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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 22882 of 2023

Ishita Chakrabarty
Vs.
Union of India & Ors.

Mr. Sabyasachi Chatterjee,
Mr. Omar Faruk Gazi,
Mr. Badrul Karim,
Mr. Ankan Das,
Mr. Sarajit Roy
...for the petitioner

Mr. Dev Kumar Sharma
...for the respondent no. 4

Ms. Rama Halder,
Ms. Tanuja Basak
...for the State

1. Affidavit-of-service filed in Court today be kept on record.
2. The petitioner is the wife of a deceased person who met his sad demise in an accident in Uttrakhand. On the application of the petitioner for *ex gratia* compensation for herself and her then six year old daughter, the Uttrakhand Government released funds for payment of *ex gratia* compensation to the tune of Rs.4,00,000/- to the petitioner. Although initially the respondent no. 2, that is, the District Magistrate, Howrah intimated the petitioner that the fund was going to be

disbursed to the petitioner, subsequently the same was withheld citing an order of injunction obtained by the private respondent no. 4, who is the mother of the deceased husband of the petitioner.

3. Learned counsel submits that in terms of Circular No. 776 dated June 08, 1999, lumpsum ex gratia payment is to be made to the widow and other legal heirs.

4. It is submitted that the injunction order, which has been annexed to the present writ petition, does not cover the ex gratia payment now sought to be made to the petitioner but deals with the bank accounts and other properties, which are the subject matter of the said succession proceedings.

5. Learned counsel for the petitioner also places reliance on a judgment of the Supreme Court in *Jodh Singh vs. Union of India & Anr.*, reported at (1980) 4 SCC 306 for the proposition that the family pension is required to be given irrespective of whether the deceased has shown his wife as his dependent or not.

6. Learned counsel also cites a judgment of a learned Single Judge of the Delhi High Court in *Smt. Ganny Kaur vs. The State (NCT) & Ors.*, reported at AIR 2007 Delhi 273 for the

proposition that the compensation has to be paid in view of agony or loss of a family member, in the said case a daughter/son. It was observed by the learned Single Judge that reliance placed on the personal law of succession is of no consequence in such case as this is a matter of compensation being awarded by the State, which does not function under any personal law but under the Constitution of India in a secular State. The Delhi High Court went on to observe that whenever the relationship between the State and a citizen is in issue, the personal law of the citizen has little or no relevance. Personal laws operate mostly in the domain of *citizen* versus *citizen* contests.

7. Learned counsel appearing for the private respondent contends that the private respondent is the mother of the deceased person and is also a Class-1 heir in the same bracket as the petitioner/widow. Hence, the private respondent is equally entitled to the *ex gratia* compensation disbursed on the demise of the son of the private respondent. It is argued that the private respondent comes within the concept of family and that the application made by the petitioner/widow was on the premise that such compensation was to be given to the

‘family’ of the deceased, which also includes the private respondent.

8. Learned counsel for the State submits that the District Magistrate’s hands are bound by law and the District Magistrate shall disburse the amount as per the direction of the Court. However, it is pointed out that there was a pending proceeding under Section 498A of the Indian Penal Code at the instance of the petitioner against her in-laws during the lifetime of the husband.

9. It is seen from the Office Memorandum dated September 11, 1998 of the Government of India annexed to the writ petition that the concept of *ex gratia* lumpsum compensation was for families of Central Government Civilian Employees. The same principle, it is argued, has also been applied in the present case.

10. Heard learned counsel for the parties.

11. The application of the petitioner for grant of *ex gratia* compensation, annexed at page 18 of the writ petition, undoubtedly mentions that the good office of the Additional District Magistrate, Howrah was extending its hands to help the “family” of the demised in collaboration with the Government of West Bengal.

12. However, the very next sentence of the said application mentions the petitioner herself and her six year old daughter as the “family” of the deceased.

13. The manner in which the application was made clearly shows that the same was for financial support to the petitioner and her six year old daughter, who were and are in financial distress on the demise of the petitioner’s husband. It is evident from the said application that the petitioner has been a dependent of her husband during his lifetime.

14. Insofar as the pendency of the application under Section 498A of the Indian Penal Code during the lifetime of the husband is concerned, the same does not *per se* take away anything from the contention of the petitioner that she was entitled to *ex gratia* compensation as the widow, being in financial distress on the demise of her husband. Rather, the filing of the application under Section 498A of the Indian Penal Code also operates as an assertion of the right of the petitioner as the wife of the deceased, which also entitles her to maintenance from the estate of a deceased husband.

15. Thus, seen from the perspective of the petitioner, the application for *ex gratia* compensation was not in the nature of a declaration of the petitioner's right of succession on the demise of her husband but by way of her right of maintenance from the estate of the husband on his demise.

16. If the petitioner's husband was alive as on today and the petitioner had made an application for maintenance from her husband, the said amount, as granted by the competent court, would not be distributed among all the heirs of the husband merely on the premise that in view of the personal law all the heirs are entitled to the estate of the husband. Similarly, the *ex gratia* compensation sought by the petitioner was the posthumous extension of a right to claim maintenance from her husband's estate and cannot be equated with the right of succession as such.

17. In such light of the matter, the private respondent, despite being a Class-1 heir as well, cannot claim a share in such *ex gratia* compensation payable to the petitioner and her six year old daughter exclusively, which was disbursed in their favour on their application merely as an *ad hoc* measure to meet the

financial distress which the petitioner and her six year old daughter have been suffering due to her husband's demise.

18. With regard to other component of the challenge, the petitioner is justified in arguing that the order of temporary injunction passed in a succession certificate proceeding by the private respondent/mother of the deceased only pertained to the subject matter of the said dispute and as per the order itself, was restricted to withdrawing any amount from any bank or insurance company lying in the account of the deceased husband of the petitioner to the extent as indicated therein. Hence, the petitioner not being a party there and the subject matter of the *ex gratia* compensation not being a subject matter of the succession proceedings, the said order cannot restrain the District Magistrate from disbursing the entire amount of *ex gratia* compensation in favour of the petitioner.

19. Having held so, I do not find any impediment on the part of the District Magistrate, Howrah to disburse the entire amount of Rs.4,00,000/-, intended at the outset to be disbursed to the petitioner and her six year old daughter, to the petitioner.

20. Accordingly, W.P.A. No. 22882 of 2023 is allowed on contest, directing the respondent no. 2, that is, the District Magistrate at Howrah, to immediately disburse the entire amount of Rs.4,00,000/- to the petitioner for use by the petitioner and her six year old daughter by way of ex gratia compensation on the demise of the petitioner's husband.

21. Such disbursal shall be made by the respondent no. 2 at the earliest, positively within a week from date, by acting on a server copy of this order.

22. There will be no order as to costs.

23. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)