REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3639 OF 2022
(@ SLP (C) NO. 1595 OF 2022)

State of U.P. and Ors. **…Appellant(s)**

Versus

Smt. Priyanka **…Respondent(s)**

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Allahabad in Special Appeal No. 343 of 2021 by which the Division Bench of the High Court has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge directing the appellants – State of U.P. and Ors. to pay the gratuity to the original writ petitioner on the death of the deceased employee (her husband), the State of U.P. and Ors. have preferred the present appeal.

The facts leading to the present appeal in nutshell are as under:-

2.1 That the deceased employee Dr. Vinod Kumar, husband of the original writ petitioner, was working as Lecturer. He joined service on 02.07.2001 and died on 11.08.2009 while in service. The original writ petitioner - wife of the deceased employee applied for payment of gratuity due to her husband, but the same was rejected on the ground that the husband of the petitioner, while in service, had not opted for retirement at the age of 60 years. The original writ petitioner therefore filed the writ appeal before the High Court being Writ Appeal No. 2211 of 2021.

2.2 Relying upon and following the earlier decisions of the High Court and by observing that if the deceased employee would have been alive, he would have retired in 2026, if he had opted for retirement at the age of 60 years and before he could opt for retirement at the age of 60 years, he died, therefore, the learned Single Judge allowed the writ petition and directed the appellants to compute the amount payable to her husband towards gratuity quantified in accordance with the relevant Government orders with the interest @ 8% p.a. from the date of filing of the application for gratuity till the amount is actually disbursed, ignoring the fact that the husband of the original writ petitioner had not opted for retirement at the age of 60 years.

2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the appellants preferred the writ appeal before the Division Bench of the High Court. By the impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal, hence the present appeal.

3. Shri Sanjay Kumar Tyagi, learned counsel appearing on behalf of the appellants has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in directing the appellants to pay gratuity to the original writ petitioner on the death of the deceased employee.

3.1 It is submitted that the High Court has not properly appreciated the fact that the deceased employee failed to exercise the option and therefore the benefit of death-cum-retirement gratuity cannot be sanctioned to the respondent being heirs of the deceased employee.

3.2 It is further submitted that as per the prevailing government orders, the exercise of option to retire at the age of 58 years (now 60 years) for availing the benefit of death-cum-retirement gratuity was a mandatory exercise. It is submitted that therefore in the absence of any option exercised by the deceased employee, the High Court has materially erred in directing the appellants to grant the benefit of death-cum-

retirement gratuity to the respondent on the death of the deceased employee.

4. While opposing the present appeal, learned counsel appearing on behalf of the respondent – heirs of the deceased employee has vehemently submitted that in the facts and circumstances of the case, no error has been committed by the High Court in granting the benefit of death-cum-retirement gratuity to the respondent on the death of the deceased employee.

4.1 It is submitted that the deceased was appointed as a Lecturer on 2.7.2001 and died while in service on 11.8.2009. It is submitted that before the deceased could exercise the option, unfortunately he died. It is submitted that as per the Government Order dated 16.09.2009, the deceased was entitled to exercise the option to retire at the age of 60 years which was available up to 01.07.2010, however, before he could exercise the option, unfortunately he died. It is submitted that therefore in the peculiar facts and circumstances of the case and taking note of the aforesaid facts, no error has been committed by the High Court in directing the appellants to grant the benefit of death-cum-retirement gratuity to the heirs of the deceased – respondent herein. It is submitted that in the peculiar facts and circumstances of the case, the grant of

benevolent scheme of gratuity by the learned Single Judge of the High Court, confirmed by the Division Bench, may not be interfered with.

5. We have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted that the date of birth of the deceased was 1.7.1951. He was appointed as a Lecturer on 2.7.2001. He would have completed 60 years of his age on 30.06.2011. As per Government Order dated 16.09.2009, he would have exercised his option to retire at the age of 60 years on or before 1.7.2010, However, before he could exercise the option, unfortunately he died. In fact, he had died even prior to the Government order. He had died on 11.08.2009 whereas the Government order is dated 16.9.2009. Therefore, there was no chance for him to exercise any option at all. There is hence no merit in this appeal.

The High Court has rightly observed that the respondent would be entitled to the benefit of the Government Order dated 16.9.2009 and would be entitled to the benefit of death-cum-retirement gratuity being the heirs of the deceased employee.

At this stage, it is required to be noted that it is not the case on behalf of the appellants that if the deceased employee would have exercised the option, even then he would not have been entitled to the

benefit of death-cum-retirement gratuity under the scheme. The death-cum-retirement gratuity is the benevolent scheme and the same is extended to the respondent being heirs/dependent of the deceased employee by the learned Single Judge, confirmed by the Division Bench. In the facts and circumstances of the case, no interference of this Court is called for.

6. In view of the above and for the reasons stated above, the present appeal fails and deserves to be dismissed and is accordingly dismissed.

We deprecate the practice of a State filing such cases before the Apex Court. Hence the appeal is dismissed with cost of Rs. 50,000/- payable by the appellant to the respondent within a period of four weeks from today.

…….J.
[M.R. SHAH]

NEW DELHI; …….J.
FEBRUARY 09, 2023. **[B.V. NAGARATHNA]**