(1997) 08 KAR CK 0029

In the Karnataka High Court

Case No : Writ appeal No. 1067 of 1996

State Bank of Mysore, Bangalore APPELLANT

Vs

Smt. Saroja Shivakumar RESPONDENT

Date of Decision : 13-08-1997

Acts Referred:

Citation : (1998) 79 FLR 181 : (1997) ILR (Kar) 2791 : (1998) 1 KarLJ 10

Hon'ble Judges : S. Rajendra Babu, J;H. Rangavittalachar, J

Bench : Division Bench

Advocate : Sri C.B. Srinivasan, for the Appellant; Sri P.S. Rajagopal, for the Respondent

Judgement

S. Rajendra Babu, J.—This appeal arises from the order made by the learned Single Judge in Writ Petition No. 16598 of 1994. One Shivakumar was working in the establishment of the appellant. Disciplinary action was initiated against him by an order made on 6-8-1992 and various charges were added to it or amended by letters dated 10-3-1993 and 28-10-1993. It is the contention of the appellant that the said Shivakumar had admitted by a letter written by him that he was forced to utilise the funds of the bank to meet his medical expenses. When the inquiry was still pending, the said Shivakumar expired on 26-11-1993 as a result of cancer the disease he was suffering from. It was stated that the said Shivakumar had misappropriated a sum of Rs.59,000/-; that he was due to the appellant-Bank towards house building loan to an extent of Rs. 1,54,000/- and a consumer loan of Rs.7,400/- and Rs.14,200/- towards the vehicle loan. The respondent claimed for payment of amounts due towards Provident Fund and Gratuity and she also sought for appointment for her son on compassionate grounds. The appellant withheld the payment of the said amounts and also declined to pass any order on the application filed for the appointment of her son. Thereafter the respondent presented a writ petition before this Court. On an interim order being made in the writ petition, a sum of Rs.44,237.61 was paid to the respondent as amount due towards Provident Fund. The matter however was seriously contested. On behalf of the respondent, the first contention raised is that the principle of actio personalis moritur cum persona is applicable and therefore the disciplinary proceedings could not be pursued or any amount recovered for the amounts due to him in view of the decision in Heera Bai Deshmukh and Another v State of Maharastra , that when the contract of employment comes to an end by reason of the death of an employee even though disciplinary proceedings may be pending, such proceedings may be deemed to have come to an end on the death of the employee and in as much as the liability if any comes out of contract of service which is personal to that person, the respondent cannot be made liable to the same.

On behalf of the appellant reliance is placed on the decision in D.K. Savitramma Vs. Anantapur District Co-operative Central Bank and Another, , that a disciplinary proceeding cannot be stated to have abated on the death of the employee in view of the language of Payment of Gratuity Act and that if an employee dies during the pendency of inquiry into the charges, no principle can be laid down that the employer has no authority to continue the proceedings. The proceedings with regard to misappropriation will have to be completed in the presence of the affected persons so that they may not claim in the event of any finding that any amount is due, that such action of the employer is arbitrary, capricious or made behind their back.

2. On the question of claim for compassionate appointment, it is contended by appellant that respondent has no right while it is pointed out by the respondent that the authorities concerned should have a humanitarian approach and on account of death of an employee if respondent''s son is eligible to employment, mere pendency of disciplinary proceedings should not come in the way of passing an order to give employment.

3. The learned Single Judge directed the payment of terminal benefits to the legal heirs of deceased after making adjustments of the subsistence allowance and to pay balance of the amount to the legal heirs of deceased with 10% interest p.a. from the date of death upto the date of payment, after deducting the amounts due from the deceased towards the housing loan, vehicle advance and other dues. Another direction was also given that the employment should be provided to the respondent''s son and if such an offer is made to him, the housing loan should be transferred to him and he should be made liable to pay such amounts.

4. On behalf of the appellant, the first criticism levelled against the order made by the learned Single Judge is that there is a conflict of opinion in the decisions between the Bombay and the Andhra Pradesh High Courts on the question of payment of terminal benefits when an employee dies during the pendency of the disciplinary proceedings is not restored and no principle is laid down as to how terminal benefits could be or to be paid. Learned Single Judge has not decided that aspect of the matter at all. The second criticism is that the appellant took a decision not to consider the application filed by the respondent in view of the fact

that the disciplinary proceedings were pending against the employee in question and therefore his relatives could not have been provided with an employment on compassionate ground merely on the ground that he died during the pendency of the proceedings. The stand of the appellant is that, several guidelines had been issued by Central Government and the rules of the bank did not allow employment of such persons on the ground of compassion when no positive mandate was available in the relevant rules. Therefore it is submitted, that the learned Single Judge exceeded his jurisdiction in deciding the matter.

