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Ct-08

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FMA 624 of 2023
with
IA No. CAN 2 of 2022

Amiya Kumar Sarkar
Vs.
Indian Bank & Ors.

Mr. Kallol Guha Thakurata
Mr. Avimannu Das
... For the Appellant

Mr. Pijush Kanti Ray
Mr. Sourajit Mukherjee
... For the Respondents

1. We have heard the learned counsel appearing for the parties.

2. The appeal is arising out of an order passed by the learned Single Judge in a writ petition filed by the petitioner. The father of the petitioner died in-harness on 30th July, 2006 who was working in the post of Clerk in Balurghat Branch of Indian Bank. After the death of his father an application for appointment of the petitioner being the dependent son was made on compassionate ground by the widow, Mrs. Shoba Rani Sarkar, which was rejected by the bank authority vide letter dated 16th October, 2006.

3. The learned Single Judge dismissed the writ petition. As a result whereof, this appeal has been preferred by the son of the deceased employee. During the hearing of the appeal, it was contended that irrespective of the result of the appeal the bank had deducted a sum of Rs.4,30,081.08/- as Ex-gratia and a sum Rs. 4,62,942/-was paid to the mother of the appellant, after the death of her husband.

4. We directed the bank to file an affidavit. Accordingly, the bank filed the affidavit. It appears from the said affidavit that a "Scheme for payment of ex-gratia in lieu of compassionate appointment" was introduced by bank with effect from 10th August, 2005 and in terms of the said Scheme, ex-gratia is paid to the dependents of employees of respondent bank who die in harness or to the employees who permanently retired from service on account of medical grounds.

5. The father of the petitioner expired on 30th July, 2006 while in service. Upon his death all the terminal benefits including the Provident Fund was settled and released in favour of his wife, namely, Mrs. Shobha Rani Sarkar. Subsequently, the widow applied for compassionate appointment vide letter dated 12th September, 2006, which was rejected by the bank in terms of communicated dated 16th October, 2006 intimating that at the time of demise of the deceased there was no provision for compassionate appointment and a Scheme for payment of ex-gratia was only in force.

Thereafter, Mrs. Shobha Rani Sarkar submitted an application claiming ex-gratia in lieu of compassionate appointment which was duly processed by the bank and a sum of Rs.4,62,942/- was credited in her Savings Bank Account in lieu of compassionate appointment on 30th January, 2009 by the bank.

6. The father of the appellant was a Provident Fund optee upon his death. In the year 2010 the bank had introduced an option to join the Pension Scheme to serving and retired employees. The said option can also be availed of by the members of deceased employee subject to fulfillment of other terms and conditions in the Scheme. In order to avail of the pension option, the employee/family of the employee has to refund the entire amount of bank's contribution of Provident Fund account and interest accrued thereon worked out at 56% of the Provident Fund Account. In the instant case, the mother of the appellant availed the benefit of the said option by remitting the bank's contribution to the Provident Fund Account along with interest accrued thereon amounting to Rs.4,30,081.08. Consequently, she was sanctioned family pension from April 2011 onwards and she received pension until her death on 30th

December, 2019. The bank also disclosed the relevant scheme dated 21st August, 2010 in this regard.

7. It appears that the Scheme dated 30th August, 2005 stipulates payment of ex-gratia amount to the family of the deceased employees dying in harness/employees seeking premature retirement on medical grounds in lieu of compassionate appointment and in terms thereof, the mother of the present appellant received ex-gratia amount and thereafter received family pension in terms of Family Pension Scheme dated 21st August, 2010.

8. Learned counsel representing the appellant has submitted that the payment of ex-gratia is in the nature of Family Pension Scheme and the same cannot be the basis for denying compassionate appointment. In this regard he has relied upon a decision of the Hon'ble Supreme Court reported in ***2000(6) SCC 493 (Balbir Kaur & Anr. Vs. Steel Authority of India Ltd. & Ors.).*** In Balbir Kaur (supra) it was observed that "*Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. 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 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."*

9. In the instant case, the bank has no provision for compassionate appointment. In absence of any Scheme for compassionate appointment, the application for compassionate appointment cannot be considered. Moreover, the mother of the petitioner did not challenge the Scheme by which she was extended the benefit of ex-gratia in lieu of compassionate appointment. She accepted the said amount and thereafter opted for pension in terms of the Scheme introduced in the year 2010. In Balbir Kaur (supra) the facts are not similar as that of the instant case. The rejection in the instant case is not on the ground that that Family Pension Benefit Scheme was available along with compassionate appointment. The prayer for compassionate appointment was rejected as there was no Scheme in operation when the bread earner died. Moreover, it is settled law that the benefit of compassionate appointment is extended as an immediate relief to enable the family to come out of the financial distress it faced by reason of the sudden death of the sole bread earner. In the instant case, the employee died on 30th July, 2006 and the application for compassionate appointment was made by the present appellant on 7th June, 2014. The widow of the deceased did not pursue her claim for compassionate appointment and instead accepted ex-gratia in lieu of compassionate appointment. Moreover, as observed earlier, there was no Scheme in place at the time when the deceased died. It is not similar to the situation where the appellant is denied compassionate appointment merely on the ground of financial benefit by giving lump sum payment was extended to the family of the deceased. The fact situation in Balbir Kaur (supra) is different from the facts, with which we are presently concerned.

10. The learned Single Judge has rightly held that the compassionate appointment is not a vested right and such benefit can only be extended to the applicant if the Scheme provides such appointment. In absence of any challenge to the said Scheme by the widow of the deceased and having regard to the fact that the Scheme does not provide for compassionate appointment. The petitioner's mother got the benefit of ex-gratia in lieu of compassionate appointment, the question of further consideration of the application for appointment of the petitioner on compassionate ground does not arise.

11. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

12. In view of the above, the appeal fails and is accordingly dismissed.

13. In view of dismissal of the appeal, nothing remains to be decided in the application for stay being CAN 2 of 2022 and the same is accordingly dismissed.

14. However, there shall be no order as to costs.

15. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.) **(Soumen Sen, J.)**