IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.53 of 2022
In
Civil Writ Jurisdiction Case No.7799 of 2017

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1. Indian Bank having its Corporate Office 254-260, Avvai Shanmugam Salai, Royapettah, Chennai- 600 014 through the Chief General Manager.

2. The General Manager (HRM), Indian Bank having its corporate Office 254-260, Avvai Shanmugam Salai, Royapettah, Chennai- 600 014.

3. The Chief Manager (HRM), Indian Bank having its corporate Office 254-260, Avvai Shanmugam Salai, Royapettah, Chennai- 600 014.

4. The Deputy General Manager, Accounts, Indian Bank having its corporate Office 254-260, Avvai Shanmugam Salai, Royapettah, Chennai- 600 014.

5. The Zonal Manager, Indian Bank, Zonal Office, Patna 800 001.

6. The Branch Manager, Indian Bank, Ratnakar Bhawan, Motijhil, Muzaffarpur- 842001.

... ... Appellant/s

Versus

Veena Devi Wife of Late Laxmi Singh Resident of Jagdamba Nagar, Kolhua, Paigambarpur, P.O. M.I.T. P.S. Ahiyapur, District- Muzaffarpur, PIN- 842003.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Shambhu Nath, Adv
For the Respondent/s	:	Mr.Vijay Kumar Singh, Advocate
		Mr. Abhinav Shandilya, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-08-2024

The appellant is aggrieved by the judgment of the learned Single Judge which directed the actual interest received by the petitioner on the corpus of terminal benefits, to be reckoned to compute the income of the family which, in the aggregate, has to be less than 60% for the purpose of payment of *ex gratia* pension.

2. Learned Counsel for the appellant Bank submitted that *ex gratia* pension is in lieu of compassionate appointment and the same is permissible only in cases where the family income of the deceased employee is less than 60% of the last drawn salary by the deceased employee. Learned Counsel also referred to Annexure-1 in the LPA which is the scheme for payment of *ex gratia* pension to the family of employees dying-in-harness/employees prematurely retired on medical grounds; in lieu of appointment on compassionate grounds. As per the policy, *ex gratia* pension would be granted to the family of the employee of the specified persons shown in Annexure-1 only if the monthly income of the family from all sources is less than 60% of the last drawn salary (net of taxes of the employee). In the present case, the employee died in harness and there is no dispute on that; which was on 12.08.2013. The family applied for *ex gratia* pension which was denied.

3. The Bank had calculated income @ 10 per cent for the corpus of terminal benefits obtained by the family of the deceased employee. This was challenged on the ground that a depositor would be entitled to only 9% maximum interest. The learned Counsel for the respondents specifically referred to Annexure-3 which speaks of 9% interest for a fixed deposit of three years and above while the learned Counsel for the Bank, the appellant, pointed out Annexure-2 wherein 1% additional interest is entitled to serving employee/retired employees/eligible family members. The learned Counsel for the respondent counters that since the scheme, is one in lieu of compassionate appointment, a liberal view should be taken.

4. A scheme for compassionate appointment itself; it is trite, as was held by the Hon'ble Supreme Court, does not create any vested right on the family of a deceased employee. Appointment to the dependent of a deceased employee, would be permissible only if the employer has a scheme for such compassionate appointment and in the circumstance of an existing scheme, it would be regulated by the specific terms of the scheme. In the present case, the Bank in lieu of compassionate appointment and introduced a scheme of *ex gratia* family pension coming to Rs. 7 lakhs as a one-time

payment, to those dependent family members to get over the loss suffered by the loss of the only bread winner of the family. It is the declared position that even the appointment under a scheme based on compassion is to get over the initial difficulty and to ensure that the impecunious family whose only bread winner has died is not thrown to the streets or figuratively; devoured by the wolf at the door. The appointment, in any event, would run counter to the rule of equality in public employment and in that circumstance can be made only in dire circumstances as required by the terms of the scheme; which have to be strictly construed. The same principle would apply in the scheme of *ex gratia* pension; which is introduced in lieu of an appointment and the employer being in the public sector is dealing with public funds.

5. The provision of the scheme is very clear and from Annexure-1 it is seen that the terminal benefits of provident fund, gratuity, leave encashment and any other amount paid on retirement or severance from employment from a cause, including death would be totaled; from which the loans taken from the Bank or other financial institutions with prior approval of the bank, would be deducted. The net corpus of the terminal benefits would thus be computed, on which interest would be

applied, to determine the income that could be generated from the net corpus of the terminal benefits. This is evident from the calculation of the monthly income; specifically Serial No. 7(i). The income so calculated from the net corpus comes to Rs. 12,603.82 to which is added the family pension paid by the Bank, which admittedly comes to Rs. 13,037.55. The two incomes, so computed as per the scheme comes to Rs. 25,641.37. Sixty per cent of the net last pay drawn by the employee was Rs. 24,390.47; which is not disputed by the writ petitioner. Though nominal, the income of the family as computed under the scheme would be above 60% of the last drawn salary of the deceased employee.

6. We have seen that Annexure-3 puts the maximum interest @ 9 per cent, Annexure-2 indicates that the employees and even the family of an employee would be entitled to 10 per cent interest on their fixed deposits.

7. Learned Counsel for the respondents argued that the onus is on the Bank, to prove that 10% interest is paid to the families also. We do not think that by the *ex gratia* family pension scheme there is any obligation on the family to put the corpus received as terminal benefits in a fixed deposit. The income is determined on the basis of the monthly interest

applicable only on a notional basis to determine as to what would be the notional income available to the family of the employees, from the net corpus of the terminal benefits. If the writ petitioner had deposited the amount in a fixed deposit and the lesser rate of 9% was applied; then it was for the writ petitioner to demonstrate before this Court that only a lesser amount of interest was made applicable to the family of the deceased employee. We do not see any such contention having been taken by the writ petitioner.

8. There is yet another argument that the amounts received as insurance was also included to compute the income; which the learned Counsel for the Bank points out, was initially reckoned but later deleted. We have also computed only the income from the interest applicable to the net corpus of the retiral benefits and the family pension, which exceeds the 60% of the last pay drawn by the deceased employee, thus dis-entitling the bereaved family from *ex gratia* pension.

9. Going by the terms of the scheme, we are of the opinion that the bank was perfectly within the four walls of the scheme in applying 10% interest as entitled to eligible family members of a deceased employee.

10. On the above reasoning, we set aside the judgment of

the learned Single Judge and allow the appeal declining the prayer for *ex-gratia* pension.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

ranjan/-

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