(2022) 09 JH CK 0028

In the Jharkhand High Court

Case No : Letters Patent Appellate No. 704, 756 Of 2019

Central Bank Of India And Others APPELLANT

Vs

Marni Devi And Others RESPONDENT

Date of Decision : 14-09-2022

Acts Referred:
Constitution Of India, 1950 — Article 14, 16

Citation : (2022) 09 JH CK 0028

Hon'ble Judges : Dr. Ravi Ranjan, CJ;Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : P.A.S.Pati, Indrajit Sinha, P.A.S.Pati

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J

1. Both these appeals were directed to be heard side by side vide order dated 17.02.2020 on the basis of the submission made on behalf of Respondent No.1 that another intra-court appeal being L.P.A. No.704 of 2019 has been preferred against the impugned order by the respondent-Bank. Accordingly, both the appeals have been heard together and are being disposed of by this common order.

2. Both these intra-court appeals, preferred under Clause 10 of the Letters Patent, are directed against the order/judgment dated 06.09.2019 passed by learned Single Judge of this Court in writ petitions being W.P.(S) No. 1663 of 2013 whereby and whereunder the impugned orders dated 01.02.2011 and 31.08.2015 have been quashed with a direction upon the respondent-Bank to act in view of the provisions or scheme dated 09.04.2008 and release the ex-gratia amount in favour of the petitioner within a period of six weeks from the date of receipt/production of a copy of the order.

3. Brief facts of the case as per the pleadings made in the writ proceedings, which are required to be enumerated, read as under :-

The husband of the petitioner, who was working with the respondent Bank as Head Cashier in Satsangnagar, Deoghar Branch, died in harness on 04.12.2010. The writ petitioner applied for appointment on 04.01.2011. The writ petitioner was intimated by order dated 01.02.2011 that the scheme for appointment on compassionate ground is no more prevalent in the Bank and it has been substituted by the scheme of ex-gratia lump sum amount in lieu of appointment on compassionate grounds. The ex-gratia amount has also been refused to be paid in favour of the writ petitioner on the ground that the total monthly income of the family of the deceased employee arrived at is more than 60% of the last drawn gross salary.

The writ petitioner preferred this writ petition against the aforesaid order dated 01.02.2011. The Bank, in the meanwhile, came out with a new scheme dated 08.04.2015 whereby the sole scheme has been substituted with the new scheme containing a provision of compassionate appointment as well as the payment of ex-gratia amount.

The writ petitioner again approached the respondent Bank to provide relief in view of the new scheme but the same was negated vide communication dated 31.08.2015. Therefore, by filing an interlocutory application amendment in the relief portion of the writ petition was sought for.

The writ petitioner took the plea before the learned Single Judge that the rejection of the claim of payment of ex-gratia amount in view of the scheme dated 09.04.2008 cannot be said to be proper since the matter was pending before the respondent-Bank and, as such, the case of the writ petitioner was fit to be considered under the new scheme dated 08.04.2015,

The learned Single Judge has framed the issue as to under which scheme the case of the writ petitioner needs to be considered and accordingly, by considering Clause-5 and 6 of the new scheme which contains a cut-off date i.e., 05.08.2014 and the husband of the writ petitioner died on 04.12.2010 which is much prior to the cut-off date and, as such, came to a conclusive finding to the effect that the case of the writ petitioner falls under the old scheme. But, the learned Single Judge has recorded a finding about rejection of the claim of the writ petitioner under the old scheme is not tenable as the bank has taken part of income from the employee under the scheme by depositing the lump sum amount in the name of provident fund, gratuity, leave encashment, calculating monthly income of the family of the deceased employee to be more than 60% of the last drawn gross salary. Therefore, the learned Single Judge has found the aforesaid calculation to be incorrect by taking into consideration the fact about payment of pensionery benefit to be not a charity and as such the impugned orders dated 01.02.2011 and 31.08.2015 have been quashed with a direction upon the respondent-Bank to act in view of the provisions or scheme dated 09.04.2008 and release the ex-gratia amount in favour of the petitioner within a period of six weeks from the date of receipt/production of a copy of the order, which is the subject matter of the instant intra-court appeals.

