IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 8391 of 2014

Reserved on : 26.04.2024
Pronounced on: 24.07.2024

Gouri Mukherjee

...Petitioner

-Vs-

The General Manager Hrd. Cenral Bank of India & Ors.

...Respondents

Present:-

Mr. Md. Sallahuddin
Mr. Md. Ahsanuzzaman
Mr. Md. Raziuddin

... for the Petitioner

Mr. Bishwambhar Jha
Ms. Munmun Mishra

... for the Respondents

Rajarshi Bharadwaj, J:

1. The instant writ application has been preferred challenging inter alia the correctness of decision dated 30.11.2013 and letter dated 11.12.2013 wherein ex-gratia amount in lieu of appointment on compassionate ground was denied to one Smt Gouri Mukherjee, herein the writ petitioner.

2. The facts of the case are that in terms of Government/IBA guidelines, Central Bank of India vide C.O Circular No. CO: HRD: 2006-2007: 57 dated 16.06.2006 introduced a new scheme of payment of ex-gratia lump sum amount in lieu of appointment on compassionate grounds to the dependents of deceased employees/physically incapacitated employees with effect from 14.12.2005. According to Rule 8 of the Annexure to the Circular, if the total monthly income of the family arrived at is less than 60% of the last drawn gross salary (net of taxes) of the employee, an ex-gratis amount calculated at the rate of 60 % of the last drawn gross salary (net of taxes) for each month of remaining service of the employee (i.e. up to the age of superannuation in terms of service rules) at the time of his death will be payable subject to the cadre-wise ceiling on ex-gratia payment.

3. One Sri Ramanath Mukherjee, husband of the petitioner hereinafter referred to as deceased employee died in harness on 04.12.2008 working as a sub-staff (daftari) in Central Bank of India, Chhota Alunda Branch hereinafter referred to as the respondent bank.

4. The petitioner applied for payment of ex-gratia lump sum amount in lieu of appointment on compassionate ground in the prescribed format on 04.05.2012 to the Branch Manager, Central Bank of India, Chhota Alunda Branch herein respondent No. 3. The claim form of the petitioner was forwarded to the Deputy Regional Manager, Regional Office HRD Cell, Durgapur herein respondent No.2 for consideration vide Reference No. CHHALU/2013-2014/OPR/27 dated 25.07.2013.

5. On the basis of decision taken vide Central Office Letter No. CO/HRD/R&P/Ex-gratia: 2013-14/888 dated 30.11.2013 passed by the General Manager (HRD) herein respondent No. 1, the claim of the petitioner for payment of ex-gratia lump sum amount was turned down by respondent No.2 vide office letter No. RO/DGP/HRD/2013-14/12/12/1519 dated 11.12.2013. As no ex-gratia amount was paid, an application was submitted for employment of one Subhasis Mukherjee, son of the deceased employee on compassionate ground on 05.03.2014 which has not been considered by the respondent bank. Thus, aggrieved by the aforesaid decision letters, the present writ application lies.

6. It has been submitted by the learned counsel for the petitioner that the petitioner is legally entitled to get the benefits under the Circular dated 16.06.2006. The petitioner's family does not receive any income derived from property and the income of the deceased employee was the only source of income. The last drawn salary of the deceased employee was Rs 14,124/- (Fourteen Thousand One Hundred and Twenty-Four) and the dependents of the deceased employee received an amount of Rs 5,69,317.71/- (Five Lakh Sixty-Nine Thousand Three Hundred Seventeen point seven one) on account of terminal benefits which included Provident fund and Gratuity. The writ petitioner is receiving family pension of Rs 5,900/- (Five Thousand Nine Hundred) per month since 2017.

7. It has been further submitted by the learned counsel for the petitioner that the dying-in-harness scheme dated 16.06.2006 is not complied with by the respondent bank while deciding her claim for appointment in the bank on compassionate ground. The total monthly family income of the petitioner's family is much below the ceiling amount *i.e.* 60% of the salary which was drawn by the deceased employee at the time of death, prescribed for receiving ex-gratia amount. The total monthly family income has been incorrectly assessed by the respondent bank in the calculation sheet dated 26.03.2014 by subjecting improper maximum term deposit rate on the terminal benefits and other investments of the deceased employee and without considering relevant factors such as compulsory family expenses, employment status of other family members and sources of their income, size of the family and other liabilities. The financial condition of the petitioner's family is to be determined after balancing the assets vis-à-vis liability which is not done by the respondent bank.

8. It has been submitted by the learned counsel for respondent bank that as per a detailed calculation of terminal benefits by the respondent bank, the financial position of the dependents of the deceased employee does not show any indigent circumstances warranting to provide employment on compassionate grounds in view of the Bank Circular dated 16.06.2006. The petitioner received an amount of Rs 7,12,028/- (Seven Lakh Twelve Thousand and Twenty-Eight) as benefits under the heads of provident fund, gratuity, leave encashment and insurance. Further, the total monthly family income of the petitioner is Rs 12,106/- (Twelve Thousand One Hundred and Six) which is beyond the ceiling amount of 60 % of the gross salary of the deceased employee i.e. Rs 8,474/- (Eight Thousand Four Hundred and Seventy-Four) and therefore the petitioner is not eligible for ex-gratia lump sum amount of Rs. 6,00,000/- (six lakhs).

9. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the writ petitioner is entitled to an ex-gratia amount in lieu of compassionate appointment as per Circular No. CO: HRD: 2006-2007: 57 dated 16.06.2006.

10. The Honorable Supreme Court in **Umesh Kumar Nagpal -versus- State of Haryana** reported in **(1994) 4 SCC 138**, observed that -

> *"2. …The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.... It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the*

> *family engendered by the erstwhile employment which are suddenly upturned." ...."*

11. Family pension and terminal benefits of the deceased employee cannot be equated with the payment of ex-gratia in place of compassionate appointment. On one hand, the terminal benefits are an assured amount that is earned by the deceased employee in course of his employment which is paid on the happening of specified incidents and family pension is one kind of a deferred payment which the employee might have received had he been alive, while on the other hand ex-gratia amount is payable on compassionate ground to tide over the sudden crisis of the petitioner brought about by the premature death of the deceased employee.

12. It is a settled principle of law that the sole object of a Family Benefit Scheme either by way of compassionate appointment or ex-gratia lump sum amount in lieu of appointment on compassionate grounds is to provide immediate relief to the employees family to tide over the sudden financial crisis.

13. In the case of **Balbir Kaur & Anr. –versus- Steel Authority of India Ltd. & Anr.** reported in **2000 (6) SCC 493**, the Hon'ble Supreme Court held that:

> "*13....The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump-sum amount being made available to the family-this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation."*

14. In the instant case, the Calculation Sheet being CO/HRD/R&P/Ex-gratia/13-14/1079 dated 26.03.2014 provided by the respondent bank reveals erroneous computation of total monthly family income to the tune of Rs 12,106/-. The monthly family pension from all sources of the writ petitioner is subject to a concocted and improbable bank deposit rate of 10% per annum which is not at par with the existing rate of interest.

15. For the reasons discussed above, the writ application being WPA 8391 of 2014 is allowed and the respondent bank is directed to calculate the monthly family income of the dependents of the deceased employee in terms of the present market rate within three months from the date of communication of this order.

16. With the above observations and directions, the writ application is disposed of.

17. There shall, however, be no order as to costs.

18. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(RAJARSHI BHARADWAJ, J)

Kolkata
24.07.2024
PA (BS)