

(2019) 09 JH CK 0020

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1663 Of 2013

Marni Devi, wife Of Late Narayan Singh

APPELLANT

Vs

General manager (HRD) And Ors

RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

Citation : (2019) 09 JH CK 0020

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Saumya Pandey, Partha S. A. Swaroop Pati

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Ms. Saumya Pandey, learned counsel for the petitioner and Mr. Partha S. A. Swaroop Pati, learned counsel appearing for the respondents.

2. The petitioner has questioned the legality and validity of order dated 01.02.2011 and 31.08.2015 whereby the prayer of the petitioner for payment of ex-gratia lump sum amount as well as prayer for compassionate appointment has been rejected.

3. Learned counsel for the petitioner submits that the husband of the petitioner was working with respondent Bank as head cashier in Central Bank, Satsang nagar, Deoghar Branch and he died in harness on 04.12.2010. The petitioner applied for appointment on 04.01.2011 with the respondent Bank. In due course of time, the petitioner was intimated by order dated 01.02.2011 that the scheme for appointment on compassionate ground has not been 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. In the impugned order, the ex-gratia amount has also been rejected 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.

4. The petitioner preferred this writ petition against that order. In the meantime, the Bank came out with a new scheme dated 08.04.2015 whereby the sole scheme has been substituted with the scheme and in the new scheme there is provision of compassionate appointment as well as the payment of ex-gratia amount. The petitioner again approached the respondent Bank to provide relief in view of the new scheme but the same was negated by communication dated 31.08.2015 contained in Annexure-7. Subsequently, this order was challenged by way of amendment in the writ petition.

5. Learned counsel for the petitioner submits that so far as the rejection of the claim of the petitioner is concerned it is beyond the scope of the scheme. She further submits that in view of the old scheme dated 09.04.2008 they have not provided the ex-gratia payment. She further submits that since the matter is still pending, the case of the petitioner is fit to be considered under the new scheme dated 08.04.2015. Thus, the only question raises before this Court as to under which scheme the case of the petitioner needs to be considered. She draws the attention of this Court to the old scheme of the year 2008 and submits that under the old scheme in view of clause 8(ii) at least the petitioner is entitled for the amount which is prescribed therein. But that amount has also not been paid to the petitioner. She further submits that pursuant to 41st report of action taken replies of the Government on the Recommendations/Observations contained in the 23rd report of the committee on "Government Policy On Appointment And Compassionate Ground. The respondents bank came with the new scheme dated 08.04.2015. She place the office memorandum dated 16.01.2013 which has been kept on record and submits that the object of this office Memorandum is granted to the appointment on compassionate appointment to a dependent family members of the Government Servant who died in harness or who is retired on medical grounds thereby leaving his family in penury and without any financial destitution and to held it get over the emergency. Pursuant to that the new scheme dated 08.04.2015 has been framed by the respondent Bank. She submits that in the new scheme there is provision for the appointment on compassionate ground in 7(c) of that memorandum dated 16.01.2013. She further submits that the case of the petitioner is fit to be allowed taking into account the new scheme as the case of the petitioner has also not decided as yet. She submits that the case of the petitioner is fit to be allowed in view of the scheme.

6. To buttresses her submissions, she referred the decision of the Hon'ble Apex Court in the case of Shashikalabai (Smt.) Vs. state of Maharashtra & Anr. Reported in (1998) 5 SCC 332. She further refers the case of Canara Bank & Anr vs M. Mahesh Kumar reported in 2015 7 SCC 412 and referred paragraph no. 18 and 19 which are quoted herein below:

"18. It is also pertinent to note that 2005 Scheme providing only for ex-gratia payment in lieu of compassionate appointment stands superseded by the

Scheme of 2014 which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant- bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.

19. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.

In view of the above paragraphs, she submits that as on date the new scheme is in force under which there is provision for compassionate appointment and in view of this the case of the petitioner is fit to be considered.

7. Per contra, learned counsel for the respondents submits that the case of the petitioner has been considered in view of the old scheme dated 09.04.2008 wherein certain formula has been prescribed to come on the conclusion and taking into account that formula the respondent Bank has come to the conclusion that at the time of death of the of the petitioner the claim has been made out but 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 claim of the petitioner has been negated. He further submits that so far as the new scheme is concerned that is not applicable in the case of the petitioner. He submits that there is a cutoff date mentioned in the clauses 5 and 6 of the said scheme. That the scheme shall come in to force with effect from 05.08.2014. The cases where death occurred on or after 05.08.2014 will only be covered under the scheme. But, the petitioner died on 04.12.2010. He also relied in the case of Canara Bank & Anr vs. M. Mahesh Kumar (supra) paragraph nos. 15, 17, 18 and 22 and submits that in that case the Hon'ble Supreme Court finally came to the conclusion considering the scope of the Scheme 'Dying in Harness Scheme 1993' then in force and the facts and circumstances of the case, the High Court rightly directed the appellant-bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. On that basis Hon'ble Supreme Court did not interfere.

8. In the present case, the case of the petitioner falls under the old scheme dated 09.04.2008. The case of the petitioner has rightly considered under the old scheme. He further submits that in the new scheme there are two criteria and on that the claim of the petitioner did not consider for compassionate appointment. On that ground, he submits that there is no illegality with regard to the impugned order passed by the respondent bank.

9. Having heard learned counsel for the parties, this Court finds that in view of the clause 5 and 6 of the new scheme there is cutoff date i.e. 05.08.2014. But, the husband of the petitioner died on 04.12.2010 which is much prior to the cutoff date. In that view of the matter the case of the petitioner falls under the old scheme. This is fortified with the Judgment of Hon'ble Apex Court rendered in the case of Canara Bank & Anr vs M. Mahesh Kumar (supra) particularly in paragraph 22 of that judgment.

10. However, this Court finds that even the rejection of the claim of the 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 and in lieu of which the management after the death of the husband of the petitioner has rejected the claim of the 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. It is well settled that the payment is no longer in the realm of charity but a statutory right provided in favour of the employee. That gratuity should be paid to the employee on his retirement or to his dependent on his death. It is significant to note that the Employees Provident Fund & Miscellaneous Provisions Act of 1952 is a beneficial piece of legislation and can amply be described as social security statute, the object of which is to ensure better future of the concerned employee on his retirement and for the benefit of the dependents in case of his earlier death. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available to the family, in this regard reference made in Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors., reported in (2000) 6 SCC 493 in paragraph nos. 13 15 & 16.

11. On perusing the representation contained in Annexure-3, this Court finds that the petitioner is an illiterate lady she has filed this representation by way of making thumb impression. Thus, the exgratia payment in view of scheme cannot be denied 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.

12. In view of the above reasons and discussions, the writ petition succeeds, the impugned orders dated 01.02.2011 and 31.08.2015 are quashed. The respondent Bank is directed 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 this order.

13. In view of the above discussions and observations, the writ petition is allowed and disposed of.