

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 167 of 2021

Date of Decision: 31.03.2023

Smti. Regina Lamare

Vs.

The Khasi Hills Autonomous
District Council & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner : Mr. H.L. Shangreiso, Sr. Adv. with
Ms. P. Biswakarma, Adv.

For the Respondent(s) : Mr. V.G.K. Kynta, Sr. Adv. with
Mr. H. Wanshong, Adv. (For R 1 & 2)
Mr. S.R. Lyngdoh, Adv. (For R 3)

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER

1. The writ petitioner is before this Court praying for amongst others, the quashing of an impugned office order dated 20.08.2018, whereby the debt-cum-retirement gratuity and leave salary amounting to

Rs.9,30,033/- (Rupees Nine Lakhs Thirty Thousand Thirty-Three only) of her deceased husband, has been released by the respondents No. 1 and 2 (KHADC) in favour of the private respondent No. 3, during the pendency of Succession Misc. Case No. 42/2017 before the Court of the Additional Judge, District Council Court, Shillong.

2. The brief facts of the case are that the petitioner was married to one (L) Protasius M. Sylliang, an employee under the respondents No. 1 and 2, who expired on 18.09.2017. Thereafter, the writ petitioner had filed Succession Misc. Case No. 42/2017, before the District Council Court arraying the private respondent No. 3, as opposite party No. 1, who on receipt of notice filed show cause and contested the case. It appears that sometime in March, 2021, the petitioner came to learn that the respondent No. 3, had already received the entitlements of the deceased employee in 2018 itself. As the petitioner could not obtain the details of the payment made to the respondent No. 3, a Misc. Case was filed on 22.03.2021 before the learned Court below, praying that the process of release of payments be stayed, which was allowed by order dated 22.03.2021, wherein the Drawing and Disbursing Officer of the respondents No. 1 and 2, was restrained from releasing the terminal benefits during the pendency of the Succession case and also to furnish a

detailed list of the debts and securities of the deceased employee before the Court.

3. The respondent No. 3 then on 30.03.2021, brought on record documents, showing the change of nomination in her favour in the service record of her late husband of the petitioner. Thereafter, on April, 2021 the respondent No. 3, filed an application annexing the impugned office order dated 20.08.2018 before the Court below, wherein it was disclosed that an amount of Rs.9,30,033/- (Rupees Nine Lakhs Thirty Thousand Thirty-Three only) and family pension of Rs.25,890/- (Rupees Twenty Five Thousand Eight Hundred Ninety only) per month had been released in favour of the respondent No. 3. In the said petition, the respondent No. 3, had also prayed that the Succession case be closed as she had already received the dues of (L) Protasius M. Sylliang. The terminal benefits and family pension which had been received by the respondent No. 3, as per the statements made in the writ petition, were then known for the first time to the petitioner, as also the fact that, these amounts had been received behind the back of the petitioner, while the Succession case was still pending. The petitioner therefore, being aggrieved with the action of the respondents No. 1 and 2, in releasing the retirement dues and benefits of her late husband, Protasius M. Sylliang, during the pendency of the Succession case; and the conduct of the respondent No. 3, in suppressing

the fact that the dues had been received since 2018, is before this Court by way of this writ petition.

4. Mr. H.L. Shangreiso, learned Senior counsel assisted by Ms. P. Biswakarma, learned counsel for the petitioner, in his submissions has highlighted the manner in which the respondent No. 3, had suppressed the material facts, as to the factum of receipt of the terminal benefits and family pension, while at the same time still contesting the Succession case. The release of the amounts by the respondents No. 1 and 2, he submits were without the orders of the Court, and has caused grave mis-carriage of justice and deprivation of the just entitlements of the writ petitioner. The learned Senior counsel submits that the respondent No. 3, had in a calculated manner, suppressed the fact that she had received the debts and securities including the family pension in the year 2018 itself, until the passing of the order dated 22.03.2021, by the Court below on the prayer of the writ petitioner, which speaks volumes about the conduct and dishonesty of the respondent No. 3. He then prays that appropriate orders be passed, to quash and set aside the impugned office order dated 20.08.2018, releasing the amount in favour of the respondent No. 3, and also for recovery of the amount already drawn. In support of his submissions, the learned Senior counsel has relied upon the judgment in the case of *Union Territory, Chandigarh & Ors. vs. Gurcharan Singh &*

Anr. reported in (2014) 13 SCC 598, with regard to recovery and also the liability of the Disbursing Authority. On the point of a party approaching the Court with unclean hands, the case of *K.D. Sharma vs. Steel Authority of India Limited & Ors.* reported in (2008) 12 SCC 481 has been placed.

5. Mr. V.G.K. Kynta, learned Senior counsel assisted by Mr. H. Wanshong, learned counsel for the respondents No. 1 and 2, apart from filing a short affidavit, has produced as directed the official records relating to the release of the amounts to the respondent No. 3. The learned Senior counsel has drawn the attention of the Court to the fact that (L) Protasius M. Sylliang had on 12.05.2015, nominated the respondent No. 3 for his terminal benefits and gratuity in his service record. The attention of the Court has also been drawn to letters issued by the office of the Meghalaya State Commission for Women, wherein the Commission through its Member Secretary and Chairperson, have been advocating the case of the respondent No. 3, to ensure that the amounts are released in her favour, as she is the nominee for such debts and securities. He submits that in the face of these proceedings and the fact that the nomination was in the name of the respondent No. 3, the said amounts was released in her favour. He however, further submits that release of monies due to the deceased employee as well as the family pension, has since been

suspended due to the Court proceedings, especially the order of the Additional Judge, District Council Court dated 22.03.2021.

