IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A.No.1662 of 2024 &
CMP.No.11732 of 2024

General Manager & Zonal Head,
Bank of Baroda, Zonal Office,
Baroda Pride, New No.41,
III Floor, Luz Church Road,
Mylapore, Chennai-4 ... Appellant

Vs.

1. The Central Government Industrial
   Tribunal-cum-Labour Court,
   1st Floor, B Wing,
   No.26, Haddows Road,
   Sastri Bhavan, Chennai-6.
2. Vijaya Bank Workers Organisation,
   represented by tis President,
   No.60/2, Big Street,
   Triplicane, Chennai-5. .... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the order passed in W.P.No.2964 of 2017, dated 01.08.2023 by the learned Single Judge

For Appellant : Mr.Gautham S.Raman
for M/s. Raman and Associates
For Respondents : Mr.K.M.Ramesh, Senior Counsel
for Mr.V.Subramani

JUDGMENT

(Order of the Court was made by J.NISHA BANU, J.)

This Writ Appeal is preferred by the appellant/Management challenging the order of dated 01.08.2023 passed in W.P.No.2964 of 2017.

2. The facts leading to filing of this Writ Appeal is as follows;

(i) Vide circular No.233/2004, dated 20.11.2004, the appellant Management framed a scheme for payment of ex-gratia amount in lieu of compassionate appointment for the legal heirs of the deceased employees. Thereafter, under revised circular No.169 of 2007 dated 17.10.2007, a revised scheme was framed, by which, the legal heirs of the deceased employees are made eligible for compassionate appointment only if the employee dies while performing official duty as a result of violence, terrorism, robbery and dacoity and (ii) if the employee dies within five years of his/her first appointment or before reaching the age of 30 years, whichever is later, leaving a dependent spouse and /or minor children.

(ii) Prior to 2007 revised scheme, the 2nd respondent raised an industrial dispute before the Regional Labour Commissioner (Central), Chennai regarding the steps taken by the Bank in introducing the new scheme under circular No.233/2004 granting ex-gratia relief in lieu of compassionate appointment and the above dispute ended in failure and failure report was filed before the Ministry of Labour.

(iii) The 2nd respondent/Organisation raised a dispute in I.D.No.2 of 2014 before the Tribunal challenging the Circular No.233/2004, dated 20.11.2004 issued by the Bank granting ex-gratia relief in lieu of compassionate appointment on the ground that introducing a scheme granting ex-gratia relief in lieu of compassionate appointment and financial compensation scheme cannot in any way be equated with the benefit of compassionate appointment and the dependents of the deceased four employees have been denied appointment under compassionate ground by the Bank.

(iv) The dispute was contested by the Bank stating that compassionate employment cannot be made in the absence of rules or regulations issued by the Government and it is the only scheme that was in force when the application for compassionate appointment was actually considered and the applications for compassioate appointment should not be considered under the earlier scheme.

(v) The tribunal, by an award dated 13.03.2014, directed the respondent to get fresh applications from the concerned dependents under the new scheme granting ex-gratia payment and on receipt of such applications, it directed the appellant Bank to pay lumpsum ex-gratia in terms of the scheme, calculating it on the basis of the salary of the deceased employees would have drawn as on the date of consideration of the applications.

(vi) Aggrieved over the award, the appellant/Bank preferred writ petition in W.P.No.2964 of 2017 on the ground that the issue of payment/rejection of ex-gratia in lieu of compassionate appointment was never an issue before the tribunal and the tribunal went wrong in directing the Bank to consider the applications beyond the provisions of the governing scheme.

(vii) After hearing both sides, the Writ Court dismissed the writ petition upholding that the award passed by the tribunal ordering payment of ex-gratia amount in favour of the legal heirs of the deceased employees is perfectly in order. It further directed to disburse the ex-gratia amount to the families of the deceased workmen as per the circular No.233/2004 and Circular No.169/2007 without any interest.

(viii) Against the dismissal of the writ petition, the present writ appeal is preferred by the appellant/Bank.