4. The intra-court appeal being L.P.A. No.704 of 2019 has been preferred by the Bank being aggrieved with the order passed by learned Single Judge by which the orders dated 01.02.2011 and 31.08.2015 have been quashed.

While on the other hand, L.P.A. No.756 of 2019 has been preferred by the writ petitioner assailing the order passed by the learned Single Judge whereby appointment on compassionate ground has been denied.

5. Mr. P.A.S. Pati, learned counsel appearing for the appellant-Bank, has submitted that the claim of the writ petitioner for ex-gratia amount has rightly been rejected on the basis of the decision contained in scheme dated 09.04.2008 which contains a formula to consider the cases for disbursement of ex-gratia amount to be based upon the disbursement of the terminal benefit after death of the concerned employee.

According to the learned counsel, the learned Single Judge, although has come to the conclusion about applicability of the old scheme dated 09.04.2008 considering the date of death of the husband of the writ petitioner, but even then holding the writ petitioner entitled for disbursement of ex-gratia amount on the ground that the calculation of terminal benefit for taking a decision about entitlement of disbursement of ex-gratia amount, is not correct. Therefore, the learned Single Judge has committed gross error in holding the writ petitioner entitled for ex-gratia compensation even holding the scheme dated 09.04.2008 applicable in the case of the writ petitioner which contains a condition about calculation of the terminal benefit for the purpose of entitlement of the ex-gratia compensation.

6. Mr. Indrajit Sinha, learned counsel appearing for the writ petitioner-respondent in L.P.A. No.704 of 2019, has submitted that the learned Single Judge has committed no error in passing the order about entitlement of ex-gratia compensation to be paid in favour of the writ petitioner, reason being that the terminal benefit cannot be said to be the criteria for determination of ex-gratia amount since, the terminal benefit is the right of the deceased employee which cannot be calculated for the purpose of ex-gratia compensation to be paid after the death of the bread earner.

According to him, learned Single Judge, after taking into consideration this aspect of the matter, is correct in holding the writ petitioner entitled for disbursement of ex-gratia amount and, therefore, the impugned order to that effect may be not interfered with.

Mr. Indrajit Sinha, while arguing in L.P.A. No.756 of 2019 on behalf of the writ petitioner-appellant, assailing the order passed by the learned Single Judge whereby and whereunder prayer for appointment on compassionate ground has been denied, has submitted that the learned Single Judge has failed to appreciate the fact that the denial of appointment on compassionate ground in lieu of ex-gratia amount cannot be considered to be correct approach.

According to learned counsel, when the deceased employee has died, in order to provide immediate succor to the dependent of the bereaved family, appointment on compassionate ground is required to be provided but the learned Single Judge has not considered this aspect of the matter in right perspective, therefore, the impugned order suffers from an error so far as this cause of action is concerned.

7. While on the other hand, Mr. P.A.S. Pati, learned counsel appearing for the Bank, submits that the learned Single Judge is correct in not passing any direction for appointment on compassionate ground taking into consideration the applicability of the scheme dated 09.04.2008 which contains no provision to provide appointment on compassionate ground.

He further submits that so far as the appointment on compassionate ground is concerned, the same is always to be given on the basis of the scheme in vogue at the time of death of the deceased employee and, therefore, the learned Single Judge is correct in passing no direction for appointment on compassionate ground after taking into consideration the applicability of the scheme dated 09.04.2008.

8. We have heard the learned counsel for the parties, perused the documents available on record as also the finding recorded by the learned Single Judge in the impugned order.

