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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
****

CWP-12498-2018 (O&M)
Date of Decision: 08.02.2023

Darshana Devi and another

..... Petitioners

Versus

Oriental Insurance Company Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sonal Soi, Advocate,
for the petitioners.

Mr. D.C. Kumar, Advocate,
for the respondents.

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<u>JASGURPREET SINGH PURI, J.</u> (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of *certiorari* for quashing the order dated 10.01.2018 (Annexure P-9) vide which the respondents have declined the claim of the petitioners and also for issuance of writ in the nature of *mandamus* directing the respondents for payment of Monetary Compensation, Yearly Incentives during job, interest on late payments of all after death benefits in respect of Sh. Ashok Chhabra, Development Officer, Oriental Insurance Company, Limited, who had expired on 11.08.2005.

At the outset, learned counsel for the petitioners has submitted that there are two petitioners in the present case. Petitioner No.1 is the widow of Sh. Ashok Chhabra, who was an employee of the respondent-

Company and petitioner No.2 is the son of petitioner No.1. However, during the pendency of the present petition, petitioner No.1 has already passed away and there is only one L.R. of petitioner No.1, who is already a party in the present case i.e. petitioner No.2, and therefore, no formal application is required for the purpose of impleading him as a party.

Learned counsel for the petitioner submitted that the petitioner is seeking the retiral benefits qua the aforesaid Sh. Ashok Chhabra on three counts:-

(i) Interest on the delayed payment of pensionary benefits.

(ii) Yearly Incentives during job.

(iii) Monetary Compensation in terms of the circulars issued by the Company from time to time.

Learned counsel for the petitioner submitted that so far as the first part is concerned, the aforesaid Sh. Ashok Chhabra, who is the father of petitioner No.2 had died on 11.08.2005 and the pensionary benefits were payable to both the petitioners immediately, but the same were paid after a lapse of time, and therefore, they were entitled for grant of interest on that. So far as the second head pertaining to Yearly Incentives during job is concerned, the same has been wrongly denied to the father of petitioner No.2 in violation of the instructions issued by the Company itself and therefore, now the petitioner is entitled for the same alongwith interest. So far as the third head is concerned, the petitioners were entitled for Monetary Compensation after the death of Sh. Ashok Chhabra, which has not been given to the petitioners, and therefore, necessary directions be issued in this regard.

On the other hand, Mr. D.C. Kumar, learned counsel appearing on behalf of the respondents submitted that so far as the first component pertaining to interest on the delayed payment is concerned, the prayer of the petitioner is misconceived. He further submitted that the aforesaid Sh. Ashok Chhabra had died on 11.08.2005 and all the pensionary benefits were paid to the petitioners immediately thereafter and regarding the same, details have been given in Para No.2 of the Preliminary Submissions filed by the respondents-Company. Provident Fund was paid on 19.08.2005 Gratuity was paid on 13.01.2006, Leave Encashment was paid on 21.09.2005 and GSLI & CIS was paid on 09.05.2006. He also submitted that so far as the prayer of the petitioners that some payments have been made in the year 2009 and 2010 is concerned, the same were pertaining to grant of payment on the basis of revision of pay-scales and was not for the purpose of initial pensionary benefits, and therefore, there was no delay on the part of the respondents-Company. He further submitted that so far as the second head pertaining to Yearly Incentives during job is concerned, the Company has already taken a decision that the same will be paid to the petitioners and the amount of the same comes to around Rs.1,00,000/- and the same shall be paid to petitioner No.2 in due course. He further submitted that so far as the head pertaining to monetary compensation is concerned, the petitioner did not qualify for the same because as per the circular issued by the Company, if the total amount which is drawn by the pensioner is more than 70% of the last drawn basic pay plus DA, then the same is not admissible and since petitioner No.1 herself had given an affidavit in the year 2010, giving the total benefits received by her which exceeded 70% as aforesaid, she was not entitled for the same, and therefore, has been rightfully denied to her.

I have heard learned counsel for the parties.

All the three different heads which have been prayed by the petitioner are taken up for consideration as under:

1. <u>Interest on the Delayed Retiral Benefits:-</u> From the perusal of the reply filed by the respondent-Company and as argued by the learned counsel for the respondent, it appears that after the death of aforesaid Sh. Ashok Chhabra on 11.08.2005, the Provident Fund, Gratuity and Leave Encashment have been paid without any delay and the dates have also been mentioned as aforesaid. So far as some payments made in the year 2009 and 2010 are concerned, the same pertained to revision of pay, and therefore, there is no question of delay with regard to the same. So far as GSLI & GIS is concerned, as per learned counsel for the respondent-Company, the same is an amount which was lying with the Society of the employees itself and few months were taken for the purpose of getting the amount from the Society.

In view of the above, this Court is of the view that the petitioners are not entitled for any interest on the retiral benefits as per dates and figures given by the learned counsel for the respondents on the basis of reply filed by them.

2. <u>Yearly Incentives During Job</u>:- So far as the Yearly Incentives during job is concerned, it has already been submitted by the learned counsel for the respondents-Company that the same has already been sanctioned and will be paid to the petitioner in due course. The said yearly incentive during job was an incentive which was pertaining to the job of the aforesaid Sh. Ashok Chhabra during his life time and especially after his death, the same was required to be paid to the petitioners promptly but there is no justification coming forth as to why there was delay. Even in the reply which has been filed by the respondents, it has been so stated that as regards payment of Yearly Incentives during job is concerned, the respondents are ready to make payment of the job incentives for the years 2004-05 and 2003-04 as per demand made by the petitioners. Today, learned counsel for the respondents has also submitted that a decision has been taken to pay the same. It is clear from the reply filed by the respondents in Para No.29 that the job incentives were pertaining to the years 2004-05 and 2003-04 and it is, therefore, clear that the aforesaid amount was to be paid at that point of time, but has not been paid despite the fact that about 18 years have elapsed.

In view of the above, as far as the payment of Yearly Incentives during job is concerned, the respondent-

Company is directed to pay the aforesaid amount of Rs.1,00,000/-, which according to the learned counsel for the respondents has already been approved and sanctioned by the Company, within a period of three months from today alongwith interest @ 6% p.a..

3. <u>Monetary Compensation</u>:- So far as the third component pertaining to the Monetary Compensation is concerned, as per learned counsel for the respondents, the income of petitioner No.1 was more than 70%, and therefore, she was not entitled for the same. However, as per learned counsel for the petitioner, the affidavit regarding income was furnished by petitioner No.1 in the year 2010 and at that point of time, there was revision of pay scales whereas at the time of the death of the aforesaid Sh. Ashok Chhabra in the year 2005, her income was less than 70% and she fulfilled the criteria for grant of Monetary Compensation.

In view of the aforesaid position, petitioner No.2 is at liberty to file an appropriate application to the competent authority/respondent No.3 giving details of the financial status as per the requirements of the circular, as relied upon by the learned counsel for the respondents. Thereafter, the said application filed by petitioner No.2 shall be considered by the competent authority/respondent No.3 and in case it is found that petitioner No.2 is entitled for the Monetary Compensation from the year 2005 onwards, then the same shall be calculated and granted to petitioner No.2 alongwith interest @ 6% p.a..

In view of the aforesaid directions, the present petition is disposed of.

08.02.2023 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No