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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R No.2636 OF 2023 (O&M)
DATE OF DECISION: 31.05.2023

Som Dutt (deceased) through legal heirs **Petitioners**

Verus

State Bank of India **Respondent**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ashok Kumar Nabhewala, Advocate,
for the petitioner(s).

Ms. Madhu Dayal, Advocate for the respondent.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 21.03.2023 (Annexure P-1) passed by learned Executing Court in Execution No.1446 of 2018 and for direction to execute award passed by learned Central Government Industrial Tribunal-cum-Labour Court.

2. Averments are that petitioner/workman was appointed as Canteen Waiter on 01.11.1990 at monthly salary of Rs.350/-. He was given full wages after the award was passed in his favour on 23.05.1995 under the Minimum Wages Act. Thereafter, respondent/management filed CWP No.9240 of 1995 which was dismissed by Division Bench of this Court. In the meantime, canteen was taken over by the bank and all the ten employees working therein were to be absorbed being bank employees. However, their services were retrenched on 27.07.1995.

2.1 The stand of respondent-bank was that there was no privity of contract between the management and workman and petitioner was never appointed by the Management as there was no post of Canteen Waiter.

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2.2 The said award was challenged by filing CWP No. 33424 of 2018 and vide interim order dated 31.01.2019, another opportunity was given to produce original record of selection conducted in the year 1995. Respondent failed to produce such record and consequently writ petition was dismissed vide judgment dated 30.04.2019 (Annexure P-3).

2.3 Respondent-bank preferred an intra court appeal bearing LPA No.1156 of 2019 which was also rejected vide judgment dated 10.02.2022 (Annexure P-4). During the pendency of LPA, workman died and his legal representatives were brought on record.

2.4 An SLP No.7136 of 2022 filed against the LPA order was also dismissed vide an order dated 12.07.2022 (Annexure P-5). Petitioner/workman through legal representatives approached executing Court for execution of award. He also submitted his calculations of arrears of back wages with effect from August, 1995 till 2022 at par with salary/wages drawn by junior employees.

2.5 Judgment debtor filed objections to the execution petition regarding obtaining of succession certificate. The said objections were upheld without appreciating the provisions of law is the contention herein.

3. Learned counsel for petitioners submits that under the Industrial Disputes Act, whenever workman dies during the pendency of proceedings, the dispute does not abate and legal heirs are entitled to substitute themselves by moving appropriate application. He would further argue that there is no requirement of obtaining succession certificate. Learned counsel further submits that wages of workman are not a debt as there was no lending or borrowing with the bank by the workman. Legal heirs are only seeking relief of back wages at par with regular workman to the extent of 50%.

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4. On the other hand, learned counsel for respondent strenuously opposes the revision petition and supports the impugned order and argues that same is based on correct findings.

5. I have heard learned counsel for the parties and perused the case file.

6. Even on an earlier occasion I have had to deal with a similar issue vide CR No.5634 of 2017 titled "**Babita and others v. Union of India**" decided on 22.05.2023. For ready reference, relevant portion of that order is extracted as under:

> *6.1. That apart, it is rather frivolous as has been observed by learned Tribunal below that since mother of the accident victim, namely, Raj Bala alias Bala Devi had died on 11.08.2013 during pendency of appeal arising out of claim petition, therefore, application for impleadment of LRs on her behalf was time barred. All that was required to be seen was the disbursement of amount to surviving LRs as on the date of disbursement and there was no question of limitation to be applied in such a scenario.*
> *7. Be that as it may, impugned orders are set aside with a direction to learned Executing Court (Railways Claims Tribunal) to disburse the compensation awarded to the family of the accident victim i.e., widow and all her children by taking an indemnity bond that in case, in future, there are other LRs who stake claim in the share, they shall be held solely responsible to the consequences arising from such claim and the liability thereof, if any, arising out of the same, shall not be fastened with the Railways.*
> *xxx*

7. In the instant case, I am of the view that since petitioners. who claim themselves to be legal heirs, are entitled to espouse the cause of deceased predecessor-in-interest under the award which attained finality on dismissal of LPA bearing No.1156 of 2019and subsequently, even before the Supreme Court wherein finally the award was affirmed and the LRs of the deceased had stepped into the shoes of deceased. I see no reasons as to why benefit of their having succeeded in litigation be not given to them.

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8. The other issue *qua* the post on which deceased/claimant was to be reinstated, the said issue is left open for the executing Court to decide afresh, even though in the impugned order some observations *qua* the claim for grant of employment to the son of the deceased on compassionate grounds as per policy of the Bank of the petitioner were made, but it was not decided either way. The same is being allowed to be re-agitated since learned counsel for petitioners stated that some material evidence of same could not be adduced earlier when learned executing Court passed the order since their status as legal heirs was not accepted. In the premise, they were more focused on locus rather establishing their case.

9. Subject to petitioners giving undertaking in the form of indemnity/affidavit(s), amount be disbursed within a period of 30 days thereafter. The amount already deposited be disbursed to legal heirs in equal proportions subject to their furnishing indemnity bonds/affidavits, as aforesaid. Rest of the issues are left open for learned executing Court to decide.

10. In the totality of circumstances, impugned order is set aside and learned executing Court is directed to proceed further and pass fresh orders during execution proceedings *qua* the petitioner's claim for grant of employment to the son of the deceased on compassionate grounds as per policy of the Bank.

MAY 31, 2023 **(ARUN MONGA)**
Shalini **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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