9. This Court, after having appreciated the material available on record, has found that in the writ petition following prayers have been made :-

"(i) An appropriate writ/order/direction, directing the respondents authorities to immediately and forthwith give compassionate appointment to the petitioner or legal heirs of the petitioner against the services of her husband as the husband of the petitioner died while in service and the same prayer was not considered by respondent authority vide letter no.RO/HRD/2010-11/2016 dated 1.02.2011 (Annexure-2).

(ii) A further writ/order/direction, directing the respondents authorities to pay to the Ex-gratia lump sum amount in lieu of appointment on compassionate grounds which was applied within six month on 04.01.2011 (Annexure-1).

(iii) Inserted vide amendment petition (I.A. No.4821 of 2015).

For issuance of a writ in the nature of "Certiorari" for quashing the order dated 03.03.2012 passed by the Sri V.T. Hude, Sr. Manager (R&P/SCT), whereby and whereunder the Petitioner"s claim for the payment of Ex-gratia lump sum amount in lieu of appointment on Compassionate ground has been rejected on the sole ground that the financial condition of the family is not indigent in nature in view of Govt./IBA guidelines and as per provision of Scheme.

(iv) Inserted vide amendment petition (I.A. No.4955 of 2017)

For issuance of writ in the nature of certiorari for quashing of the order dated 01.04.2012 passed by Manager, Regional office, Ranchi, whereby and whereunder the Petitioner"s claim for the payment of Ex-gratia lump sum amount in lieu of appointment on Compassionate ground has been rejected on the sole ground that the financial condition of the family is not indigent in nature in view of Govt./IBA guidelines and as per provision of Scheme.

(v) Inserted vide amendment petition (I.A. No.4204 of 2019)

For issuance of an appropriate writ(s)/order (s) / direction (s) in the nature of "Certiorari" for quashing the order dated 31/08/2015, bearing Memo No. CO/HRD/R&P/Ex-Gratia/15-16/347, whereby and where under the claim of the petitioner for grant of appointment on compassionate ground and also the claim of the payment of Ex-gratia lump sum amount, has been arbitrarily rejected on non-est ground."

10. This Court, before scrutinizing the legality and propriety of the impugned order, deems it fit and proper to refer herein the position of law so far as the appointment on compassionate ground and the applicability of the scheme is concerned

It is not in dispute that the appointment on compassionate ground is to be considered and granted on the basis of the scheme meant for that. In this regard, reference may be made to the judgment rendered by the Hon"ble Apex Court in Canara Bank and Anr. v. M. Mahesh Kumar, (2015) 7 SCC 412, wherein the question fell for consideration was whether the scheme passed in 2005 providing for ex-gratia payment or the scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent (para-12).

The issue about applicability of the scheme has been considered by the Hon"ble Apex Court in another judgment rendered in State Bank of India & Ors. v. Jaspal Kaur, (2007) 9 SCC 571, wherein it has been laid down that the claim of compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

The Hon"ble Apex Court applying the principle laid down in State Bank of India & Ors. v. Jaspal Kaur (supra) has considered the factual aspect in Canara Bank and Anr. v. M. Mahesh Kumar (supra), wherein the fact leading to the said case was that the father of the dependent died on 10.10.1998 while he was serving as a Clerk in the bank and the dependent had applied timely for compassionate appointment as per the "Dying in Harness Scheme" dated 08.05.1993 which was in force at that time. The bank rejected the dependent"s claim on 30.06.1999 recording that there are no indigent circumstances for providing employment to the dependent. Again on 07.11.2001, the bank sought for particulars in connection with the issue of the dependent"s employment. In the light of the principles laid down in the case of State Bank of India & Ors. v. Jaspal Kaur (supra) the cause of action to be considered for compassionate appointment arose when circular no.154 of 1993 dated 08.05.1993 was in force. Thus, as per the judgment referred in State Bank of India & Ors. v. Jaspal Kaur (supra), the claim cannot be decided as per 2005 scheme providing for ex-gratia payment. The circular dated 14.02.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993.

