

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3550 of 2016

=====

1. Binod Kumar, S/o Late Siya Mohini Sharan R/o Sisai, PO- Dumarshan, Bangra PS- Masrak, Distt- Saran.

.... Petitioner/s

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- 03438

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr Ravi Shankar Ganguli Mr. Dharmesh Kumar Shrivastava
For the Union of India	:	Mrs. Kanak Verma, CGC
For SBI	:	Mr Anjani Kumar Mishra

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 21-07-2016

Petitioner superannuated on 31.3.2012 holding the post of Special Assistant under the respondent State Bank of India from Taraiya Branch in the district of Saran. After his superannuation, he decided to file the writ application on 19.2.2016 because he perceives that the Bank has not been fair to him in extending the benefit of ex gratia which they themselves have envisaged in the policy notified by them. The policy has been brought on record as Annexure- 5 to the writ application.

Since the entire thrust of the argument is based on one of the Clause of Annexure- 5, the Court is of the opinion that at least the

relevant portion should be reproduced for ready reference :

“2. We have been receiving request form Circles for covering the following cases also for the payment of ex-gratia under the scheme:-

(I) Cases of death occurred between 04.11.2004 to 03.08.2005 for payment of minimum amount of ex-gratia

(II) Cases of premature retirement due to incapacitation on medical grounds before reaching the age of 55 years, for payment of ex-gratia under revised scheme effective from 1st April 2012.”

The factual matrix is that the petitioner was taken unwell. He states that he fell down in the branch one day, therefore, he decided to go for voluntary retirement since he had already reached age of 55 years on the ground that he was severely sick and he had lost the hope of revival, for duty.

Petitioner filed an application form contained in Annexure-1 seeking voluntary retirement. The Bank acceded to his request and he was allowed to superannuate with effect from 31.3.2012. Post retirement, other issues are not the subject matter of dispute. But it is refusal on the part of the Bank to extend the benefit of ex gratia in terms of Clause 2 (II) quoted above, which has brought the petitioner before the Court.



Submission of the counsel for the petitioner is that the scheme contained in Annexure- 5 does envisage a situation which allowed the petitioner seeking voluntary retirement. He had sought retirement on medical grounds and since it was a premature retirement which has been granted by the Bank, the consequences thereof of the scheme must follow and he should be rewarded and extended the benefit of ex gratia.

The State Bank of India seriously opposes the writ application on the ground that the scheme, which the petitioner is pressing into service, is not applicable to him. Voluntary retirement to the petitioner is one thing but premature retirement due to 'incapacitation' on medical ground is altogether a different scheme of things. The primary reason for the Bank to issue the scheme as contained in Annexure- 5 is for keeping the object of providing ex gratia payment in lieu of compassionate appointment. Since the Bank does not have scheme of providing any employment to the siblings or offspring of an employee, who dies prematurely or is compelled to retire because of physical incapacity on medical ground, the scheme for grant of benefit of ex gratia was notified and it subsists.

The question is whether the benefit of ex gratia, which the petitioner is looking for under the context he sought voluntary retirement, can be equated with the case provided for in Clause 2 (II)

of the scheme.

Counsel for the petitioner submits that since there is no provision or any other form to compel the petitioner to subject himself to any medical board, therefore, his contention contained in Annexure- 1 should have been more than enough for the authorities to treat it to be a case of medical 'incapacitation' due to illness. They cannot turn around and now take a stand that since the petitioner was not subjected to any medical board, therefore, he will be deprived or barred from claiming the benefit.

The whole argument of the learned counsel for the petitioner is based on a mistaken understanding of the scheme contained in Annexure- 5. If the basic distinction is not understood between a voluntary retirement due to illness or ailment of an employee and physical 'incapacitation' due to medical ground then there is bound to be expectation on his part to seek some more aid and assistance from the Bank by way of ex gratia by virtue of Annexure- 5. The case of the petitioner does not fall within the scheme contemplated under Annexure- 5. There has to be a declaration by competent board constituting of the doctors certifying that the person so subjected to the medical board is incapable of performing any kind of official duty and he cannot continue to perform responsibility of the office which he was holding. Seeking voluntary retirement is a wish

of an employee. So far as medical incapacitation is concerned, it is compulsion created because of the medical condition of an employee and it is more a kind of forced retirement because of the medical condition and not a case of voluntary retirement because of the ailment employee was suffering from.

Annexure- 1 indicates that the petitioner has gone for voluntary retirement by virtue of the fact that he felt that he was incapable of continuing with the responsibility showered upon him as an employee and the Bank accepted his request for voluntary retirement. The case of the petitioner does not fall within Clause 2 (II) of a case of incapacitation on medical ground after reaching age of 55 years. Such provision which have been talked about in Annexure- 5 is a different breed or genre of provision for grant of ex gratia. There is no provision for grant of ex gratia so far as voluntary retirement, which has been sought on ground of illness by the petitioner.

Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

sk

AFR/NAFR	AFR
CAV DATE	
Uploading Date	23.7.2016
Transmission Date	