

(2013) 09 CAL CK 0082

Calcutta High Court

Case No: Writ Petition No. 497 of 2010

Shankari Mondal

APPELLANT

Vs

United Bank of India and Others

RESPONDENT

Date of Decision: Sept. 3, 2013

Citation: (2014) 140 FLR 28 : (2013) LabIC 4172 : (2013) 4 LLJ 402

Hon'ble Judges: Sambuddha Chakrabarti, J

Bench: Single Bench

Advocate: Sudip Sanyal, Mr. Sukanta Das and Ms. Lopamudra Moitra, for the Appellant; Subir Sanyal and Ms. Sumouli Sarkar, for the Respondent

Final Decision: Disposed Off

Judgement

Sambuddha Chakrabarti, J.

The petitioner's husband was an employee of the respondent No. 1 bank. On May 2, 2003 he was murdered. He was survived by his wife and two sons. After about three and a half years a certain sum calculated by the respondents was sought to be paid to the petitioner as his terminal benefits which the petitioner did not accept as it was without interest. The petitioner on the death of her husband applied for employment on compassionate ground in May, 2003. Since no payment was made by the bank, the petitioner says, she had to survive by taking domestic works.

2. By a letter dated April 9, 2008 the Senior Manager of the respondent No. 1 bank informed the petitioner that her case did not merit consideration either for employment in the bank or for payment of any ex-gratia. She filed a writ petition which was disposed of by a judgment and order dated January 27, 2009 setting aside the order impugned therein. Subsequently, the respondent No. 2 by a letter dated July 6, 2009 informed the petitioner that the competent authority had sanctioned a sum of Rs. 1,50,000/- to her as ex-gratia lump sum on compassionate ground. But it has not been received by her till date.

3. The petitioner alleges that the concerned bank had issued two circulars regarding appointment on compassionate ground. The first circular dated November 1, 2000 contemplated a onetime lump sum financial assistance of Rs. 1,50,000/- and by the second circular dated November 13, 2004 payment of a one-time ex-gratia lump sum not exceeding Rs. 6 lacs was provided for.

4. The case of the petitioner is that by the time her application for compassionate appointment was considered the first circular had been superseded by the second circular of 2004 and thus she became entitled to payment of ex-gratia lump sum on the basis of the second circular. Challenging the decision to grant Rs. 1,50,000/- as ex-gratia lump sum to the petitioner she has filed the present writ petition inter alia praying for a writ in the nature of Mandamus commanding the respondents to grant her ex-gratia lump sum payment in accordance with the subsequent circular and interest calculated at the rate of 18 per cent per annum on the terminal benefits accruing to her husband and for other reliefs.

5. The petitioner has submitted that in terms of clause 12 of the subsequent circular all applications for compassionate appointment or grant of lump sum final relief, if any, pending on the effective date should be dealt with in accordance with the said scheme approved by the Board and in terms of clause 13 after the subsequent circular came into being the earlier circulars stood superseded.

6. The respondent No. 1 has affirmed an affidavit denying the allegations made by the petitioner. It has been alleged that the husband of the petitioner was murdered on May 2, 2003 and the petitioner submitted an application dated June 30, 2003 for employment of herself or for her son in the bank's died-in-harness category. She was asked to appear before the interview board on March 29, 2004. Subsequently, the bank came to know that she was implicated in a criminal case as an accused for murdering her husband and a case was pending before the competent court of law. The bank, therefore, could not proceed any further with her application. It has taken an exception that the petitioner had not disclosed it to the bank authorities and it was only after her acquittal in the year 2008 that she informed the bank about her implication in the criminal case and her subsequent acquittal therefrom. According to the respondent bank in view of Clause 16 of the death-in-harness policy of the concerned bank suppression of any material information by the applicant in connection with the lump sum amount of one-time compensation and/or employment in the bank under the scheme shall make the applicant liable to such action as the bank may deem fit and proper.

7. The respondents say that the deceased employee had two wives, namely, the petitioner and Sumitra Mondal. The deceased nominated the petitioner for 100 per cent share of his Gratuity showing the relationship as husband and wife. The bank accordingly made payment of Gratuity and other arrear dues thereon subsequent to the salary revision to the petitioner. The petitioner thereafter made an application to the General Manager for appointment on compassionate ground or for

arrangement of payment of ex-gratia lump sum amount in lieu of appointment as per the norms of the bank. Initially the bank did not accede to the claim of the petitioner. But pursuant to an order passed by this court an opportunity of hearing was given to the petitioner and the appropriate authority concluded that she would not be eligible for any employment because of the suppression of material facts as per Clause 16 of the policy referred to above. But it was decided that a request would be placed before the appropriate authority for consideration of payment of lump sum ex-gratia amount of Rs. 1,50,000/- as per the policy prevalent at that time.