11. The Hon”ble Apex Court, in Commissioner of Public Instructions and Others v. K. R. Vishwanath, (2005) 7 SCC 206, after taking into consideration its various judgments, reiterated that the appointment to the public service can only be made on the touchstone of Article 14 or 16 of the Constitution and compassionate appointment is an exception to general constitutional mandate in the interest of justice under peculiar circumstances.

As has been settled by the Hon”ble Apex Court in the judgments referred hereinabove that the appointment on compassionate ground cannot be claimed as a matter of right since it is exception of Articles 14 and 16 of the Constitution of India and further, the appointment on compassionate ground is to be provided on the basis of the condition stipulated in the scheme.

12. So far as the fact of the given case is concerned, the death of the husband of the writ petitioner occurred on 04.12.2010. At that time, the scheme dated 09.04.2008 was in vogue. The said fact is not in dispute. The learned Single Judge has also come to the conclusive finding about the applicability of the scheme dated 09.04.2008 in case of the writ petitioner.

13. This Court, on perusal of the scheme dated 09.04.2008, has found that there is no provision to provide appointment on compassionate ground, rather the scheme for disbursement of ex-gratia lump sum amount in lieu of appointment on compassionate ground is there.

As has been settled by Hon'ble Apex Court in Canara Bank and Anr. v. M. Mahesh Kumar (supra) that the scheme which was in vogue at the time of death of the employee concerned will be applicable so far as appointment on compassionate ground is concerned.

Since in the scheme dated 09.04.2008 there is no provision to provide appointment on compassionate ground, therefore, there is no question to provide appointment on compassionate ground in absence of provision under the scheme. Therefore, the learned Single Judge is correct in not passing any direction for appointment on compassionate ground.

14. According to our considered view, the intra-court appeal being L.P.A. No. 756 of 2019, whereby and whereunder the issue of compassionate appointment has been raised, lacks merit.

Accordingly, the aforesaid appeal, being L.P.A. No. 756 of 2019, stands dismissed.

15. So far as L.P.A. No. 704 of 2019 which is for disbursement of ex-gratia amount is concerned, admittedly, the scheme dated 09.04.2008 has been held to be applicable in the case of the writ petitioner by the learned Single Judge which

has not been disputed by either of the parties. The aforesaid scheme provides conditions to hold the dependent of the deceased employee entitled for ex-gratia amount on the basis of the following conditions :-

(3) To whom the scheme will be applicable :

(i) Employee dying in harness (other than due to injury while performing official duty)

(ii) Employee dying due to injury sustained while performing official duty within or outside office premises (excluding travel from residence to place of work and back).

(iii) Employee dying while performing official duty within or outside the office premises (excluding travel from residence to place of work and back) due to dacoity/robbery/terrorist attack.

(iv) Employee seeking premature retirement due to incapacitation before reaching the age of 55 years.

(7) Ex-gratia may be granted to the family of the employee/employee who has retired on medical ground due to incapacitation, in the manner and subject to the ceilings specified below, if the monthly income of the family from all sources is less than 60% of the last drawn salary (net of taxes) of the employee.

Calculation of monthly income

(I) Terminal Benefits

(i) Provident Fund

(ii) Gratuity

(iii) Leave Encashment

(iv) Any other amount paid under Bank"s Scheme(s)_____

Sub-Total (A) ______

(II) Liabilities

Loans taken from bank and/or other financial Institutions with the prior approval of the Bank _____

Sub-Total (B) ______

(III) Net corpus of terminal benefits (C=A-B) ____________

(IV) Investments

Deposits

NSCs

PPF

LIC policies

Others

____

Sub-Total (D) _________

(V) Details of movable property, if any, held and Monthly

Income derived therefrom

(VI) Details of immovable property, if any, held and Monthly Income therefrom

(VII) Monthly income of the family from all sources:-

(i) Monthly interest at the Bank"s maximum term Deposit rate on the net corpus of terminal benefit (C)

