IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203 **CWP-10305-2010 (O&M)**
Date of decision: 18.05.2016

Adarsh Kaur

....Petitioner

Versus

New India Assurance Company Ltd. and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Mohit Jaggi, Advocate for the peitioner.

Mr. Ashwani Talwar, Advocate for the respondents.

P.B. Bajanthri, J. (Oral)

In this petition, the petitioner has questioned the order dated 5.10.2009 Annexure P-4 by which claim of the petitioner for ex-gratia payment of her late husband Kanwalbir Singh has been rejected.

2. The deceased Sh. Kanwalbir Singh was working as a Development Officer in the office of the respondent. On 02.01.2003 Government introduced scheme called "The General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Scheme 1976". It was amended as "The General

Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003 (for short "Amendment Scheme, 2003"). Under the said scheme, the petitioner's husband late Shri Kanwalbir Singh submitted application for voluntary retirement and sought for payment of ex-gratia on 27.02.2003 (Annexure P2). Validity of the amendment scheme 2003 was pending consideration before the Supreme Court and the Amendment Scheme 2003 dated 02.01.2003 was stayed. Therefore, the respondents could not implement the amended scheme, 2003 dated 02.01.2003. In view of the pendency and stay of the amended scheme, 2003, Kanwalbir Singh was continued in service and he died on 19.06.2006 while he was in service.

3. Supreme Court uphold the Amendment Scheme, 2003 dated 02.01.2003 (Annexure P1) on 08.04.2008. The respondents could not act upon application of the deceased Development Officer Sh. Kanwalbir Singh on the sole ground that under the scheme for payment of ex-gratia payable under Clause 2 shall be computed as on the date of relieving. Since the deceased Development Officer Kanwalbir Singh could not be relieved as he died while he was in service on 19.6.2006. Since he could not satisfy the clauses mentioned in Amendment Scheme 2003 in particularly Item nos. 3(2), 5(6) and (13). Learned counsel for the petitioner submitted that the petitioner is entitled for ex-gratia benefit which was due to her late husband who had applied under Amendment Scheme of 2003 on 27.2.2003 itself. Conditions of relieving may not come in the way of present case for the reasons that Kanwalbir Singh died on 19.6.2006. Therefore, the

respondents could not insist that petitioner is to be relieved for the purpose of granting ex-gratia amount under Amendment Scheme 2003 is highly arbitrary and it was beyond control of late Kanwalbir Singh and the petitioner. Therefore, rejection of the petitioner's claim for grant of ex-gratia under Amendment Scheme 2003 is to be set aside.

4. Per contra, learned counsel for the respondent vehemently contended that under the Amendment Scheme, 2003 there is a specific clause that for the purpose of ex-gratia payment Development Officer has to be relieved in the absence of relieving an officer, question of payment of ex-gratia do not arise. Therefore, there is no infirmity in rejecting the claim of the petitioner for payment of ex-gratia under Amendment Scheme of 2003. It was further submitted in the year 2008 one more scheme was launched and under that scheme benefits have been granted to the petitioner and it was accepted by her. The petitioner's counsel submitted that it was accepted under protest and 2003 Scheme is more beneficial to her.

5. Learned counsel for the respondent relied on Supreme Court decision 2006(3) SCC 708 while contending that if an employee is died before implementation of a scheme the legal representatives are entitled for benefits under new scheme. Identical issue was decided by this Court in CWP No. 15458 of 2007 on 8.9.2010 titled as ***K.K. Puri Versus Union of India and others***. Even in the said decision it was held that LRs are entitled under new scheme.

6. Heard learned counsel for the parties.

7. Short question for consideration in this matter is whether

petitioner (LR) is entitled for ex-gratia benefit under Amendment Scheme, 2003 or not. Amendment Scheme 2003 introduced on 02.01.2003. Deceased Development Officer submitted application for voluntary retirement and for payment of ex-gratia amount on 27.2.2003. The respondent could not act upon the said application for the reasons that Amended Scheme 2003 dated 2.1.2003 was stayed by the Supreme Court and it was pending consideration. During pendency of the litigation before the Supreme Court petitioner's husband died on 19.6.2006 while he was in service. Therefore, the respondents could not take a decision on the deceased officer's application for voluntary retirement. For the purpose of grant of ex-gratia benefit, one of the clause is that officer is to be relieved before calculation and disbursement of ex-gratia amount. In the present case, petitioner's husband was not relieved apparently for the reasons that scheme was stayed by the Supreme Court and it was upheld on 8.4.2008 i.e., subsequent to the death of the deceased Development Officer.

