

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 102 of 2018

Date of Decision: 01.04.2024

Shri. Bidyut Das
S/o (L) Rajendra Chandra Das
And (L) Lakshmi Das,
C/o Smti. Chinky Nongbet,
Quarter No. G 48, Raj Bhawan
Complex, Shillong – 793001.

.....Petitioner

–Versus–

1. The Union of India,
Represented by the Ministry of Finance
Government of India.
2. The Vijaya Bank,
A body corporate constituted under Banking Companies
(Acquisitions and Transfer of Undertakings) Act, 1970 (Act V of
1970) having its Head Office at No. 41/2, M. G. Road, Bangalore
- 560 001 and a Branch Office amongst other places at Jail Road
in the State of Meghalaya within the jurisdiction of this
Honourable High Court.
3. The Chief Manager (HRD)
Vijaya Bank, Head Office No. 41/2, M.G. Road,
Bangalore – 560 01.
4. General Manager – Personnel,
Vijaya Bank, Head Office No. 41/2, M.G. Road,
Bangalore – 560 01.
5. The Deputy General Manager,
Vijaya Bank, Head Office No. 41/2, M.G. Road,
Bangalore – 560 01

6. The Assistant General Manager,
Vijaya Bank, Head Office No. 41/2, M.G. Road,
Bangalore – 560 01
7. The Branch Manager,
Vijaya Bank, G. S. Road Branch,
Jail Road, Shillong,
East Khasi Hills District,
Meghalaya

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Chakrawarty, Sr. Adv. with
Ms. E. Slong, Adv.

For the Respondent(s) : Ms. T. Yangi. B, Sr. Adv. with
Ms. I.M. Lyngdoh, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

J U D G M E N T

1. This is the second round of litigation between the parties revolving around the same issue that is, the claim of the petitioner (since deceased), now represented by her legal heir, the present petitioner, such claim being for payment of ex-gratia relief in lieu of compassionate appointment which is due and payable by the respondents No. 2-7 respectively.

2. The brief story of the case is that the husband of the deceased (original writ petitioner) (L) Rajendra Chandra Das during his lifetime

was serving as an Armed Guard in the office of Vijaya Bank, Shillong/respondent No. 2 when he died in harness on 09.12.2001, he was survived by his wife, the original writ petitioner and their two children.

3. The wife of the deceased Armed Guard approached the bank authorities with a prayer for compassionate appointment of her son in place of her deceased husband. The respondent No. 3 then issued a letter Ref.No.PER/HRD/RCT/4410/2005 dated 10.06.2005 wherein it was informed that there is no scheme for providing employment on compassionate ground, however the bank has formulated a scheme providing of ex-gratia relief in lieu of appointment on compassionate ground to which the petitioner responded positively.

4. In spite of filing the necessary forms to avail of the said scheme of ex-gratia relief, the petitioner's case was not looked into by the respondents which compelled the petitioner to cause several reminders to be issued, some of which resulted in the response of the respondents calling upon her to reapply by filing a fresh application as her papers could not be traced at the office of the respondent bank. Finally, after the petitioner has fulfilled all the required formalities, she was shocked to receive letter dated 13.04.2011 from the respondent No. 5 informing her that her application for ex-gratia relief was rejected on the ground that the application was incomplete since all the required information were not furnished within the stipulated time.

5. The petitioner then filed another application after clarifying all the necessary queries and has requested the respondent to reconsider her case. The respondent No. 6 had then issued letter dated 21.06.2011 by

which letter the petitioner was communicated of the decision of the respondents to reject her claim apparently on the ground that the monthly income of the dependent family from all sources is more than 60% of the last drawn salary of the deceased employee.

6. The petitioner in response to the letter dated 21.06.2011 issued by the respondent No. 6, vide her letter dated 27.07.2011 has clarified that the income of the dependent family is less than 60% of the last drawn salary of her deceased husband. Not finding any response to this letter, a number of reminders were issued upon the respondent authority which were also not responded to by the respondent authority which compelled the petitioner to approach this Court, as it then was, that is, the Shillong Bench of the Gauhati High Court with a writ petition being WP(C) (SH) No. 110 of 2012.

