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05.12.2023

FMA 4436 of 2016
With
CAN 3 of 2023
With
CAN 4 of 2023

Pradip Singh & Anr.
Vs.
The State Bank of India & Ors.

Mr. Debabrata Roy
Mr. Manojit Pal
… … for the appellants
Mr. S.K. Sinha
Mr. S. Pal Chqudhuri
Ms. Diya Nandi
… … for the respondents

Order on CAN 3 of 2023 and CAN 4 of 2023

Heard Shri Debabrata Roy, along with Shri Manojit Pal, learned counsel for the appellants/petitioners and Shri S.K. Sinha along with Shri S. Pal Chqudhuri, learned counsel for the respondents/bank.

CAN 4 of 2023 has been filed for condonation of delay in filing the restoration application being CAN 3 of 2023 for recalling of the order dated 07.02.2020, whereby the appeal of the appellants/petitioners was dismissed for non-prosecution.

Although, there is a considerable delay in filing the restoration application, but the delay caused has been explained by the applicants in paragraphs 4 to 7 of the application being CAN 4 of 2023. Cause for non-appearance on 07.02.2020 has been explained in paragraphs 3 and 5 of the application being CAN 3 of 2023 and it is submitted by learned counsel for the appellants that the appellants cannot be allowed to suffer on account of the laches on the part of the counsel who was authorised to appear on 07.02.2020 but he failed to appear.

Learned counsel for the respondents does not dispute the cause for non-appearance as well as the fact that non-appearance on the date fixed i.e. 07.02.2020 was not deliberate.

In view of the facts, circumstances and submissions, briefly noted above, the CAN 3 of 2023 and CAN 4 of 2023, both are allowed. Delay in filing the restoration application is condoned. Restoration application is also allowed. Order dated 07.02.2020 dismissing the appeal for non-prosecution is hereby recalled.

Order on appeal

Heard Shri Debabrata Roy, along with Shri Manojit Pal, learned counsel for the appellants/petitioners and Shri S.K. Sinha along with Shri S. Pal Chqudhuri, learned counsel for the respondents/bank.

Admitted facts of the present case are that one Sannysi Singh who was the father of the appellant no.1 and husband of the appellant no.2, was a Group-D employee of the respondents working as a Messenger of MAMC Branch, Durgapur, District – Bardwan. He died on 13.01.2006 while in employment. As per legal advice, the appellants filed a writ petition being W.P. No. 8408 (W) of

2007 (Smt. Tunurani Singh and another Vs. State Bank of India and others) seeking relief for compassionate appointment, whereas no scheme for compassionate appointment was prevalent on that date and instead a scheme for ex-gratia payment was in operation. However, the writ petition was disposed of with some observations. Subsequently, the appellants herein filed another writ petition being W.P. No. 2501 (W) of 2016 (Pradip Singh and another Vs. State Bank of India and others). It was dismissed by order dated 17.02.2016 on the ground that there is no scheme for compassionate appointment.

Aggrieved, the appellants herein filed the present appeal seeking to set aside the order of the learned Single Judge. During pendency of this appeal, this Court considered the case of the appellants/petitioners and passed an order dated 10.04.2017 holding that the appellants/petitioners may not have the legal right to get appointment on compassionate ground and at the best they may have their relief by way of payment of ex-gratia as per the scheme framed by the State Bank of India, appearing at page 25. The aforesaid scheme dated 04.08.2005 was reproduced by this Court in the aforesaid order dated 10.04.2017 and thereafter in paragraphs 9 to 13 this Court observed and directed as under :

> "9. Learned counsel for the respondents submits that the format for ex-gratia payment in lumpsum has been provided and it was available to the appellants but the appellants never

attended the bank to apply for such scheme and invites our attention to a letter dated 28th December, 2006, addressed to the appellants regarding payment of terminal benefits and payment of ex-gratia lumpsum amount vide Annexure R-4 to the affidavit, filed in compliance with the order dated 21st March, 2017 of this Court, which reflects that the appellants were addressed by the Bank's Assistant General Manager (Operations) that in spite of advice given, no application for payment of terminal benefits in connection with the termination of services of the deceased father of the appellant no. 1 on account of death on 13th January, 2006, was received by them. It was also informed by the said letter that the Bank had already withdrawn the provision for appointment on compassionate ground with effect from 4th August, 2005 and in lieu thereof payment of lumpsum ex-gratia has come into effect. This aspect has already been communicated to the appellants number of times and one of the officers of the bank had also called upon the appellants in 2006 for obtaining various application forms required to be submitted for payment of terminal benefits and ex-gratia but the appellants did not show any interest and did not apply. Accordingly, it was expressed that the terminal benefits and payment of lumpsum ex-gratia got lost due to loss of time.

10. Thus, we find in consideration of the totality of the materials placed on record and upon hearing learned counsel for the parties that the appellants have no legal right to seek appointment on compassionate ground on

account of demise of the employee, being the father of the appellant no. 1 and they have also lost the opportunity for seeking lumpsum ex-gratia payment, which now we propose to the appellants and accordingly we are of the view that ex-gratia payment as per the scheme framed by the State Bank of India, may be extended to the relief of the appellants herein.

