

Jaymala Devi Vs. State Bank of India Represented Through Regional Manager and Ors

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Court : Jharkhand

Decided On : Jul-25-2017

Appellant : Jaymala Devi

Respondent : State Bank of India Represented Through Regional Manager and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 5523 of 2015 Jaymala Devi, Wife of Late Thakri Oraon, Resident of House No.35, S.B.I. Colony, Tel Mill Gali, Piska More, P.O. Hehal, P.S. Sukhdeonagar, District- Ranchi. . . . Petitioner Versus 1. State Bank of India, represented through Regional Manager, R.B.O, State Bank of India-1, Ranchi, New Collectorate Building, Block Road, 5th Floor, Court Compound, Ranchi, P.O-G.P.O, P.S-Kotwali, District-Ranchi.

2. The Regional Manager, R.B.O., State Bank of India-1, Regional Business Office-1, Ranchi, New Collectorate Building, Block Road, 5th Floor, Court Compound, Ranchi, P.O-G.P.O, P.S-Kotwali, District-Ranchi.

3. Deoki Devi, Wife of Late Thakri Oraon, Resident of Village-Kundo, Pipara Toli, P.S-Kuru, District Lohardaga, at present resident of Jaipur, P.O- Jaggai Chainpur, P.S-Chainpur, District Gumla. . Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Rajeev Ranjan

Tiwari. Advocate For the Respondent no.1 and 2 : Mr. Ratnesh Kumar, Adv. For the Respondent no.3 : Mr. Deepak Roshan, Adv. ----- th CAV on 11 January, 2017 Pronounced on 25/07/2017 Per Pramath Patnaik, J.:

1. In the instant writ petition, the petitioner has inter alia prayed for writ in the nature of mandamus, commanding upon the respondents to release all the death cum retiral benefits of her husband including family pension.

2. The factual matrix, which has led for filing of the present writ petition, is that, the petitioner got married to one Thakri Uraon as the first wife of the said Thakri Uraon who left her. After marriage petitioner was living with husband and the proof evidencing the relationship of the petitioner with late Thakri Uraon is evident from Annexure-1 series. The husband of the petitioner who was permanent employee of State Bank of India working on the post of Manager, died in harness on 29.05.2015. After death of the husband, the petitioner submitted representations enclosing the death certificate of her husband to the respondent no.2. Thereafter, the petitioner also approached the respondent for death cum retiral benefits including the family pension and the petitioner was asked by the respondent for furnishing details. The name of the petitioner as wife has been mentioned in the P.F. statement as per Annexure-5 to the writ petition. The name of the 2 petitioner has also been mentioned as nominee for Gratuity as evident from Annexure-6 to the writ petition. Due to inaction of the respondent for not releasing the post retiral benefits, the petitioner left with no alternative, approached this Court under Article 226 of the Constitution of India, invoking extraordinary jurisdiction of this Court for redressal of her grievance.

3. Learned counsel for the petitioner has submitted with vehemence that the action of the respondent in not releasing the death cum retiral benefit including the family pension notwithstanding the fact that the name of the petitioner appears as nominee, is wholly arbitrary, unjust and unsustainable in the eye of law. Learned counsel for the petitioner further submits that the respondents are supposed to follow the rules, regulations, circular in relation to releasing the death cum retiral benefit of the late husband of the petitioner and any deviation thereof would amount to stony silence, indifference and apathy which cannot be countenanced in

law.

4. Controverting the averments made in the writ application, counter affidavit has been filed on behalf of the respondent no.1 and 2, wherein it has been submitted that the petitioner is the second wife of late Thakri Oraon. Late Thakri Oraon has exercised nomination in favour of two sons and one daughter with respect to fund lying in his provident fund account and in favour of the petitioner with respect to the gratuity amount payable. It has been further submitted that a member to the P.F Fund nominates in prescribed form one or more members belonging to his/her family to whom the amount standing at his/her credit in the fund shall be payable in the event of his/her death. The family of a member is wife/wives, husband, children, widow(s) of deceased son of a member, children of a deceased son of a member. As Late Thakri Oraon had exercised valid nomination in favour of two children namely Prateek Kumar Oraon and Tripti Kumari born with the petitioner along with the child born with respondent no.3 Smt. Deoki Devi, namely Sanitosh Kumar Oraon, the petitioner was requested to complete documentation on behalf of her children i.e. Prateek Kumar Oran and Tripti Kumari so that amount standing to the credit in the PF Fund minus lien exercised on the fund in favour of the Bank by Late Thakri Oraon could be released in favour of Prateek Kumar Oron and Tripti Kumari, in the proportion specified in the nomination. However, the petitioner did not choose to complete the formalities with respect to the nomination exercised by Late Thakri Oraon in favour of the petitioner. With respect to the gratuity, it has been submitted that the nomination exercised in favour of the petitioner by late Thakri Oraon is in contravention to the statutory provision contained in the Payment of Gratuity Act and could not be treated as valid nomination and consequently becomes payable to legal heirs of the deceased. The petitioner was requested to complete the documentation on behalf of her children who were the legal heirs of Late Thakri Oraon so that their share of gratuity could be paid. However, the petitioner did not choose to do so. It has further been submitted that with respect to family pension, there is no discretion vested in a member for nominating before retirement for sanction of family pension and the details of family members to whom family pension is payable after death of the employee is obtained at the time of submitting application for sanction of family pension. It has further been submitted that family become eligible for