7. This Court vide order dated 03.08.2012 had directed the respondent authorities to determine afresh the family income of the deceased petitioner herein by excluding the income of her non-dependent son, Bidyut Das.

8. The respondent bank in compliance with the said order dated 03.08.2012 had reconsidered the case of the petitioner and eventually vide letter being REF:PER:PA&PD:672:2013 dated 08.03.2013, had informed the deceased petitioner that her case has been rejected on the ground that it is found out that the family income of the dependents from all sources (excluding the income of Shri. Bidyut Das) is more than 60% of the last drawn salary of the deceased employee.

9. As pointed out above, the original petitioner has since died and on being allowed by this Court, her legal heir who is her son, Shri Bidyut

Das was substituted in her place to pursue this petition.

10. Heard Mr. S. Chakrawarty, learned Sr. counsel appearing for the petitioner who has submitted that the only issue to be decided in this case is whether the total income of the family at the time of the demise of the said bank employee, that is the husband of the original petitioner, is more than 60% of the last drawn salary of the said deceased employee.

11. In this regard, the learned Sr. counsel has submitted that the total income of the family should be reckoned from the date of demise of the said bank employee, that is on 09.12.2001 when evidently the original petitioner was receiving the family income which includes income from all sources except for the salary that was due and payable to her deceased husband. Therefore, at that relevant point of time, the family income would definitely be less than 60% of the last drawn salary of the deceased employee. On such income being calculated the total monthly income of the deceased original petitioner would amount to the following: -

- i. Monthly income by way of interest - ₹ 906.00
- ii. Monthly income from family pension- ₹ 2741.50

Total Monthly Income - **₹ 3647.50**

12. The learned Sr. counsel has contended that the stand of the respondent bank that the total monthly income of the original petitioner is more than 60% of the last drawn salary of her deceased husband, which according to their calculation comes to ₹ 6371.00, is not the correct calculation.

13. On the contention of the respondent bank that this petition has become infructuous on the death of the original petitioner, the learned Sr. counsel has submitted that the substituted petitioner in this case is not asserting any right or claim of his own but is pursuing a claim made by his deceased mother who, if the prayer is allowed would have received the benefits thereof and as such, as her legal heir the substituted petitioner is entitled to further the claim of the deceased original petitioner since her right would not have been extinguished with her death.

14. Ms. T. Yangi. B, learned Sr. counsel appearing for the respondent bank in counter to the contention and submission of the learned Sr. counsel for the petitioner has submitted that the prayer of the petitioner in this instant writ petition would fail primarily on the ground of delay and laches amongst others since even after the order dated 03.08.2012 passed by this Court in WP(C) (SH) No. 110 of 2012, in compliance thereof the respondent bank having calculated the total monthly income of the petitioner's family, excluding the income of the non-dependent member of the family, who happens to be the substituted petitioner herein, the bank having rejected the claim of the original petitioner on 08.03.2013, this petition was filed only in the year 2018, that is after five years of the said rejection.

15. The conduct of the petitioner in coming before this Court in the year 2018 would only prove that the family is not really going through a financial crisis since the purpose of extending compassionate appointment or in lieu of the same, giving ex-gratia payment to a member of the family is to relieve the family of such financial crises which is not the case herein.

16. The second limb of argument on behalf of the respondent bank is that on calculation, the monthly income from all sources as far as the original petitioner is concerned, is worked out as follows:

1. Amounts received by way of terminal benefits

(i)	Provident Fund – Rs. 65,926.71
(ii)	Gratuity – Rs. 65,862.00
Total	– Rs.1,31,788.71

Monthly income of the family by way of interest @8.25% (max. deposit rate) on the net corpus of terminal benefits: Rs. 906/-

2. Family pension from the Bank: Rs. 3,088/-

3. Family pension from Defence: Rs. 2,377/-

4. Total monthly income from all sources: Rs. 6,371/-

60% of the last drawn net salary of Late Rajendra Chandra Das (the deceased employee) comes to Rs. 3,997.00.