(ii) Monthly income from investments

(iii) Monthly income from movable and immovable property

(iv) Monthly income of dependent family members

(v) Any other income of the family ___________

Total monthly income of the family ___________

16. The Hon'ble Apex Court since has laid down about the applicability of the scheme and the entitlement to be based upon the terms and conditions stipulated therein, therefore, if any scheme has been formulated containing therein the conditions to hold the dependents of the deceased employee entitle for disbursement of the amount of lump sum compensation, there cannot be any deviation from such terms and conditions for holding the dependent of the deceased employee entitled for lump sum compensation.

However, the learned Single Judge was also of the view that the scheme dated 09.04.2008 is applicable in the facts and circumstances of the case, more particularly, taking into consideration the date of death of the employee but even then the learned Single Judge has come to a finding holding therein that such condition cannot be said to be proper wherein the terminal benefit has been considered to be a major factor for holding the dependent of the deceased employee entitled for lump sum compensation.

The question is that once the learned Single Judge has come to the conclusion about applicability of the scheme dated 09.04.2008, in the facts of the given case which contains a condition for holding the dependent of the deceased employee entitled for lump sum compensation, then where is the question to go beyond the terms and conditions stipulated in the aforesaid scheme dated 09.04.2008, which has been done by the learned Single Judge while recording the finding that the denial of the claim of lump sum compensation on the basis of disbursement of terminal benefit cannot be said to be justified when the terms and conditions of the scheme dated 09.04.2008 has never been questioned by the party aggrieved (the deceased), therefore, the same will be held to be applicable and in that view of the matter, the decision was required to be taken by the Bank for deciding the entitlement of the dependent of the deceased employee for lump sum compensation.

Therefore, the finding recorded by the learned Single Judge holding the decision of the Bank rejecting the claim of the writ petitioner on the basis of amount disbursed by way of terminal benefit to be incorrect, which, according to our considered view, is incorrect finding, being contrary to the scheme dated 09.04.2008.

As such, the order passed by the learned Single Judge to the effect of quashing the order 01.02.2011 and holding the writ petitioner entitled for ex-gratia amount giving a go-bye to the calculation of the terminal benefit is hereby quashed and set aside.

17. The order passed by the learned Single Judge so far as it relates to quashing of the order dated 31.08.2015 is concerned, the gross error has been committed in quashing the said order, reason being that the writ petitioner after rejection of her claim vide order dated 01.02.2011 which was based upon the consideration of scheme dated 09.04.2008, has again agitated the same issue after coming into effect of new scheme which has come on 08.04.2015, but the same has been rejected vide order dated 31.08.2015, which has also been quashed taking the ground of calculating it on the basis of disbursement of terminal benefit.

The learned Single Judge has failed to appreciate the fact that the claim which was rejected on 01.02.2011 was based upon the scheme dated 09.04.2008 which will only be said to be applicable in the facts of the given case, taking into consideration, the date of death of the deceased employee, which is 04.12.2010, but applying the subsequent scheme which has come on 08.04.2015, cannot be made applicable with retrospective effect and that is the reason if the decision has been taken by the Bank by rejecting the claim again vide order dated 31.08.2015, the same ought not to have been interfered with by the learned Single Judge, but having done so, the said part of the order also suffers from gross error.

18. Before parting with the judgment, this Court deems it fit and proper to consider the judgment rendered by Hon"ble Apex Court in Central Bank of India v. Nitin [2022 Live Law SC 690]. By putting reliance upon the same, Mr. Indrajit Sinha, learned counsel appearing for the Respondent No.1 in L.P.A. No.704 of 2019, has submitted that the Provident Fund cannot be said to be the part of calculation to assess the financial viability of the dependent of the bereaved family.