3. The learned counsel for the appellant/Bank submitted that the order of the Writ Court as well as the Tribunal directing the Bank to disburse ex-gratia payment to the dependents of the deceased workmen under Circular Nos.233/2004 and 169/2007 suffers from illegality since dependents whose monthly income from all sources is less than 60% of the last drawn gross salary of the employee are eligible to receive ex-gratia amount under the scheme. Therefore, both orders in directing the appellant Bank to disburse payments to the dependents of the deceased fourworkers without determining as to whether the said persons are eligible under the

Circulars to receive exgrativa is erroneous. Such blanket direction to disburse amounts to the families is contrary to the circulars.

4. He further submitted that the award passed by the tribunal granting to pay lumpsum ex-gratia in terms of the scheme to the eligible beneficiaries calculating it on the basis of the salary, the deceased employees would have drawn, as on the date of consideration of the applications, goes against the provisions contained in the Scheme itself. The tribunal, travelling beyond the terms of the reference, gave a direction to pay ex-gratia to the dependents based on a different calculation method, which is beyond the scope of the Scheme prevailing in the Bank, therefore, the order of the 1st respondent amounts to rewriting the appellant's circular and the same has been erroneously upheld by the learned Single Judge.

5. The learned counsel appearing for the 2nd respondent submitted that the dependents of the four workmen of the different branches of the Bank, who died between 2000 and 2003, gave applications for providing compassionate ground under the existing scheme available. Since no orders

were passed by the Bank, the 2nd respondent raised industrial dispute before the Labour Court. The Labour Court, though held that the dependants are not eligible for appointment on compassionate ground, directed to process the fresh applications submitted by them under the new scheme and on receipt of such applications, the appellant Bank was directed to pay lumpsum ex-gratia on the basis of the salary the deceased employee would have drawn as on the date of consideration of the applications. Therefore, the orders passed by the Labour Court, which was confirmed by the Writ Court suffers from no illegality or irregularity. Thus he prayed for dismissal of this Writ Appeal.

6. Heard the learned counsel for the appellant and the learned counsel appearing for the 2nd respondent and perused the impugned order and Labour Court Award.

7. It is seen from the records that as per the reference made by the Central Government under section 2(k) of the Act, in order to resolve the dispute between them, the Labour Court has passed an award for payment

of ex-gratia amount in lieu of compassionate appointment to the legal heirs of the deceased employees under the scheme of 2004 as well as the scheme of 2007. It is the contention of the learned counsel for the appellant that the Labour Court, beyond the terms of the reference, gave a direction to appellant/Bank to pay ex-gratia to the dependents based on a different calculation method, which is beyond the scope of the Scheme prevailing in the Bank,

8. In the Labour Court award, at paragraph 12, it has been held as follows;

> *'Even if the respondent is not bound to consider the claim of the dependents for appointment on compassionate grounds because of the replacement of the scheme for appointment on compassionate grounds, the respondent is bound to grant relief on the basis of the new scheme. The scheme of 2004 as well as the scheme of 2007 provides for ex-gratia relief, so the concerned dependents are entitled to be considered for ex-gratia payment. The Respondent is bound to pay them ex-gratia relief if they are eligible. On considering*

the eligibility for ex-gratia relief as per the norms prescribed under the existing scheme, the respondent is bound to calculate the ex-gratia amount payable on the basis of the salary that the deceased employees would have drawn as on the date of consideration. This is necessary since the delay was caused on account of the decision of the management to defer consideration of the applications of the defendants. Accordingly an award is passed as follows;......'

From the above, it is clear that by substantiating the delay caused on account of taking decision by the Appellant to defer consideration of the applications of the dependents, the Labour Court has rightly come to the conclusion that applications under the new scheme should be processed by the bank and they should be paid lump sum ex-gratia amount calculating it on the basis of the salary the deceased employees would have drawn as on the date of consideration of applications. The Writ Court has reached a conclusion that it did not find any reason to deprive the payment of ex-gratia amount to the legal heirs of the deceased employees, by directing the appellant Bank to disburse the ex-gratia amount to the families of deceased workmen as per the above cited circulars without any interest thereto and thereby, it has rightly dismissed the writ petition, which this Court finds no infirmity.

9. For the reasons stated above, we are not inclined to interfere with the order made in W.P.No.18446 of 2014, dated 02.11.2022. Accordingly, this Writ Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is also closed.

[J.N.B.,J.] [P.D.B.,J.]
26.07.2024

Index: yes/no
Internet:yes/no
msr

To

The Central Government Industrial Tribunal-
cum-Labour Court,
1st Floor, B Wing,
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