

THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH,
AT JABALPUR

(DIVISION BENCH)

W.A. No. 619 of 2020

Manager (ER) & othersAppellants

-Versus-

Smt. Preeti Singh ...Respondent

Coram :

Hon'ble Mr. Justice Ravi Malimath, Chief Justice.
Hon'ble Mr. Justice Vijay Kumar Shukla, Judge.

Presence :

*Shri Aditya Adhikari, Senior Advocate with Shri Eijaz Siddiqui,
Advocate for the appellants.*
*Shri K.C. Ghildiyal and Shri Anoop Shrivastava, Advocates for
the respondent No.1.*

JUDGMENT(Oral)
(08/12/2021)

Per : Ravi Malimath, Chief Justice

The case of the petitioner is that her husband was working with the Indian Oil Corporation namely the appellant herein. He died in service on 22.05.2013 on account of an accident. He survived by his wife and minor three year old son as on that date. Seeking appointment on the ground of the death of her husband while in service, she made an application to the respondent/employer. The same was rejected. Questioning the same, the instant petition was filed.

The learned Single Judge by the impugned order quashed the order of rejection and directed the employer to consider the case of the petitioner for compassionate appointment subject to her fulfilling other conditions. Questioning the same, the respondent/employer is in appeal.

Shri Aditya Adhikari, learned Senior Counsel for the appellants contends that the order passed by the learned Single Judge is incorrect. That, the clause on which the re-employment was sought for does not include a widow. In the absence of including a widow, an appointment could not be made. He further submits that the clause relied upon by the petitioner is part of a memorandum of settlement dated 12.04.1990 arrived at between the employer and the employees. That, it was a memorandum of settlement with various clauses. The same contained Annexure-1 wherein Option No.3 was for employment on the death of an employee. Since, the same does not include a widow, it cannot be granted. That, such a scheme cannot be modified by the orders of the Court. Hence, he relies on the judgments of the Hon'ble Supreme Court reported in AIR 1959 Madras 441 (The Employees in the Caltex (India), Ltd. Madras and another vs. The Commissioner of Labour and Conciliation Officer, Government of Madras and another), (1978) 2 SCC 133 (New Standard Engineering Company Ltd. vs. N.L. Abhyankar and others) and 2002 AIR SCW 630 (I.T.C. Ltd., Workers Welfare Association and another vs. The Management of ITC Ltd. and others).

The same is disputed by the learned counsel for the respondent

who contends that the appointment sought for on the basis of a scheme. That there has been only a typing error in not stating that the widow is entitled, specially in view of the preamble to the settlement which includes a widow. Therefore, the learned Single Judge was justified in passing the impugned order. Hence, no interference is called for.

Heard learned counsels.

The memorandum of settlement arrived at between the employer and employee was produced as Annexure-J4 in the writ petition. It primarily reads that the employer does not have any pension scheme for retiring workmen. That, the existing benefits are not adequate, therefore, a demand for a suitable pension scheme has been made. It is under these situations that a memorandum of settlement was arrived at. The same contains Annexure-1 which is the "Scheme for Rehabilitation of the Family of the Employee Dying or Suffering Permanent Total Disablement While in Service". The preamble to Annexure-1 indicates that the same will operate in the case of a death or permanent total disablement of a workman while in service then the female spouse or the dependent male spouse, as the case may be, may opt within six months of the death of the employee, any of the following three options. Therefore, the same clearly indicates that the widow or the widower is entitled to claim the benefit of the rehabilitation scheme. Option-1 is for the purposes of a monthly recurring superannuation and Option-2 is for full salary till the notional date on which the employee would have retired on

attaining the age of superannuation. Both these options are not applicable to the case on hands. What is applicable is Option No.3. Option No.3 narrates eligibility of the son/daughter, which may also include one who is adopted. Therefore, it is contended by the appellant that it does not include a widow or a widower.

On considering the preamble to the memorandum of settlement, the same would clearly indicate the inclusion of a female spouse or a male spouse. The said words are absent in Option No.3. To a specific question being asked as to whether the employer has deliberately and intentionally denied the benefit to the widow or widower, the answer is in the negative. Therefore, there is no conscious attempt not to include the widow or the widower. That, from a harmonious reading of the preamble to the settlement, the same would necessarily include not only the dependent son and daughter but also the widow and widower. Therefore, it would appear that it is only by an error of omission that the female or male spouse has been left out in Option No.3. Therefore, we are of the view that the same would have to be read-in into Option-3 of the memorandum of settlement.

In our considered view, the contention of the appellants that there can be no interference in the matter of settlement of dispute, is undisputed. However, the reading of the word “female or male spouse” does not amount to altering the terms of agreement between the employer and the employees. It does not affect the employer in any manner

whatsoever. It is only a reading into the particular Option that is being done by this Court. That does not affect the agreement under any circumstances whatsoever. Hence, while upholding the order of the learned Single Judge, we hereby declare that Option No.3 will also include the male and female spouse of the deceased. Rest of the order of the learned Single Judge is sustained.

The writ appeal is disposed off with the aforesaid direction. The compliance be made within a period of three months from the date of receipt of a copy of this order.

Pending interlocutory applications, if any, are also disposed off.

(RAVI MALIMATH)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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