8. According to the answering respondents the petitioner is not entitled to the benefit of the second circular dated November 13, 2004 which came into effect after the death of her husband. In fact, the respondents assert that she is not entitled to either compassionate appointment or lump sum payment in lieu thereof in terms of Clause 16 of the circular. That a sum of Rs. 1,50,000/- was sanctioned to the petitioner was entirely on sympathetic consideration. The respondents have prayed for the dismissal of the writ petition.

9. Mr. Sanyal the learned Advocate for the petitioner has strenuously argued that the stand taken by the bank about the suppression of material facts and the consequent disentitlement of the petitioner is entirely untenable.

10. In neither of the orders it has been mentioned that because of her involvement in the criminal case and the suppression of facts that the bank refused to make any lump sum payment. On the contrary a sum of Rs. 1,50,000/- was sanctioned by the order dated July 6, 2009. The plea of non-consideration of the petitioner's application on the ground of her involvement in the criminal case is not buttressed by the facts on record. Mr. Sanyal has relied on the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, for a proposition that when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may by the time it comes of court on account of a challenge, get validated by additional grounds later brought out. Mr. Sanyal next relied on the case of Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu, wherein the Supreme Court held on the facts of that case that it could not be said that the respondent had made false declaration or it suppressed material information. The petitioner submits that in the present case there was no requirement laid down by the authorities to the effect that she had to disclose her involvement in the criminal case. As such the stand for the non-consideration of the petitioner's application on the ground of her involvement in the criminal proceedings is absolutely baseless.

11. Mr. Sanyal had also relied on the case of Arindam Sarkar Vs. Union of India, reported in 2010 (2) CHN (Cal) 524, wherein it has been held by a learned single judge of this court that it does not automatically follow that a public sector bank

after undertaking a selection process can reject the candidature of any applicant on any ground they choose. It is not open to them to resist judicial scrutiny of such action on the sole argument that the rejected applicant has no vested legal right. If an individual is innocent in the eye of law in the absence of any law or any pre-disclosed stipulation in the advertisement or even service regulations it would be impermissible for a potential employer in the state sector to make a contrary presumption. Mr. Sanyal submitted that since there is no evidence to show that her family did somehow tide over the financial crisis the bank by granting Rs. 1,50,000/- had accorded and recognized her need for financial assistance. Mr. Sanyal prayed for an order declaring the petitioner entitled to the benefit of Rs. 6 lacs as lump sum.

12. The whole thing thus boils down to which of the two circulars shall apply to the petitioner. Undoubtedly when the petitioner's husband had died the scheme dated November 1, 2000 was in vogue and was governing the field. It is equally true that this scheme for payment of ex-gratia lump sum amount in lieu of appointment on compassionate ground was introduced in supersession of the bank's earlier circular. The scheme of 2004 made it very clear that it was brought into force on October 11, 2004 and it very specifically stipulated that all applications for compassionate appointment or grant of lump sum financial relief pending on the effective date shall be dealt with in accordance with the scheme approved by the Board. The petitioner's application was pending on the day the second circular had come into being and in terms of the said circular the second circular should apply to the petitioner's case.

13. We may also look it from a different angle. If the earlier circular had been superseded by the subsequent circular way back in the year 2004 the first circular had become non-est and it could not be invoked for the purpose of granting an ex-gratia lump sum amount only because the petitioner's husband had died when this was in vogue. I find no merit in the stand taken by the respondents. I equally do not find any justification in offering Rs. 1,50,000/- as lump sum ex-gratia in lieu of compassionate appointment. I declare that the petitioner is entitled to the benefit under the second circular and direct the respondent bank to grant ex-gratia lump sum payment to her in accordance with the second circular dated November 13, 2004 and to further grant an interest calculated at the rate of 8 per cent per annum on the terminal benefits accruing to her husband from the date of accrual to the date of payment. I direct the bank authorities to make a fresh calculation and to make the payment as indicated above within a period of six weeks from the date of the communication of the order.

14. The writ petition is disposed of accordingly.

15. There shall, however, be no order as to costs. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.