SPC Guiding Case No. 69: Wang Mingde v. the Human Resources and Social Security Bureau of Leshan City (Work Injury Determination)

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SPC Guiding Case No. 69

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on September 19, 2016

Keywords

Administrative litigation; work-related injury determination; procedural administrative act; acceptance

Holding

Where a party considers that a procedural administrative act taken by an administrative organ infringes its lawful rights and interests such as personal rights and property rights, has an obvious actual impact on its rights and obligations, and cannot obtain relief by bringing an action against the relevant substantive administrative act, and therefore brings an administrative action against the procedural administrative act, the people's court shall accept the case in accordance with the law.

Basic Facts

The plaintiff Wang Mingde was the father of Wang Leibing. Wang Leibing was an employee of the Emeishan Branch of Sichuan Jiabao Asset Management Group Co., Ltd. On March 18, 2013, Wang Leibing died in a traffic accident. Because the cause of the overturning of the motorcycle driven by Wang Leibing could not be ascertained, the Traffic Police Brigade of the Emeishan Municipal Public Security Bureau of Sichuan Province, on April 1 of the same year, in accordance with Article 50 of the Provisions on Procedures for Handling Road Traffic Accidents, issued Road Traffic Accident Certificate No. Le Gong Jiao Ren Ding [2013] No. 00035. The Road Traffic Accident Certificate recorded: on March 18, 2013, Wang Leibing drove an unlicensed "Kadiwang" two-wheeled motorcycle from the large roundabout toward the small roundabout in Emeishan City. At around 1:20 a.m., when the vehicle reached the 29.3 km point of Provincial Highway S306, it entered the right side of the road, scraped against the edge of the isolation belt, overturned within the isolation belt, causing damage to the vehicle and a traffic accident in which Wang Leibing died on the spot.

On April 10, 2013, the third party, the Emeishan Branch of Sichuan Jiabao Asset Management Group Co., Ltd., applied to the defendant, the Human Resources and Social Security Bureau of Leshan City, for work-related injury determination regarding the death of its employee Wang Leibing in a traffic accident, and simultaneously submitted the Road Traffic Accident Certificate made by the Traffic Police Brigade of the Emeishan Municipal Public Security Bureau and other evidence. The defendant, on the ground that the traffic administrative department of the public security organ had not yet made a traffic accident determination for the accident in question, issued on the same day Work-Related Injury Determination Time Limit Suspension Notice No. Le Ren She Gong Shi [2013] No. 05 (Emeishan City) (hereinafter the "Suspension Notice"), and served it on the plaintiff and the third party.

On June 24, 2013, the plaintiff submitted to the defendant an "Application for Resumption of Work-Related Injury Determination" by domestic express mail, requesting the defendant to resume the work-related injury determination for Wang Leibing. Because the defendant did not resume the work-related injury determination procedure for Wang Leibing, the plaintiff then brought an administrative lawsuit in court on July 30 of the

same year, requesting a judgment to revoke the Suspension Notice issued by the defendant.

Judgment

On September 25, 2013, the Shizhong District People's Court of Leshan City, Sichuan Province, rendered Judgment No. (2013) Le Zhong Xing Chu Zi No. 36, revoking the Suspension Notice No. Le Ren She Gong Shi [2013] No. 05 issued by the defendant, the Human Resources and Social Security Bureau of Leshan City, on April 10, 2013. After the first-instance judgment was pronounced, the Human Resources and Social Security Bureau of Leshan City appealed. During the second-instance proceedings before the Leshan Intermediate People's Court, the Human Resources and Social Security Bureau of Leshan City submitted an application to withdraw the appeal. Upon review, the Leshan Intermediate People's Court held that the appellant's voluntary application to withdraw the appeal was an expression of its true intent and conformed to the law, and therefore ruled to permit the Human Resources and Social Security Bureau of Leshan City to withdraw the appeal. The first-instance judgment has become legally effective.

Reasoning

The court in its effective judgment held that there were two focal issues in this case: first, whether the Suspension Notice was an administrative act subject to litigation; and second, whether the Suspension Notice should be revoked.