5. On behalf of the respondent, the contention put forth is that when an employee dies during the pendency of disciplinary proceedings, those disciplinary proceedings cannot be continued and such proceedings are deemed abated in that event an employee concerned must be deemed to have been continued in employment and all terminal benefits to which he is entitled to must be accorded. If viewed in that angle, it is submitted that on the death of the employee concerned, when the disciplinary proceedings against him cannot be continued, the charges against him must be deemed to have been wiped out and all benefits arising under law must be extended to his heirs. On that basis it is submitted, that the respondent''s son should have been given the appointment on compassionate ground and the amounts due i.e., Provident Fund and Gratuity should be released to her after deducting the legitimate dues. It was also submitted that the learned Judge made an equitable order, in the circumstances of the case, by asking the appellant to give the respondent''s son an employment so that the housing loan taken by the deceased employee could be transferred to him and amounts deducted out of the salary payable to him.

6. We have carefully perused the order made by the learned Single Judge. Though there is reference to the two decisions to which the learned Counsel on both sides adverted to but the conflict between the two are not dealt with except to notice that the rules of the bank had not provided for the situation and therefore there can be no other way of looking at the legal position. Ordinarily though an adverse inference can never be reached against a dead man and we must also take cognisance of the fact that the initiation of the disciplinary proceedings was on the prima facie allegations which was conditional and reviewable and it was not the result of the final outcome of the inquiry. In these circumstances, the learned Judge held that the salary is payable to the deceased employee and also the other benefits. If any money has been misappropriated by an employee who dies during the pendency of inquiry, we cannot say that the monetary liability thereto cannot be determined even after the death of the delinquent employee. The employer should have the liberty to assess such financial liability which is recoverable out of the amounts due to the deceased employee on notice being given to the concerned heirs and that is the only way by which the proceedings can be concluded. The respondent must co-operate with the appellants in the inquiry to enable in establishing guilt or innocence of the deceased employee and the charge against him. On conclusion of such inquiry though no action can be taken against the deceased, still his monetary

liability can be determined. In taking such action, the appellant will have to take into consideration the question of amount misappropriated by the deceased employee, the time lapse between the date of misappropriation and the inquiry and the fact that the deceased employee is no longer available to defend himself and such other factors. If they come to the conclusion that still the proceedings should be continued to recover the amounts from out of the amounts due to the said deceased employee, such steps will have to be taken. Otherwise any action taken by the appellant can be criticised as one done arbitrarily without applying the principles of natural justice. Therefore the view taken by the learned Single Judge cannot be sustained at all. We set aside the order made by the learned Single Judge and direct the appellant to inquire into the matter before making any deductions out of the Provident Fund, Gratuity or any other amounts due to the deceased employee appropriately one way or the other after issuing notice to the respondent. If a finding is recorded that there is any monetary liability as far as the deceased employee is concerned, appropriate deductions can be made from the amounts payable to the respondent otherwise the amounts due to the deceased employee will have to be disbursed to the respondent as directed by the learned Single Judge.

7. So far as the claim for compassionate appointments is concerned, it is certainly open to the bank either to give such appointment to the son of the respondent or not and such a question must be left entirely to the discretion of the appellant. In the present case, the circumstances in which the deceased is stated to have misappropriated the amount can also be taken note of by the appellant. The appellant will have to take note of the fact that the deceased employee was suffering from cancer, treatment of which involves enormous expenditure and in these peculiar circumstances if he had utilised certain amounts from the bank, the matter need not be viewed far too seriously so as to deprive his son from seeking compassionate employment for such an act must be viewed with due sympathy and consideration.

8. Therefore, we direct the appellant to consider the case of the respondent''s son for compassionate appointment within a period of 3 months from today. If the appellant propose to take any action in the matter, let an appropriate notice be issued within a period of 3 months from today and an inquiry shall be held which shall be concluded within a period of 6 months from today.

9. Appeal is allowed accordingly.

