(2015) 05 AHC CK 0171

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 34945 of 2014

Nazma Khatoon APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Citation : (2015) 6 ADJ 183 : (2015) 112 ALR 265 : (2015) 4 AWC 3921 : (2015) 3 ESC 1846 : (2015) 3 UPLBEC 2044

Hon'ble Judges : Sunita Agarwal, J

Bench : Single Bench

Advocate : V.S. Tiwari, for the Appellant

Final Decision : Allowed

Judgement

Sunita Agarwal, J—Heard learned counsel for the parties. The petitioner is wife of deceased Sadaruddin Jakhmi who died in harness on 6.6.2007. He was working as Assistant Teacher (LT Grade) in-P.D. Inter College, Gaya Ghat, Ballia.

2. The dispute being raised in the present writ petition is for release of unpaid gratuity. The petitioner being wife of the deceased employee moved an application for release of Death-cum-Retirement Gratuity (D.C.R.G.). The application was rejected on the ground that the petitioner''s husband did not give any option for availing the benefit of Death-cum-Retirement Gratuity to retire at the age of 58 years (now 60 years) pursuant to the Government Orders dated 6.10.1990 and 17.2.1999. The Principal of the institution informed that there was no relevant record of filling the option form by the deceased employee.

3. To decide the controversy in hand, it would be appropriate to go through the relevant Government Orders issued from time to time. First Government order is dated 6.10.1990, which was issued in continuation of earlier Government Orders dated 31.3.1978 and 28.7.1978 promulgated to provide certain benefits to teaching and non-teaching staff of aided non-Governmental Higher Secondary Schools.

4. By means of the Government Order dated 6.10.1990, the benefit which was granted by the earlier Government Orders was extended for a period of 98 days. Clause ''2'' of the Government Order dated 6.10.1990 provides that the benefit of Death-cum-Retirement Gratuity would be available to only those teachers who would opt to retire at the age of 58 years. Those who would not give option within the prescribed period, would retire at the age of superannuation i.e. 60 years with benefits of pension, family pension and general provident fund. They would not be entitled for Death-cum-Retirement Gratuity.

5. Another Government Order dated 17.2.1999 was issued in continuation of the Government Order dated 6.10.1990 on the demands raised by teaching/non-teaching employees who could not exercise their option within the time prescribed. Clause ''2'' of the Government Order dated 17.2.1999 reads that the teachers of an aided Secondary School would entitle to give option to retire at the age of 58 years by 1st July of the academic year in which they are about to retire i.e. one year prior to the date of retirement. This arrangement was made applicable from the date of issuance of the said Government Order.

6. By the Government Order dated 4.2.2004, age of retirement of teachers has been raised from 60 to 62 years and it was provided therein that the retirement benefit which were available on retirement at the age of 58 years would now be available on retirement at the age of 60 years and for the benefits at 60 years, the retirement age would be 62 years.

7. The District Inspector of Schools while rejecting the claim of the petitioner for grant of benefit of Death-cum-Retirement Gratuity though referred to the Government Orders dated 6.10.1990, 17.2.1999 and 4.2.2004 but had conveniently ignored the Government Order dated 26.3.2005 which says that the benefit as provided in the Government Order dated 17th February, 1999 (wrongly mentioned as 17th November, 1999) would be available to the teachers who got the benefit of raising age of retirement by the Government order dated 4.2.2004.

8. Resultantly, the effect of Government Order dated 23.6.2005 is that the teachers whose age of retirement is now 62 years can give their option to retire at the age of 60 years and the option be exercised one year prior to the date of retirement (that means before attaining the age of 60 years).

9. Applying the position in the Government Orders referred above to the instant case, it is note-worthy that the petitioner''s husband was to attain the age of 62 years on 30.6.2017. Categorical submission to this effect has been made in paragraph ''4'' of the supplementary-affidavit filed by the petitioner on 2nd August, 2014.

10. The said supplementary-affidavit has been replied by the respondents in supplementary counter-affidavit dated 18.12.2014. There is no denial of the discloser of date of retirement of the employee concerned.

11. Under scheme of the Government orders, the option to retire at the age of 60 years was available to the deceased employee till the year 2014 i.e. One year prior to the date of attaining 60 years of age. But unfortunately he could not survive upto the age of 58 years. It cannot be conceived that these benefits would available to only those who could live upto the date of their superannuation to avail these benefits. Those who unfortunately could not reach the age of 60 years (or for that matter 58 years) to exercise their option, it cannot be treated that they would not be covered by the scheme.

12. It is trite that the policy decision taken by the State Government is to provide social security to the employees. The options which were invited upto the date fixed in the Government Order has been extended till the contingency of achieving the age of 58 years, arrived.

13. The petitioner''s husband, could have availed the option to retire at the age of 60 years, if he would have survived to claim the benefits.

14. As the event of death of a person is an unforeseen circumstance, which cannot have predicted by him, it cannot be presumed that he chose to retire at the age of 62 years. Non exercise of option by him prior to his death, cannot be allowed to work to his disadvantage.

15. Reliance placed by learned counsel for the petitioner upon a judgment of this Court in Smt. Ranjana Kakkar Vs. The State of Uttar Pradesh, The Vice Chancellor, University of Allahabad and The University of Allahabad, (2008) 119 FLR 978 , clearly covers the issue. It has been held in paragraph ''12'' & ''13'' as under:

"12. Where an event cannot be foreseen and a person is invited to give options with the understanding to arrange his affairs according to his own wisdom, his choice should not be allowed to work to his disadvantage after his death. He should be provided with the maximum of the benefits and social security after his death. Late Prof. Amarnath Kakkar did not live beyond the age of 45 years. He may have planned for his affairs upto the age of 60 years, both for himself and his family. The God however willed otherwise. His untimely death made his option unworkable. In order to give him maximum benefits of the social security, which was the intention of the Government Order dated 24.12.1983, he could not be denied the D.C.R.G. payable to him and calculated upto to his death, for the completed years of service rendered by him to the University. His wife was cut short and thus his option became unworkable and futile, on his death at the age of 45 years. He could not be pinned down to his option by the University, to deprive his family of the gratuity earned by him and payable to his family.

13. The ''gratuity'' is defined in Webster''s New Collegiate Dictionary as something given voluntarily, or beyond obligation usually in return for, or in anticipation of some service. The Black''s Law Dictionary defined gratuity as ''a recompense or reward of service or benefits given voluntarily without solicitation or promise''. Late Amarnath Kakkar could have given up gratuity voluntarily on

his option, if he had the occasion to avail the benefit of two years additional service. When he could not avail the benefit and was not in a position to change his option, he cannot be denied the reward by way of gratuity payable to him on completing 58 years of service. The event provided in his option i.e. the extended service upto the age of 60 years, became an impossibility to be performed by him and thus his option would be deemed to be revoked in law, on the principles of frustration of contract."

16. The petitioner''s husband could have exercised his option on a future date in case he would have survived. The petitioner is clearly entitled for the benefit of Death-cum-Retirement Gratuity payable to her husband upto the time of his death.

17. The order passed by the District Inspector of Schools rejecting the claim of the petitioner is set aside.

18. The respondents authorities are hereby directed to pay the Death-cum-Retirement Gratuity upto the time of death of the employee within a period of three months from the date a certified copy of this order is produced before them. With observations and directions, the writ petition is allowed.