IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1659 of 2016
IN
Civil Writ Jurisdiction Case No. 3550 of 2016

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Binod Kumar ,S/o Late Siya Mohni Sharan R/o Sisai, P.O. - Dumarshan, Bangra P.S.- MAsrak, District - Saran.

.... Appellant

Versus

1. The Union of India through its Finance Minister, Ministry of Finance, South Block New Delhi.
2. The State Bank of India through its General Manager, Local Head Office, West Gandhi Maidan, Patna.
3. The Assistant General Manager (Marketing), the State Bank of India, Administrative Office, Muzaffarpur.
4. The Branch Manager, State Bank of India, ADB, Taraiya-3438.

.... Respondents

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Appearance :

For the Appellant : Mr. Ravi Shankar Ganguli,
Mr. D.K. Srivastava, Advocates
For the Union of India : Mrs. Kanak Verma, CGC
For Respondent-Bank : Mr. Anjani Kumar Mishra, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 09-12-2016

Heard learned counsel for the appellant and learned counsel for the respondents.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 21st of July, 2016 in CWJC No. 3550 of 2016 whereby the claim of the appellant for grant of ex gratia amount in lieu of compassionate appointment remained unsuccessful.

3. The appellant joined the respondent-State Bank of

India on 21st of January, 1983 as a clerk. He applied for voluntary retirement on 31st of March 2012 in view of his poor health. Such application was allowed and the appellant was permitted to retire on 31st of March 2012.

4. The grievance of the appellant is that having retired on 3rd of March, 2012 on medical incapacitation; he is entitled to ex gratia payment in lieu of compassionate appointment in terms of the circular dated 4th of August, 2005. It is the said claim which was resisted by the Bank, inter alia, on the ground that the appellant has not been subjected to medical examination by the Medical Board and therefore, the stand that the appellant was medically incapacitated remains unsubstantiated. Though at one point of time reference was made to the circular dated 17th of April, 2012 in respect of payment of ex gratia amount but the said circular is not applicable as it revised the payment of ex gratia lump sum amount in respect of the employee, who died after 1st of April, 2012. Since the appellant has voluntarily retired on 31st of March, 2012, he is not covered by the said circular. In fact, the claim of the appellant is to be examined in view of the circular dated 4th of August, 2005 which contemplates for the payment of ex gratia amount. The relevant clause 8 reads as under:-

> "EX-GRATIA:
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> Ex-gratia on compassionate grounds in lieu of compassionate appointment may be granted to the family

> of the employee and subject to the ceilings specified below, if the monthly income of the family from all sources calculated in the manner shown below in paragraph 9(B) is less than 60% of the last drawn gross salary (net of taxes) of the employee. The family shall be deemed to be eligible for ex-gratia payment if the income so arrived at is below 60% of the gross salary (net of taxes) last drawn, and ineligible if it is 60% or more of the gross salary (net of taxes). Ex-gratia will be paid to the family of the deceased employee or the employee who has retired due to incapacitation if eligible under the Scheme within three months of the receipt of application, complete in all respect."

5. The request of the appellant seeking voluntary retirement has been appended by him as Annexure-1 to the writ application. Against column no. 10, he has specifically mentioned that he is severely sick and has lost hope of revival to do his duty. Such request was forwarded by the Manager of the Bank and dealt with vide order dated 23rd of June, 2012. The appellant was permitted to retire with effect from 31st of March, 2012 subject to fulfillment of certain conditions.

6. The scheme of ex-gratia payment contemplates that such amount will be payable to an employee who has to retire due to incapacitation. How the incapacitation to be determined is part of the Reference Book on Staff Matters, Volume-2: Award Staff. The

relevant conditions are as under:

> "23.7 Voluntary Retirement:
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> A member of Award Staff who has completed 20 years' pensionable service or 20 years' service (if he is not a member of Pension Fund) may be permitted by the General Manager to retire from the Bank's service subject to his giving one month's notice in writing or pay in lieu thereof. Before allowing the employee to retire prematurely/voluntarily it should be ensured that no disciplinary action is pending/contemplated against him.
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> (ii) If the employee is seeking voluntary retirement on health grounds before 55 years of age, he should be subjected to an examination by a medical board consisting of (i) a Civil Surgeon, (ii) a specialist relevant to the disease/ailment, and (iii) the Bank's Medical Officer at LHO/ZO. The Medical board should be asked to unequivocally state whether or not the employee is permanently incapacitated and hence unfit to continue in service. If the Medical board pronounces the employee to be permanently incapacitated he/she should be retired from the date of medical report provided no disciplinary action is pending/contemplated against him.
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> (iii) In such a case, the employee's request, bio data and medical report should be forwarded to the concerned authority expeditiously along with recommendations in the matter, the bio date of the employee should consist of Name, Date of birth, Age as on the date of retirement, Date of appointment in the bank and Designation at the time of initial appointment,

Present designation, Total pensionable service, Reasons for seeking retirement, Whether any disciplinary action is pending/contemplated and Details of outstanding loans and advances and how the employee will liquidate them."

xxx xxx xxx

7. A perusal of the procedure for seeking voluntary retirement shows that in case an employee seeks voluntary retirement on medical ground, the request of employee, bio data and medical report should be forwarded to the concerned authority expeditiously along with the recommendation of the matter. The Clause 23.7(ii) contemplates that an employee seeking voluntary retirement on health ground should be subjected to an examination by a Medical Board. The question is whether once the appellant has applied for voluntary retirement on medical ground, he was required to be subjected to medical examination by the Medical Board but such action has to be initiated by the Bank alone. Since the Bank has not subjected the appellant to undergo examination by the Medical Board, the amount of ex-gratia cannot be declined for the reason that the medical incapacitation is not proved. The fact is that the appellant was permitted to retire on his request which was on the ground of medical incapacitation.

8. Consequently, we find that the order passed by the

learned Single Bench is not sustainable. The same is set aside. The Respondent-Bank is directed to pay ex-gratia amount in lump sum in terms of the circular dated 4th of August, 2005 expeditiously and preferably within a period of two months from today.

9. The present Letters Patent Appeal is accordingly disposed of.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

B.T/-

AFR/NAFR	AFR
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