on the basis of the administrative notings of the concerned



departments. The impugned order opens with the sentence —
"On 23.02.2002 one note was received by this Office from the Under Secretary (Adm), S.N.T., in connection with the payment of death compensation in respect of the deceased Govt. servant late Kamal Mani Das, Assistant mechanical engineer, who was working under the Transport Department (SNT) with the request to this department for taking necessary action in the matter." The relevant sentences that occur thereafter are as follows:-

"This Office after having examined the matter carefully had issued a letter to SNT whether they have any objection in awarding the death compensation in favour of the dependants of the deceased.

In reply to the said letter, the SNT Department had sent a letter to this Office bearing No.182/T dated 8.7.2002 stating that the Transport Department (SNT) has no objection in awarding the death compensation in favour of the legal heirs of the deceased.

Since the Transport Department had no objection in awarding the death compensation to the legal heirs of the deceased Kamal Mani Das, this department had calculated the death compensation which came to Rs.4,19,840/- (Rupees four lakh nineteen thousand eight hundred forth) only, as per the norms fixed in the Workmen's Compensation Act, 1923."

Accordingly, the legal heirs of the deceased were held to be entitled to death compensation and the appellant-department was held to be liable to make the payment of the compensation.

8. It would thus appear from the above that the learned Commissioner failed to follow the established procedure



prescribed under the law. There was non-compliance of the mandatory provision of the relevant Rules. The short cut method adopted by the learned Commissioner without any doubt, resulted in violation of the well-recognised principles of natural justice. It appears that the learned Commissioner was completely oblivious of the fact that he was discharging a quasi-judicial function and in so doing such quasi-judicial body is required to follow the well-recognised procedure established by law so as to ensure fairness in the process of adjudication.

9. The same lackadaisical approach has been adopted by the learned Commissioner with regard to its finding on the question as to whether the deceased was covered by the definition of "workman". In his brief order, the learned Commissioner merely noted as follows:-

"Upon consideration, it was found that the deceased who was working as Asstt. Mechanical Engineer, met with the accident while returning home after his duty. It was found that since the nature of his duty was connected with maintenance of motor vehicles, the same is covered under the definition of "Workman" as defined under Section 2(i)(n)(ia)(c) of the Workmen's Compensation Act, 1923 which provides that "Workman" means "any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is - a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a Motor Vehicle". Further, it is also established that the nature of his duty is covered by Schedule II Clause (i) appended to the said Act."

The definition of "workman" as quoted above goes to show that the learned Commissioner missed out the distinct



amendment brought about in the definition of "workman" by the Payment of Wages (Amendment) Act, 2000. It might be noted that prior to this amendment casual workers were excluded from the purview of the definition. It was with a view to make the provisions of the Act applicable to all the casual workers that the amendment of 2000 deleted the following brackets and words from the definition of "workman":-

"(other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business)."

Thus after the above amendment the definition of the "workman" stood as follows at the relevant time:-

"(n) "workman" means any person who is -

- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989) not permanently employed in an administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or
- (ia) (a) a master, seaman or other member of the crew of a ship,
(b) a captain or other member of the crew of an aircraft,
(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
(d) a person recruited for work abroad by a company,
and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;
- (ii) employed in any such capacity as is specified in Schedule II,



whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them."

10. The above definition of the expression "workman" shows that the Act, at present, applies to railway servants and persons employed in certain hazardous employment specified in Schedule II of the Act. The Act thus aims to protect the relatively weaker section of society, the object being to do social justice by providing for speedy and cheap forum for the workman to claim compensation under the Act. It would, therefore, be against the principle aim and object of the Act to unduly stretch the meaning of the word "workman" so as to cover a post of gazetted rank in the cadre of the Sikkim Mechanical Engineering Service. It is plain that for a person to be considered a "workman" it is not enough to establish the relationship of an employer and employee. In order that a person may be considered to be "workman" within the meaning of the Act it must further be shown that the person has been employed in such capacity as is mentioned in any of the items included in Schedule II. In the case at hand there is no evidence on record to establish that the deceased was employed in any capacity as mentioned in Schedule II. It appears from the relevant portion of the impugned order

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quoted above that the learned Commissioner was carried away by the word 'mechanical' in bracket in the designation of the deceased. It goes to show that the well-settled position that the designation of an employee is not decisive in the matter of ascertaining whether an individual falls within the definition of "workman" was not present to the mind of the learned Commissioner. It is well-settled that what determines the status of an employee is a consideration of the nature and duties of the functions assigned to an employee and not the designation.