He further contended that in the judgment rendered by Hon"ble Apex Court in Punjab National Bank v. Ashwini Kumar Taneja [(2004) 7 SCC 265], it has been held that the Provident Fund cannot be taken into consideration in entirety, rather part of the contribution of the employer can only be taken into consideration if the reference of the same as has been made by Hon"ble Apex Court in Punjab National Bank v. Ashwini Kumar Taneja (Supra), wherein it has been referred that under the P.F. head the employee"s/employer"s contribution which suggests that the Provident Fund is only required to be considered either of the employee"s contribution or the employer"s contribution and not both. For ready reference, the paragraph-9 of the said judgment is quoted and referred hereunder :-

9. One other thing which needs to be considered is whether the retiral benefits are to be taken into consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what has been held recently in G.M. (D&PB) v. Kunti Tiwary [(2004) 7 SCC 271] . It was categorically held that the amounts have to be taken into consideration. In the instant case, there was a scheme called "Scheme for Employment of the Dependants of the Employees Who Die While in the Service of the Bank — Service on Compassionate Grounds" (in short "the Scheme") operating in Appellant 1 Bank which categorically provides as follows:

"Financial condition of the family

The dependants of an employee dying in harness may be considered for compassionate appointment provided the family is without sufficient means of livelihood, specifically keeping in view the following:

(a) Family pension.

(b) Gratuity amount received.

(c) Employee's/Employer's contribution to PF.

(d) Any compensation paid by the Bank or its Welfare Fund.

(e) Proceeds of LIC policy and other investments of the deceased employee.

(f) Income of family from other sources.

(g) Employment of other family members.

(h) Size of the family and liabilities, if any, etc. It is most respectfully submitted that the Board of Directors of the petitioner Bank had approved the abovesaid Scheme, which was based upon the guidelines circulated by Indian Banks' Association to all the public sector banks which in turn are based upon the law laid down by this Hon'ble Court in the case of Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138]. The Scheme after approval was circulated vide PDCL 6/97 read with PDCL 11/99 dated 17-4-1999."

19. It is evident from the aforesaid paragraph that the dependents of an employee died in harness may be considered for compassionate appointment provided the family is without sufficient means of livelihood, specifically keeping

in view the following:

(a) Family pension.

(b) Gratuity amount received.

(c) Employee's/Employer's contribution to PF.

(d) Any compensation paid by the Bank or its Welfare Fund.

(e) Proceeds of LIC policy and other investments of the deceased employee.

(f) Income of family from other sources.

(g) Employment of other family members.

(h) Size of the family and liabilities, if any, etc.

20. But, in the given case the appellant Central Bank has formulated a scheme on 09.04.2008 wherein for calculation of monthly income under the head “Terminal Benefit”, the Provident Fund has been inserted which means that the Provident Fund in entirety and not to be considered on the basis of the contribution either of the employer or the employees.

21. The position of law is well settled that when the Appellant Central Bank has formulated a scheme on 09.04.2008 which contains the basis of calculation of monthly income including there the Provident Fund under the Terminal Benefit, the same will have the binding effect, since under the said Scheme only the relief either of appointment on compassionate ground or ex-gratia compensation is being sought for.

22. Mr. Indrajit Sinha, learned counsel appearing for the Respondent No.1, has relied upon the judgment rendered in Central Bank of India v. Nitin (Supra), wherein also the Hon”ble Apex Court has come to the considered view that ignoring the financial criteria for compassionate appointment under the Compassionate Appointment Scheme will be an error and accordingly, it has been held that the High Court patently erred in ignoring the financial criteria for appointment under the Compassionate Appointment Scheme.

23. Therefore, according to our considered view, in the facts and circumstances of the case, the judgment rendered by Hon”ble Apex Court in Central Bank of India v. Nitin (Supra) also supports the case of the appellant Central Bank of India.

24. Accordingly, the instant appeal, being L.P.A. No. 704 of 2019, stands allowed.

In consequence thereof, the writ petition stands dismissed.

