(2023) 07 CAL CK 0055

In the Calcutta High Court

Case No : W.P.A No. 17491 Of 2017

Shibani Bag — APPELLANT

Vs

Chairman, Calcutta Port Trust & Ors. — RESPONDENT

Date of Decision : 11-07-2023

Acts Referred:

Citation : (2023) 07 CAL CK 0055

Hon'ble Judges : Rajarshi Bharadwaj, J

Bench : Single Bench

Advocate : Prodyut Kumar Ray, Subhankar Nag, Ashok Kumar Jena, Shreyan Chakraborty

Final Decision : Dismissed

Judgement

Rajarshi Bharadwaj, J

1. The instant writ petition application has been preferred challenging a letter dated April 28, 2017 wherein a family pension to one Shibani Bag, herein the petitioner was denied.

2. The facts of the case in a nutshell are that the Ministry of Surface Transport (Ports Wing), Government of India vide letter No A- 38011/7787-PE.I dated August 13,1990 liberalised retirement benefits to the Ports and Dock Labour Boards Pensioners, who had retired or would retire on and from January 1, 1986. The circular stated "Widows and dependent children of the Contributory Provident Fund Beneficiaries who had retired from service prior to 01.01.1986 shall be granted an ex-gratia payment of Rs.150/- per month with effect from 01.01.1986 or from the date following the date of death of the employee whichever is later. This payment shall also be admissible with effect from 01.01 1986 to the widow and dependent children of the contributory provident fund beneficiaries, who died while in service prior to 01.01.1986. They will also be paid relief on the ex-gratia payment at the rates specified by Government to their retirees."

3. One Sri Panchanan Bag, the father of the petitioner, hereinafter referred to as ex-employee was an employee of the Commissioner for the Port of Calcutta, herein the respondent authority, holding P.F A/C No. CT 13190. The service certificate concluded that the father of the petitioner worked as a workman and shed clerk and was superannuated from service on and from December 1, 1980. The ex-employee expired on February 21,1884.

4. Due to the death of the ex-employee, the full and final retiral payment could not be made, so there was a difference in payment gratuity and the provident fund. In connection to the payment of such dues of the ex-employee, the mother of the petitioner submitted a letter dated June 30,1986 before Senior Accounts Officer of Calcutta Port Trust herein respondent No.2 for granting payment of difference of gratuity due to the ex-employee.

5. On the basis of the application for ex-gratia payment dated October 5, 1993 filed by the mother of the petitioner, ex-gratia payment was approved on December 15, 1993.As per the norms of the respondent authorities, a Savings Bank Account (A/C No. 11311136198) was opened in favour of the mother of the petitioner bearing pension Roll No. EXF/02729 at Surekalna Branch, Bardhaman and necessary payment of full and complete ex-gratia with arrears was made subsequently to her with effect from January 01, 1986.

6. The respondent authorities continued to pay monthly subsistence to the mother of the petitioner till her death in 2017. Upon her death in a letter dated September 26,2017 it was ascertained by Pension section that an amount of Rs 4289/- already charged in the monthly pension bill during the intervening period was to be recovered from the account of the mother of the petitioner and reverted to the respondent authorities. An amount of Rs. 613/-is payable in full and final settlement of payment of ex-gratia to the writ petitioner.

7. The petitioner being unemployed and having no source of income prayed before the respondent authority to grant pension to her treating as family pension in a letter dated March 20, 2017 addressed to respondent No.2. The petitioner’s claim to family pension was refused in a letter dated April 28, 2017 by respondent No.2.

8. It has been submitted by the learned counsel for the petitioner that the respondent authority has acted irrationally and illegally by not allowing the withdrawal of family pension since 2017.

9. Petitioner’s right to family pension cannot be denied owing to The Regulation of 1986 governing payment of pension to government employees. Though the said regulation was operative long after the year of death of the petitioner’s father, there is no whisper in the said circular for the deprivation of family pension.

10. In the separate account made in the name of the mother of the petitioner, monthly payment of all the dues of the ex-employee was made. This implies that

the mother of the petitioner collected family pension because ex-gratia cannot be paid month by month.

11. It has been submitted by the learned counsel for respondent No.3, Financial Advisor and Chief Accounts Officer that at the outset that owing to the office held by the petitioner's father (workman and shed clerk), he was not entitled to any pension and pensionary benefit attached to retirees, under Non-Contributory Provident Fund Scheme. In pursuance of the CPF Scheme, the writ petitioner being a dependent of the ex-employee is not entitled to any benefits of family pension as per provisions of Kolkata Port Trust Pension Regulations.

12. The mother of the petitioner, wife of a CPF retiree was only eligible to draw ex-gratia payment as per circular of the Government of India adopted by the respondent authority and on such basis, voluntarily made an application for release of all dues of the ex-employee in the form of ex-gratia. The mother of the petitioner was drawing ex-gratia and not family pension right up to her death on February 07, 2017.

13. Payment of ex-gratia amount to the legal heir of the ex-employee is in unerring conformity with the Ministry of Surface Transport (Ports Wing) letter No. A-38011/7/87-PE.I dated August 13, 1980. The mother of the petitioner in an exclusive savings account received a monthly payment of Rs.150/- as ex-gratia which was later enhanced to an amount of Rs.605/- per month. In addition, admissible Dearness Relief at a rate specified by the Government from time to time, later revised with effect from November 01, 1997 was collected by the mother of the petitioner.

14. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the writ petitioner is not entitled to any benefits of family pension as per provisions of the respondent authority's pension regulation. On the death of the ex-employee, his legal heirs were entitled to ex-gratia payment and not family pension.

15. The payment for ex-gratia payment has been specifically demanded by the mother of the petitioner in the form of an affidavit dated August 23, 1993 before the Notary Public, Calcutta and submitted before the respondent authority. Such affidavit serves as estoppel, preventing the petitioner from further claiming for family pension.

16. The petitioner is under a mistake of fact that family pension was granted to the mother of the petitioner and that the petitioner is entitled to family pension for her livelihood. A careful observation of the bank passbook belonging to the mother of the petitioner depicts that ex-gratia has been received in full under strict compliance of the orders of the Government of India on ex-gratia payments to CPF retirees, their spouses and dependent children as adopted by the respondent authorities.

17. Once a choice to accept full ex-gratia amount as retiral benefit is made after

ample time to given to choose between other options, such a choice is considered to be final.

18. In such view, the writ application being WPA 16491 of 2017 would not be maintainable as the application lacks merit and the same is dismissed accordingly.

19. There will be no order as to costs.

20. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.