

GAHC010015022016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2770/2016

ANIL SINGH and ANR

2: SRI SUNIL SINGH

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
POWER, DISPUR, GHY.-781006.

2:THE A.P.D.C.L.
BIJULEE BHAWAN
PALTANBAZAR
GHY.-781001.

3:THE CHIEF GEN. MANAGERFandA
APDCL
BIJULEE BHAWAN
PALTANBAZAR
GHY.-781001.

4:THE DY. GEN. MANAGER FandA
BUDGET
APDCL
BIJULEE BHAWAN
PALTANBAZAR

GHY.-781001.

5:SMT. SANDHYA SINHA

Advocate for the Petitioner : MR.I KALITA

Advocate for the Respondent : MR.B D GOSWAMI R-5

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 26-08-2022

Heard Mr. N.J. Khataniar, learned counsel for the petitioners; Ms. M.D. Bora, learned Junior Government Advocate, Assam for the respondent no. 1; Mr. N. Deka, learned Standing Counsel, Assam Power Distribution Company Limited [APDCL] for the respondent nos. 2, 3 & 4; and Mr. B.D. Goswami, learned counsel for the respondent no. 5.

2. The issue involved in this writ petition filed under Article 226 of the Constitution of India is distribution of gratuity amount. After hearing the learned counsel for the parties, it has emerged that the issue involved is distribution of gratuity amount of one Late Kairang Singh, an employee in the respondent Assam Power Distribution Company Limited [APDCL], who died intestate. It is not in dispute that the respondent no. 5 is the first wife of Late Kairang Singh and two daughters viz. Smti Dipima Sinha and Smti Anima Sinha were born out of the said wedlock. It is also not in dispute that the two petitioners are born out of a marriage, albeit void under the Hindu Marriage Act, 1955, with one Smt. Radha Rani Sinha. Kairang Singh [since deceased] retired from service on 31.10.2015 on reaching the age of superannuation. When the process of his terminal benefits like pension and other retirement benefits was underway, Kairang Singh expired on 12.12.2015.

3. It is the gratuity part of the terminal benefits of Kairang Singh [since deceased] in respect of which the two petitioners have laid their claim with the contention that they are the heirs of Late Kairang Singh.

4. It is submitted at the bar that the family pension has already been sanctioned and released in favour of the respondent no. 5 who is the first wife of Late Kairang Singh. It is also submitted at the bar that GPF amount has also released already in favour of the respondent no. 5. It is the gratuity amount belonging to Late Kairang Singh which is yet to be released.

5. It has been submitted, in unison, that the matter of gratuity of an employee under the respondent APDCL is governed by the provisions of the Payment of Gratuity Act, 1972.

6. Section 4 [1] of the Payment of Gratuity Act, 1972 has provided that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 [five] years [a] on his superannuation, or [b] on his retirement or resignation, or [c] on his death or disablement due to accident or deceased. The second proviso to Section 4 [1] has provided that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, or where any such nominee or heir is a minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution or as may be prescribed, until such minor attains majority.

7. The learned counsel for the parties have, in concord, submitted that all the children of Late deceased Kairang Singh are majors.

8. The word 'heir' is not defined in the Payment of Gratuity Act, 1972. The petitioners

have laid their claim by virtue of the provisions contained in Section 16 [3] of the Hindu Marriage Act, 1955 and Section 8, Section 9 and Section 10 r/w Section 3 [1][f] of the Hindu Succession Act, 1956. The learned counsel for the respondents have also endorsed the said submissions and submitted that though the petitioners are illegitimate sons of Late Kairang Sing, born out of a void marriage with Smti Radha Rani Sinha, they would be entitled to shares in accordance with the afore-stated provisions.

9. In view of such consensus reached by the learned counsel for the parties, this writ petition is disposed of with a direction to the respondent APDCL authorities to process and disburse the gratuity amount payable under Section 4 [1] of the Payment of Gratuity Act, 1972 in respect of the services rendered by Late Kairang Singh amongst the heirs of Late Kairang Singh by adhering to the provisions contained in Section 4 of the Payment of Gratuity Act, 1972, Section 16 of the Hindu Marriage Act, 1955 and Section 8, Section 9 and Section 10 r/w Section 3 [1][f] of the Hindu Succession Act, 1956, as per their respective shares. The entire exercise shall be carried out within a period of 2 [two] months from the date of submission of a certified copy of this order by the petitioners at the office of the respondent no. 3.

10. This order disposes of this writ petition.

JUDGE

Comparing Assistant