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(2012) 07 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 8072 of 2009 (O and M)

Om Wati APPELLANT

Vs

Canara Bank and Others RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Citation : (2013) 1 SCT 321

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Alka Chatrath, for the Appellant; D.S. Nalwa, for the Respondent

Judgement

Rajesh Bindal, J.—The petitioner, who is widow of late Hari Singh, who was working as Security Guard with the respondent-Bank, has approached this court impugning the communication dated 6.4.2009, whereby her claim for payment of lumpsum ex-gratia in lieu of compassionate appointment was dismissed, being belated. The pleaded facts are that the deceased husband of the petitioner was working as Security Guard with the bank. He expired on 10.2.2000. At the time of death of the petitioner''s husband, her only daughter was minor. The petitioner submitted an application for compassionate appointment for her daughter on 10.4.2000. The bank required the petitioner to furnish certain information regarding income of the family and particulars of dependents, which were duly furnished. Vide communication dated 8.1.2002, the petitioner was informed that the competent authority has accorded permission to keep open offer of appointment for her daughter till she attains the age of majority. She was required to submit a fresh application after she attains majority. The needful was done by the petitioner. The petitioner was further required to fulfill certain formalities, which were completed. The application remained pending with the bank. Under these circumstances, daughter of the petitioner sent a legal notice to the bank on 5.6.2004. Though an ex-gratia scheme had also been implemented for giving solace to the family of the deceased, even that was not paid. The petitioner was forced to file C.W.P. No. 17103 of 2004 in this court seeking a direction to the respondent-bank to consider the case of her daughter for compassionate appointment. A direction was issued to the bank on 8.2.2005 to decide the legal notice dated 5.6.2004. In terms of the directions issued by this court, legal notice was decided by the bank. The decision was communicated vide letter dated 25.4.2005 intimating that in terms of the observations made by Hon''ble the Supreme Court, a new scheme has been formulated which came into force w.e.f. 24.1.2005. In terms of the new scheme, there is no provision for providing compassionate appointment, rather, it provides for payment of lump-sum ex-gratia. As all the pending applications are required to be processed as per new scheme, the application of the petitioner was also considered eligible to be processed under the new scheme, however, a fresh application was required to be filed as per the format annexed with the letter. The claim for compassionate appointment was rejected.

2. The petitioner challenged the aforesaid communication of the bank by filing C.W.P. No. 8564 of 2005, which was dismissed by this court on 26.5.2005. The same was upheld by Hon''ble the Supreme Court vide order dated 23.9.2005. Unfortunately, the daughter of the petitioner met with an accident on 16.8.2006 and expired. Thereafter, the petitioner submitted application for grant of ex-gratia amount. As no action was taken on her application, a legal notice dated 27.3.2009 was got issued, which was rejected vide communication dated 6.4.2009. It is the aforesaid communication rejecting the claim of the petitioner, which is impugned before this court.

3. Learned counsel for the petitioner submitted that initially vide communication dated 8.1.2002, the petitioner was assured that her daughter will be offered appointment on compassionate basis when she attains majority, however, when the application was filed, the same was kept pending and ultimately the policy for granting compassionate appointment was scrapped and a new policy was framed providing for payment of ex-gratia amount, which was circulated on 14.2.2005. As per clause (9) of the scheme, it was enforced with immediate effect and all pending applications for compassionate appointment were to be dealt with in terms thereof, as in future there was no provision for providing compassionate appointment. Though the application of the petitioner was already pending, but still she submitted fresh application on the format, as was required. Even if there was some delay in filing the application, the same cannot be said to be fatal as it is the question of grant of solace to the family of the deceased employee for survival. The time provided in a scheme has to be considered in the light of the fact that the policy is meant for the benefit of the families of employees dying in harness and those seeking premature retirement/resignation due to incapacitation before reaching the age of 55 years.

4. As far as rejection of the case of the petitioner on merits in terms of the provisions of the policy is concerned, learned counsel submitted that the calculation and the figures as mentioned in the sheet annexed with the reply showing that the petitioner was not eligible to get pension as she had income of

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more than 60% of the last drawn salary of her deceased husband, are not correct. The amount added in the particulars of investments at Rs. 1,80,000/- is, in fact, incorrect. The same was the total amount shown in the column, as was received on account of terminal benefits, on the death of her husband, which was Rs. 1,90,400/-, though it has been shown to be Rs. 1,77,766.46 by the bank. Another error committed by the respondent-bank is that her income has been calculated from house property as Rs. 1,166/- per month. The petitioner in the present case is an illiterate lady. The form was got filled up through some one who wrongly mentioned in the same that her annual income from immoveable property at Rs. 14,000/-. The petitioner is living only in a mud house.

5. Even the interest calculated on the total investments, as is shown in the sheet produced by the bank, is also on the higher side. The same has been taken at 11.5%, where it should not be more than 7% to 8% per annum. If the aforesaid errors are corrected, the petitioner is certainly eligible to get ex-gratia amount in terms of the aforesaid policy, as the total income available with the petitioner will be less than 60% of the last drawn salary of her deceased husband. She further submitted that even the terminal benefits, received by the petitioner, had been immediately utilised for payment of the loan raised by her for treatment of her husband who was suffering from cancer.