11. The format for payment of lumpsum ex-gratia has been annexed, which provides for furnishing information. Learned counsel for the appellants points out that in the application for recommendation for appointment on compassionate ground of dependants of deceased employees, information is to be furnished with regard to the financial condition of the family, monthly income of the family from all sources and the particulars of dependants of the deceased employee. Based on those information, payment of lumpsum ex-gratia can be made to the appellants but we find that the Bank has got a specific format for consideration of payment of lumpsum ex-gratia under the scheme. It is imperative for the appellants to furnish information as per the format for payment of ex-gratia which is Annexure R-1 at page 41 of the affidavit of compliance furnished by the respondent State Bank of India.

12. We accordingly direct the appellants to furnish the information as per the format to the Bank within two weeks from the date hereof and the respondent Bank will take into consideration the case of the appellants within

> four weeks from the date of furnishing information in the prescribed format.
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> 13. List the matter after six weeks. On that date, the Bank will inform the Court the amount payable to the appellants, to be calculated according to the scheme, along with simple interest @f 5% per annum.”

Learned counsel for the appellants/petitioners submits that the jurisdiction under Article 226 of the Constitution of India is an extraordinary and equitable jurisdiction. Even if the appellants/petitioners have not legal right for compassionate appointment but they have right for consideration for payment of ex-gratia amount under the scheme dated 04.08.2005. Learned counsel for the appellants/petitioners further submits that the appellants would be satisfied if modifying the relief ; pursuant to the aforesaid order dated 10.04.2017 the respondents may consider the case of the appellants for ex-gratia payment in terms of the scheme dated 04.08.2005 and if they find that any amount is payable to the appellants of the scheme, then the same may be paid.

Learned counsel for the respondents submits that technically the appeal of the appellants deserves to be dismissed inasmuch as the relief sought by the appellants in the writ petition was only for compassionate appointment and the order impugned in the present appeal dismissing the writ petition of the petitioners for compassionate appointment, does not suffer from any error of law or fact.

We have carefully considered the submissions of the learned counsel for the parties and perused the record of the appeal.

We find that the appellants/petitioners are not entitled for compassionate appointment inasmuch as at the time of death of the employee, there was no scheme for compassionate appointment and instead the scheme was for ex-gratia payment. The appellants, as stated by learned counsel for the appellants; were contesting the matter as per legal advice for compassionate appointment instead of pressing for ex-gratia payment under the prevalent scheme. The deceased employee was a Messenger in the respondent bank. It has been stated before us by learned counsel for the appellants that the appellants are economically weak. Be that as it may, we are of the view that equity lies in favour of the appellants/petitioners to the extent that their case deserves consideration in accordance with scheme for ex-gratia payment. Their right for consideration of their case for ex-gratia payment cannot be said to be barred on account of the relief sought by the appellants/petitioners for compassionate appointment. Even this Court passed the aforesaid order dated 10.04.2017 requiring the petitioners to furnish information in the prescribed format for consideration of their case for ex-gratia payment by the respondent bank. But it appears that in the hope to succeed in appeal for compassionate appointment the appellants/petitioners did not take any steps. Today, learned counsel for the appellants/petitioners has stated before us that the appellants/petitioners cannot be given compassionate appointment and they would be satisfied if their case for ex-gratia payment is considered by the respondent bank in terms of the scheme for ex-gratia payment.

Considering the submissions and the fact that equity lies in favour of the appellants/petitioners to the extent of consideration of their case for ex-gratia payment, and to meet the ends of justice, we dispose of this appeal with the following directions;-

(i) The appellants/petitioners shall furnish the information as per the format for payment of ex-gratia payment in the annexure R-1 (as mentioned in paragraph 11 of the order dated 10.04.2017) within four weeks from today along with certified copy of this order before the respondent no.2.

(ii) The respondent no.2 shall process the case of the appellants/petitioners in accordance with law and in terms of scheme for ex-gratia payment, without raising any objection as to limitation; and shall take final decision within next six weeks.

(iii) On taking the decision, as aforesaid, if the respondent finds that any amount is legally due and payment to the appellants/petitioners in terms of the scheme, then it shall be paid to the appellants/petitioners within next two weeks.

(iv) In the event amount due and payable, if any, is not paid by the respondents to the appellants/petitioners within the stipulated period, then for delay in making the payment the appellants/petitioners shall be entitled for interest @ 9 percent per annum commencing from the date of the order for ex-gratia payment.

With the aforesaid directions, the appeal is disposed of and the impugned order passed by the Writ Court is accordingly modified.

We make it clear that we have passed this order on peculiar facts and circumstances of the present case and therefore it shall not be treated as precedent.

(Surya Prakash Kesarwani, J.)

(Rajarshi Bharadwaj, J.)