17. The learned Sr. counsel has further submitted that notwithstanding the fact that the original petitioner may or may not be eligible to the said ex-gratia payment, in the said scheme, named as “Revised Scheme for Payment of Ex-Gratia Amount In lieu of Appointment on Compassionate Grounds and Appointment of Dependents of Deceased Employees on Compassionate Grounds” at clause 1.10 the word ‘dependents’ has been defined to mean the family of the employee. Family for this purpose would mean and include spouse and wholly dependent children. The substituted petitioner is admittedly not a dependent of the deceased employee and as such is not eligible to be a beneficiary of the said Ex-Gratia Payment scheme.

18. In support of the respondent bank's case the following cases have been cited:

- i. State Bank of India & Anr. v. Somvir Singh, (2007) 4 SCC 778, para 11 and 12;
- ii. Mumtaz Yunuz Mulani (SMT) v. State of Maharashtra & Ors., (2008) 11 SCC 384, para 13.

19. As far as the respondent No. 1/Union of India is concerned, none has appeared on its behalf.

20. It appears that the primary issue to be decided herein is whether the monthly income from all sources of the original petitioner is above the 60% mark of the last drawn salary of the deceased employee.

21. From the pleadings of the parties, the fact that the last drawn salary of the deceased employee (husband of the original petitioner) was ₹ 6661.79p and also the fact that the monthly income of the petitioner from all sources was ₹ 6371.00 has not been disputed by the petitioner as the above details have been brought on record by the respondent bank in the additional affidavit filed on 16.11.202. A rejoinder to the same not having been filed by the petitioner.

22. A copy of the "Revised Scheme for Payment of Ex-Gratia Amount In Lieu of Appointment on Compassionate Grounds and Appointment of Dependents of Deceased Employees on Compassionate Grounds" conveyed by the respondent bank through communication dated 17.10.2007, has been annexed as Annexure-32 (pg. 89) of this writ petition which goes to show that the petitioner is aware of the said scheme. On perusal of the contents of the scheme, the relevant portion

wherein is found the details on eligibility criteria is at chapter-II clause 2.0 which reads as follows:

“2.0. ELIBILITY CRITERIA

Dependents whose monthly income from all sources is less than 60% of the last drawn gross salary (Net of taxes) of the employee are eligible to receive ex-gratia amount under the scheme...”

23. The contention of the learned Sr. counsel for the petitioner that as on the date when the deceased employee died, the total income of the original petitioner was below the 60% mark as she has not received any monthly pension from the bank due to her deceased husband cannot be accepted as it is evident that since the deceased employee died in harness, on his death, his family or rather the original petitioner would be entitled to such monthly family pension, even if the same is given at a later date, she would still be entitled to the arrears thereof. The calculation which included the monthly pension from the bank as well as from the defence services cannot be faulted.

24. Again, as indicated hereinabove, since the total monthly income of the original deceased petitioner was ₹ 6371.00 and the gross amount of the last drawn salary of the deceased employee was ₹ 6661.79p, therefore, the monthly income of the petitioner being higher than 60% of the last drawn salary of the deceased employee, she was not eligible to receive any sum of money as ex-gratia payment from the respondent bank.

25. Consequently, on this ground, this petition is found to be devoid of merit and is liable to be dismissed, the impugned letter dated 08.03.2013 issued by the respondent No. 5 does not suffer from any

infirmity.

26. The other contention of the petitioner as regard the status of the substituted petitioner as well as the authorities cited by the parties are not necessary to be discussed herein in view of the fact that on the above findings and observations, the claim of the petitioner is found to be wanting.

27. This petition is hereby disposed of and dismissed as devoid of merit. No costs.

Judge

Meghalaya
01.04.2024
"Tiprilynti-PS"