6. The learned Senior counsel in all fairness also submits, that as the competing claims of the writ petitioner and the respondent are yet to be fully adjudicated, and even though the maintainability of the instant writ petition is questionable, the ends of justice would be served if the matter is directed to be taken up again by the Additional Judge, District Council Court, where the Succession case is pending for final disposal in accordance with law.

7. Mr. S.R. Lyngdoh, learned counsel for the respondent No. 3 has refuted the submissions made by the petitioner and submits that, the respondent No. 3 has been validly nominated by (L) Protasius M. Sylliang, and as such, is entitled to all the terminal benefits and family pension of the deceased employee. It has also been submitted that, the petitioner herself has also indulged in concealment, inasmuch as, she had fraudulently behind the back of respondent No. 3, changed the name of the nominee in the Life Insurance Policy of (L) Protasius M. Sylliang, and had withdrawn an amount of Rs.1,25,000/- (Rupees One Lakh and Twenty-Five Thousand only). He lastly submits that, the respondent No. 3, being a housewife is totally dependent on the pension of (L) Protasius M. Sylliang, and due to the freezing of her savings account, by the bank

authorities, which was done on the request of the respondents No. 1 and 2, she is suffering immense hardship.

8. I have heard learned counsels for the parties. The uncontroverted facts as can be understood are that, there are rival claims for the terminal benefits and family pension of (L) Protasius M. Sylliang, by the petitioner and the respondent No. 3, based on their respective reasons and materials, that have been urged and produced before this Court. However, this Court notes with concern the manner in which the pending Succession Case, has been sought to be disabled by the respondent No. 3, inasmuch as, though at the institution of the succession case, the respondents No. 1 and 2, were yet to release the terminal benefits, the respondent No. 3 exerted pressure for settlement of the dues in her favour, in view of the fact that, she was the nominee without divulging this fact before the Court below. It is also noted from the records produced, that apart from petitioning the respondents No. 1 and 2, to release the dues in her favour, recourse had also been taken by her to exert further pressure by approaching the Meghalaya State Commission for Women, who in turn requested the respondents No. 1 and 2 to settle the dues in her favour.

9. It was only after the petitioner came to learn from other quarters that, certain payments had been made to respondent No. 3 by the respondents No. 1 and 2, and had accordingly filed a Misc. Case before

the Court below, for staying the release of the debts and securities of (L) Protasius M. Sylliang, which was allowed vide order dated 22.03.2021, that the respondent No. 3 came clean with the facts that, she was the nominee and had also received Rs.9,30,033/- (Rupees Nine Lakhs Thirty Thousand Thirty-Three only) and family pension of Rs.25,890/- (Rupees Twenty-Five Thousand Eight Hundred Ninety only). Though the further release of the dues has since been suspended by the respondents No. 1 and 2, and the savings account of the respondent No. 3 frozen, the issue as to legal entitlement is still to be decided by the competent Court, which is seized with the matter, but has kept the same in abeyance by order dated 17.11.2021.

10. The writ petitioner has made prayers for quashing the impugned office order dated 20.08.2018, issued by the respondent No. 2, releasing the gratuity amount etc., to respondent No. 3, to direct the said respondents to recover the amount already drawn by the respondent No. 3, and also for directions to respondent No. 3 to return/refund the amounts. In this context, it is to be noted that, in the instant proceeding under Article 226 of the Constitution, this Court is not sitting in appeal or revision, and cannot exercise its powers to grant the reliefs as prayed. However, this Court also cannot close its eyes to the grievances that have been brought

before it by the writ petitioner, who appears to have come before this Court by way of this writ petition, as a last resort.

11. In consideration thereof, it is ordered as follows.

(i) the Succession Misc. Case No. 42/2017, pending before the Court of the Additional Judge, District Council Court, Shillong shall be resumed for disposal in accordance with law.

(ii) all the facts and materials including the conduct of the respondent No. 3, shall be taken into consideration, while deciding the rival claims of the petitioner and the respondent No. 3.

(iii) necessary orders after affording adequate opportunity to the parties herein to adduce evidence, shall then be passed including orders for recovery or otherwise, if it is deemed that the amounts so released were done so irregularly.

(iv) it shall be open to the Court of the Additional Judge, District Council Court, Shillong to also make attempts for conciliation by way of mediation or any other manner of out of Court settlement.

12. As ordered above, this writ petition accordingly stands closed and disposed of.

13. Records to be returned back to Mr. V.G.K. Kynta, learned Special Counsel for KHADC.

14. Parties put to notice to appear before the Court of the learned Additional Judge, District Council Court, Shillong on 2nd May, 2023 at 10:30 AM.

Judge

Meghalaya
31.03.2023
"D.Thabab-PS"