8. If two schemes/Rules are governing some benefits to an employee, advantage/beneficial scheme/rules is to be extended by giving liberal interpretation. Supreme Court in the case titled as ***Senior Divisional Manager, Life Insurance Corporation of India Ltd. v. Shree Lal Meena*** reported in 2016(2) Scale 526 at para 20 held as follows:-

> "20. *Learned counsel for the respondent also placed reliance on* ***Asger Ibrahim Amin v. Life Insurance Corporation of India, 2015(4) S.C.T. 695: (2015)10SCALE 639*** *wherein the Court was interpreting the 1995 Rules with which we are*

> *concerned in this case. In the said case, a contention was raised that the employee having resigned from service was not eligible to claim pension under the 1995 Rules. The Court referred to Rule 31 of the 1995 Rules which deals with voluntary retirement. The Court referred to the authority in Sheelkumar (supra) and thereafter referred to paragraph 10 of Cecil Dennis Solomon case (supra) which we have reproduced hereinbefore and opined thus:-*
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> > *"The legal position deducible from the above observations further amplifies that the so-called resignation tendered by the Appellant was after satisfactorily serving the period of 20 years ordinarily qualifying or enabling voluntary retirement. Furthermore, while there was no compulsion to do so, a waiver of the three months notice period was granted by the Respondent Corporation.* ***The State being a model employer should construe the provisions of a beneficial legislation in a way that extends the benefit to its employees, instead of curtailing it."***

Supreme Court in the case titled as ***Bangalore Turf Club Ltd. v. Regional Director, Employees State Insurance Corporation*** reported in (2014)9SCC 657 at Para 17 held as follows:

> *"17. The primary rule of interpretation of statutes may be the literal rule, however, in the case of beneficial legislations and legislations enacted for the welfare of employees, workmen, this court has on*

> *numerous occasions adopted the liberal rule of interpretation to ensure that the benefits extend to those workers who need to be covered based on the intention of the Legislature."*

9. In view of these facts and circumstances, it is not correct to interpret for the purpose of ex-gratia amount, officer should be relieved. An officer can be relieved only if he is alive. In the present case, question of relieving the deceased Development Officer do not arise as on 8.4.2008 the date on which Supreme Court upheld Amendment Scheme 2003 he died on 19.6.2006. Therefore, wherever, there is a clause insisting that an officer is to be relieved before grant of ex-gratia amount is concerned, is applicable only to those who are in service. Insisting that Officer is to be relieved for grant of ex-gratia amount clause is highly impracticability to implement clause against death person to be relieved.

10. In view of these facts and circumstances, the petitioner is entitled to ex-gratia benefit under Amendment Scheme, 2003 and the respondent cannot insist for fulfilling the clause of relieving.

11. Learned counsel for the respondent pointed out that in the year 2008 they have introduced another scheme under which the petitioner and others have been granted the benefit and it was accepted by the petitioner under protest. If the petitioner had accepted monetary benefit under 2008 scheme, the respondents are directed to work out the amount under 2003 scheme as well as 2008 scheme. If there is any difference of amount, the same shall be adjusted and released. Learned counsel for the respondent cited two

decisions wherein regarding implementation of new scheme after the death of an employee. In the present case, the deceased officer has already opted for Voluntary Retirement way back in the year 2003 i.e., before introduction of new Scheme of 2008. Scheme 2003 was pending consideration before the Apex Court till 8.4.2008 therefore, it was beyond control of the deceased officer or the petitioner. Hence the cited decisions are distinguishable.

12. In view of these facts and circumstances, Annexure P-4 is set aside. Respondents are directed to work out the benefit under Amendment Scheme, 2003 and to extend the same to the petitioner within a period of 4 months.

(P.B. BAJANTHRI)
JUDGE

18.05.2016
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