payment of family pension and the family pension is payable to the widow of the deceased employee up to her death or remarriage whichever is earlier and failing which to the eldest surviving children in order of their birth up to the age of 25 years or he/she is gainfully employed whichever is earlier. Further the petitioner has been advised that if she had been the legally wedded wife of Thakri Oraon, family pension could have been payable to her. Photo copy of Form-A Provident Fund Nomination, Gratuity related nomination applied by late Thakri Oraon, letter providing information of death have been annexed as Annexure-A, B and C to the counter affidavit. It has further been submitted that on receipt of the claims for petitioner and respondent no.3, respondent vide letter dated 29.07.2015 requested both the petitioner and respondent no.3 to furnish details of legal heirs of Late Thakri Oraon. In response thereto, the petitioner and respondent no.3 submitted the details of their children on 30.07.2015 as evident from Annexure -D to H of the counter affidavit. The petitioner has again been requested by letter dated 27.10.2015 to complete the formalities for early processing of the terminal dues claim of late Thakri Oraon. The petitioner replied vide letter dated 07.11.2015 that the writ petition is pending. It has further been submitted that as per the statutory provisions and Banks instructions the respondent can process the death cum retiral benefits. 4 5. Counter affidavit has been filed on behalf of respondent no.3, wherein it has been submitted that the respondent no.3 being the first wife (legally wedded) she is entitled to all the death cum retirement benefits of her deceased husband and no amount should be apportioned to anybody. It has further been submitted that the nomination in respect of the Provident Fund of Late Thakri Oraon is in favour of Prateek Kumar Oraon (40%), Tripti Kumari (30%), Santosh Kumar Oraon (30%) and respondent no.3 has no objection if the Provident Fund amount of her deceased husband is paid as per the nomination. So far as nomination in respect of gratuity is concerned, it is submitted that the same is not in accordance with the Payment of Gratuity Act, 1972. Since the petitioner is admittedly second wife of the deceased employee, is not a legally married wife as the marriage was solemnized during the lifetime of the respondent no.3. Accordingly, the petitioner is not covered within the definition of Family under the Payment of Gratuity Act, 1972. Hence, the nomination, if any, in favour of the petitioner is a void nomination. So far as family pension is concerned, the first wife

the legally wedded wife is only entitled to family pension with arrear.

6. Learned counsels for the respondent no.1, 2 and 3 have more or less reiterated the submissions made in the counter affidavit.

7. Before adverting to the factual aspects, it would be apt to refer to the relevant provisions of the Hindu Marriage Act, 1955: Section-5(i) neither party has a spouse living at the time of the marriage; Section-11. Void marriages- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

8. Here, it would also be relevant to refer to the relevant provisions of Payment of Gratuity Act, 1972: Section-2(h) family, in relation to an employee, shall be deemed to consist of- (i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent 5 parents [and the dependent parents of his wife and the widow] and children of his predeceased son, if any, (ii) In the case of a female employee, herself, her husband, her children whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any: Section-4. Payment of gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,- (a) on his superannuation, or (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease: Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement: [Provided further that in the case of death of the employee gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominee or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, a may be prescribed, until such minor attains majority.] Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee

for the work which he was capable of performing before the accident or disease resulting in such disablement. (2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned: Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

6. Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days wages for each season. (Explanation.- In the case of a monthly rated employee, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen]. (3) The amount of gratuity payable to an employee shall not exceed [ten lakh rupees]. (4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced; (5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. (6) Notwithstanding anything contained in sub-section (1),- (a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused; (b) the gratuity payable to an employee [may be wholly or partially forfeited]- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. Section-6(3) if an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or

more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family, shall be void.

9. After hearing learned counsel for the respective parties and on perusal of the records, I feel it expedient in the interest of justice to direct the 7 respondent nos.1 and 2 to release the post retiral benefits in favour of petitioner and respondent no.3 and other legal heirs as per the relevant provisions of Hindu Marriage Act, Payment of Gratuity Act and Provident Fund Act, as expeditiously as possible preferably within a period of three months from the date of receipt/ communication of the order.

10. With the aforesaid direction, the writ petition stands disposed of. (Pramath Patnaik, J.) Saket/-

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