11. It might be useful to notice the guidelines laid down by the Hon'ble Supreme Court in this regard in few of the important cases. In *Management of M/s. May and Baker (India) Ltd. vs. Their Workmen* reported in AIR 1967 SC 678, Wanchoo, J. (as he then was) dealing with the question of interpretation of the word "workman" occurring in section 2(s) of the Industrial Disputes Act, 1947 observed as follows:-

"(9) A "workman" was then defined as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary before a person could be called a workman. This definition came for consideration before industrial tribunals and it was consistently held that the designation of the employee was not of great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical then the person must be held to be a workman. On the other hand if manual or clerical work is only a small part of the duties of the person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workman. It has, therefore, to be seen in each case from the nature of the duties

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whether a person employed is a workman or not, under the definition of that word as it existed before the amendment of 1956."

The above decision was quoted with approval by the Hon'ble Supreme Court in the later decision rendered in Miss A. Sundarambal vs. Government of Goa, Daman & Diu and others reported in AIR 1988 SC 1700. The question that came up for consideration was whether a teacher employed in a school falls within the definition of the expression "workman" under section 2(s) of the Industrial Disputes Act, 1947. Referring to and relying on the above decision of May and Baker's case (supra) it was held that a teacher employed in a school does not fall within the definition of expression "workman" though the school is an industry in view of the definition of "workman" as it then stood. The following observation of the Hon'ble Supreme Court occurring in paragraph 8 of the judgment is apposite.

"8. In order to be a workman, a person should be one who satisfies the following conditions: (i) he should be a person employed in an industry for hire or reward; (ii) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and (iii) he should not be a person falling under any of the four clauses, i.e., (i) to (iv) mentioned in the definition of 'workman' in section 2(s) of the Act. The definition also provides that a workman employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, an industrial dispute, or whose dismissal, discharge or retrenchment has led to that dispute."

12. The Hon'ble Supreme Court in the latest decision rendered in Management of M/s. Sonapat Cooperative Sugar

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Mills Ltd. vs. Ajit Singh reported in AISLJ VI-2005(2) page 188 has laid down the same criteria and observed that a person would come within the purview of the definition "workman" if he (i) is employed in any industry, and (ii) performs any manual, unskilled, skilled, technical, operational, clerical or supervisory work. As to the method of determining whether an employee would fall within the expression "workman" it was laid down in paragraph 17 of judgment as follows:-

"17. It is now trite that the issue as to whether an employee answers the description of a workman or not has to be determined on the basis of a conclusive evidence. The said question thus, would require full consideration of all aspects of the matter."

13. It is to be noted that the learned Commissioner in the present case while coming to the conclusion that the deceased was covered by the definition "workman" totally ignored the fact that the deceased was not only holding a gazetted post in the Government of Sikkim but was also a member of the well-established service called Sikkim State Mechanical Engineering Service and holding the cadre post of Asstt. Engineer in the pay scale of Rs.1820/- to 3200/-. It is obvious that the terms and conditions of the services of the deceased were governed by the relevant Service rules framed by the State Government under the power conferred under Article 309 of the Constitution of India. It was on account of the applicability of such rules framed by the Government that the legal heir of the deceased was paid DCRG, Leave



Encashment, GIS etc. It is obvious that the learned Commissioner failed to take all these aspects of the matter and other relevant considerations into account at the time of passing the impugned award. As can be seen from the relevant extract of the impugned order, the learned Commissioner entirely acted on the basis of the administrative notings of the concerned departments without following the procedure contained in part V of the Workmen's Compensation Rules, 1924. We have already noted above that the record of the proceedings go to show that the learned Commissioner was unaware of the fact that he was discharging a quasi-judicial function and in the discharge of such duties the Commissioner is bound to follow the procedure established by law. Indeed we fail to find words to adequately deprecate the perfunctory manner in which the whole proceedings were conducted by the learned Commissioner.

14. For the reasons stated above, we are of the view that the provisions of the Workmen's Compensation Act, 1923 are inapplicable in the present case and as such, the impugned award is not legally sustainable and cannot be given effect to. We are, therefore, left with no option but to set aside the impugned award.


15. Accordingly, the impugned award is set aside. The payment duly deposited by the appellant-department vide cheque no.458009 voucher no.17-18/F dated 22nd August,




2001 in terms of the impugned order/award shall be refunded to the appellant-department.

16. There shall be no order as to costs.

17. The records of the concerned department may be returned forthwith along with a copy of this judgment. A copy of the judgment may also be sent to the learned Commissioner for Workmen's Compensation, Sikkim at Gangtok.


(A. P. Subba)
Judge
12-07-2005

18. I agree.


(N.S. Singh)
Chief Justice (Acting)
12-07-2005