

The Administrator General vs The General Manager, E.I. Railway on 1 August, 1951

Equivalent citations: AIR1951ALL815

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Y. Bhargava, J.

1. This is an application by the Administrator General of Uttar Pradesh for issue of a writ of mandamus directing the opposite party, the General Manager, East Indian Railway, Calcutta to pay the sum of Rs. 14,240-6-0 to the applicant. The applicant in his affidavit alleges that this sum is included amongst the assets of T. Murphy as being Provident Fund and Gratuity payable to him. The Administrator General is administering the estate of deceased T. Murphy. He called upon the Railway Administration to pay the amount to him, but the Railway Administration have refused. In the affidavit itself the applicant has admitted that T. Murphy at the time of his death left one minor son K. F. J. Murphy who is now under the guardianship of one Mr. Walsh. The applicant claims this amount as part of the estate of T. Murphy. Obviously under Sub-section (a) of Section 8, Provident Funds Act, 1925, the Provident Fund on the death of T. Murphy vested in his dependant, viz. K. F. J. Murphy. The facts also indicate that T. Murphy left one other son and daughter. It is not clear from the facts alleged in the affidavit whether they would also fall in the class of dependants of T. Murphy. Their existence is, however, immaterial to the present petition for writ, because the right of the Administrator General to obtain the writ remains the same whether the Funds vest in only one dependant or more. The Administrator General has claimed that he has a right to receive this money, because he obtained Letters of Administration in respect of it from this very Court. Under Section 4(1)(a), Provident Funds Act, 1925, the amount in the Provident Fund which vests in a dependant under the provisions of Section 3(2) is payable only to the dependant or to such persons who may be authorised by law to receive payment on his behalf. In such a case Letters of Administration obtained, by any person other than the dependant are of no effect. Letters of Administration can govern the payment of the Provident Fund money only when the Provident Fund does not vest in a dependant under Section 3(2), Provident Funds Act and is not payable to a dependant or a person authorised by law to receive payment under Section 4(1)(a) of the Act. Even a nomination made, while the dependant is alive, would be against the provisions of Sub-section (2) of Section 3 and would be invalid.

2. The learned counsel for the applicant referred us to the case of *Aimai v. Awabai*, A. I. R. (11) 1924 Sind 57 in which it was held by the Court of the Judicial Commissioner, Sind, that the Provident

Fund left by a subscriber on his death forms part of his estate. That case was decided before the Provident Funds Act, 1925, came into force, and it cannot now be applied when there is a clear provision in the Act that the Provident Fund standing to the credit of a subscriber shall on his death vest in the dependant. This mandatory provision makes it clear that, while a dependant of a subscriber to a Provident Fund is alive, there can be no nomination or succession to the Fund. It passes to the dependant by vesting in the dependant and not by succession. It can only form part of the estate of the subscriber if the subscriber retires from service and the amount becomes payable to him before his death. In case he dies before the amount becomes payable to him, it passes not by succession but by vesting in the dependant. In the present case, therefore, the Provident Fund obviously vested in the minor dependant, if not in his brother and sister also. The Administrator-General is administering the estate of T. Murphy deceased and since the Provident Fund does not form part of that estate, the Administrator-General is not entitled to receive it. In the affidavit it has been alleged on behalf of the Administrator-General that Mr. Walsh, the guardian of the minor dependant, has given a letter authorising the Administrator-General to receive the money from the East Indian Railway. Such a letter would not constitute the Administrator General into a person "authorised by law" to receive the payment on behalf of the minor, as required by Clause (a), Sub-section (1) of Section 4, Provident Funds Act. The right person to put in a claim on behalf of the minor would be Mr. Walsh himself who is the guardian, and this power of his to receive the money on behalf of the minor is not affected by the letter just mentioned.

3. Obviously, therefore, there is no force at all in the contention of the Administrator-General that the Railway Administration is under any statutory duty to hand over the money to him. If under the letters of administration obtained by the Administrator-General he thinks he is entitled to receive the money, he can seek his remedy in the regular Court.

4. This application is dismissed.