6. On the other hand, learned counsel for the respondents submitted that firstly the application filed by the petitioner was belated, as in terms of the policy the same could be filed within six months from the death of the husband of the petitioner. He further submitted that even if the case of the petitioner is considered on merits, still when the application filed by her was examined in the light of the conditions laid down in the policy, she did not fulfill the same. Her monthly income from the investments and Army pension being received by her was more than 60% of the last drawn salary of her husband. In that eventuality, the petitioner is not entitled to receive ex-gratia amount. There is no illegality committed by the bank in rejecting the claim of the petitioner.

7. Heard learned counsel for the parties and perused the paper book.

8. It is not in dispute that husband of the petitioner, who was employed with the Bank as Security Guard, died during service on 10.2.2000. Initially, the request made by the petitioner for grant of compassionate appointment to her daughter was accepted till she attains the age of majority, however, she also unfortunately died. In the meantime, a new policy was framed by the bank on 14.2.2005, titled as "Scheme for payment of ex-gratia lumpsum amount in lieu of employment on compassionate grounds". When the petitioner was pursuing her claim for employment for her daughter on compassionate ground, the bank sent communication dated 25.4.2005 intimating the petitioner that her claim for compassionate appointment for her daughter cannot be considered in the light of the new policy, however, she was eligible for consideration for payment of ex-gratia amount in terms of the new policy, for which a fresh application on new format was required. Thereafter, the petitioner furnished the application. No

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doubt, it is belated as far as submission of application on the specified format is concerned, however, it is not in dispute that the application filed by the petitioner for compassionate appointment was already pending when the aforesaid policy came into force and in terms thereof, all pending applications for compassionate appointment were to be considered in terms of the new policy. Still considering the fact that the petitioner in the present case is an illiterate lady, in my opinion, mere delay in submission of some particulars, asked for by the bank in terms of the new policy, will not be fatal for consideration of her case for grant of ex-gratia benefit. She is otherwise also unfortunate, who had lost her husband and the only daughter.

9. As far as merits of the case are concerned, in the form on which the application was to be filed for payment of ex-gratia amount, certain information was required to be furnished, which was in the form of personal particulars of the claimant, number of dependents, details of assets and liabilities. In terms of clause (4) of the policy, ex-gratia is to be granted only in the cases where the monthly income of the family from all sources is less than 60% of the last drawn salary (net of taxes) of the ex-employee. As has already been noticed above, the petitioner, being an illiterate lady, got her form filled up through some other person. In the column titled as "Details of Assets", upto item No. 6, where information regarding bank deposits, NSCs, PPF, LIC, Post Office deposit, shares/ debentures etc. was to be provided, it was mentioned in the application, total payment is Rs. 1,80,000/-. In item No. 7 of pension received, it was mentioned that Rs. 1,250/- per month is the Army pension received by the petitioner. In item No. 8, regarding details of immoveable property, it is mentioned that nothing except one mud house. In item No. 9 providing for annual income received from the immoveable property, Rs. 14,000/- were mentioned. The bank considering the eligibility of the petitioner calculated the monthly income of the petitioner in the following manner:

"Calculation Sheet for Payment of Lump Sum Exgratia Amount to The Dependents of Late Hari Singh (59950), Armed Guard, Yamunanagar

In Ward No. 82/09

10. The petitioner in her application had mentioned that she had received payment of Rs. 1,80,000/- against various columns. The word "payment" used shows that it was the amount received. It coincides with the calculation made by the bank on terminal benefits paid to the petitioner on account of death of her husband. In the calculation sheet, as reproduced above, it is evident that the total terminal benefits received by the petitioner were Rs. 1,77,766.46. The amount received by the petitioner was Rs. 1,80,000/-. The same otherwise also could not be considered for the purpose of calculation of interest in terms of the policy, as item No. 1 "Details of Assets" specifically excluded the same which is extracted below:

(A) Details of Assets

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(1) Bank deposits (other than those made from the terminal benefits settled).

11. Hence this entire amount of Rs. 3,57,766.46 as taken by the bank for calculation of interest thereon deserves to be ignored. As a consequence thereof, income of Rs. 3,346.71 taken by the bank as the monthly income of the petitioner falls flat. In the absence thereof would remain merely her Army pension of Rs. 1,250/- per month.

12. Even as regards the income from the house property is concerned, the same is highly debatable. Even if it is considered, the petitioner is still eligible for getting ex-gratia amount as her total income would still be Rs. 2,416/- per month and 60% of the last drawn salary of her deceased was Rs. 2,927.58. The income from the house property deserves to be ignored is for the reason that in the application, the petitioner has mentioned her place of residence in a village. It has been mentioned in item No. 8 of "Details of Assets" that she does not own any property except one mud house. Under the circumstances, there was no question of annual income of Rs. 14,000/- from immoveable property. Some error in the application apparently is on account of the fact that the petitioner being illiterate got the form filled up through some other person.

13. For the reasons mentioned above, the impugned communication dated 6.4.2009 (Annexure P-15) is quashed. The petitioner is declared eligible to get ex-gratia payment in lieu of compassionate appointment. The amount due to the petitioner be paid within three months from the date of receipt of a copy of this order. The petition stands disposed of.

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