I. On the issue of whether the Suspension Notice was an administrative act subject to litigation

The court held that the defendant's issuance of the Suspension Notice was a procedural administrative act in the work-related injury determination procedure. If the act did not involve a final issue and had no substantive impact on the counterparty's rights and obligations, it was an immature administrative act and was not subject to litigation; where the counterparty brought an administrative action, it did not fall within the scope of cases accepted by the people's court. However, if the procedural administrative act was final in nature, had a substantive impact on the counterparty's rights and obligations, and could not be remedied by bringing an action against the relevant substantive administrative act, it was an administrative act subject to litigation; where the counterparty brought an administrative action, it fell within the scope of administrative litigation cases accepted by the people's court.

Although Article 73 of the Road Traffic Safety Law of the People's Republic of China provides: "The traffic administrative department of the public security organ shall, based on the on-site investigation, inspection, and investigation of the traffic accident and the relevant test and appraisal conclusions, promptly prepare a traffic accident determination, which shall serve as evidence for handling the traffic accident. The traffic accident determination shall record the basic facts, causes, and the parties' liability of the traffic accident, and shall be served on the parties." However, in real road traffic accidents, there are also situations where the cause of the road traffic accident truly cannot be ascertained and the traffic administrative department of the public security organ cannot make a traffic accident determination. In this regard, Article 50 of the Provisions on Procedures for Handling Road Traffic Accidents provides: "Where the cause of a road traffic accident cannot be ascertained, the traffic administrative department of the public security organ shall issue a road traffic accident certificate, recording the time and place of the road traffic accident, the situation of the parties, and the facts obtained from investigation, and serve it on the parties respectively." In this case, the Traffic Police Brigade of the Emeishan Municipal Public Security Bureau, regarding Wang Leibing's death in a traffic accident, could only make a Road Traffic Accident Certificate in accordance with the law based on the investigated circumstances of the accident, and could not make a Traffic Accident Determination. Therefore, the Road Traffic Accident Certificate in this case was already the conclusion made by the traffic administrative department of the public security organ on the accident in accordance with the Provisions on Procedures for Handling Road Traffic Accidents, that is, the "conclusion of a judicial organ or the relevant administrative department" required for a work-related injury determination decision under Article 20(3) of the Regulations on Work-Related Injury Insurance. Unless new facts or statutory reasons appeared, the traffic

administrative department of the public security organ would not make any other conclusion on the traffic accident involved in this case. In this case, the defendant, even though the third party had already submitted the relevant Road Traffic Accident Certificate when applying for work-related injury determination, still issued the Suspension Notice, and up to the date of the plaintiff's lawsuit, the defendant still refused to resume the procedure for determining whether Wang Leibing's death was a work-related injury, on the ground that the work-related injury determination was in suspension. It can thus be seen that although the defendant's issuance of the Suspension Notice was a procedural act in the work-related injury determination, the act would cause the plaintiff's lawful rights and interests to be unable to obtain lawful relief for a long time, or even permanently, directly affecting the plaintiff's lawful rights and interests and having a substantive impact on its rights and obligations, and the plaintiff could not obtain relief by bringing an action against the relevant substantive administrative act. Therefore, the defendant's issuance of the Suspension Notice was an administrative act subject to litigation, and the people's court should accept it in accordance with the law.

II. On the issue of whether the Suspension Notice should be revoked

The court held that Article 20(3) of the Regulations on Work-Related Injury Insurance provides: "Where a work-related injury determination decision needs to be based on the conclusion of a judicial organ or the relevant administrative department, the time limit for making the work-related injury determination shall be suspended during the period before the judicial organ or the relevant administrative department has made its conclusion." As described above, the third party had already submitted the Road Traffic Accident Certificate when applying to the defendant for work-related injury determination regarding Wang Leibing's death. In other words, when the third party applied for work-related injury determination, there did not exist the circumstance provided in Article 20(3) of the Regulations on Work-Related Injury Insurance under which a suspension decision could lawfully be made. Therefore, the defendant's issuance of the Suspension Notice based on Article 20 of the Regulations on Work-Related Injury Insurance constituted erroneous application of laws and regulations and should be revoked. In addition, it should be pointed out that after the judgment revoking the Suspension Notice issued by the defendant took effect, the defendant's procedure for determining work-related injury of the employee involved in the case should be resumed.

(Judges of the effective judgment: Huang Ying, Li Ju, Peng Dong)

Relevant Legal Provisions

Articles 12 and 13 of the Administrative Litigation Law of the People's Republic of China

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