

GEETA MISHRA

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v.

SIDHO KANHU MURMU UNIVERSITY & OTHERS

(Civil Appeal No. 7919 of 2021)

NOVEMBER 16, 2021

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[INDIRA BANERJEE AND J.K. MAHESHWARI, JJ.]

Service law: Contributory Provident Fund Scheme – Applicability of the Scheme floated by University – In the instant case, husband of appellant who was appointed as lecturer died during the course of employment on 24.2.1995 – During service, he had opted for Contributory Provident Fund Scheme – After his death, all retiral benefits were settled and paid as per option exercised – Thereafter, respondent-University floated a scheme for teaching and non-teaching employees, who retired from the service on or after 1.4.1972 for giving them “one more chance” for exercising a “fresh option” as per the terms and conditions in the scheme – Appellant-wife of deceased employee filed writ petition before High Court for availing the benefit of the scheme – Single Judge of High Court allowed the benefit of the scheme – Division Bench, however, set aside the order of Single Judge – On appeal, held: Under the scheme, in case of an employee who had not exercised the option and retired on or after 1.4.1972, but died before exercising the option, the family is offered an opportunity to exercise the “fresh option” subject to terms and conditions – As the husband of appellant had already exercised the option prior to his death, all the benefits under the prevalent scheme were received by the family members – Hence, appellant did not have the right to exercise “fresh option” to avail the benefit one more time – Interference not warranted.

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Dismissing the appeal, the Court

HELD: The condition No. 5 of the Scheme clearly spelt out that an employee, who retired from the service of the University, on or after 1.4.1972 have died before exercising his/her option, then his/her family shall be eligible for exercising the fresh option, giving them one more chance subject to the terms and conditions. The husband of the appellant had already

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A exercised the option prior to his death. All the benefits in terms of the option so exercised under the prevalent Scheme have been received by the family members. In the said contingency, as per the terms and conditions of the Scheme, the appellant did not have right to exercise a fresh option to avail one more chance to exercise the option again. [Paras 5, 6][107-C-E]

B CIVIL APPELLATE JURISDICTION: Civil Appeal No.7919 of 2021.

From the Judgment and Order dated 29.10.2018 of the High Court of Jharkhand at Ranchi in LPA No.123 of 2016.

C Aditya Shankar Prasad, Sameer Kumar, Shahrukh Ahmad, Sahil Chowdhury, Mandeep Baisala, Advs. for the Appellant.

Rajeev Singh, Samant Singh, Kumar Arunish Singh, Abhishek Vikram, Advs. for the Respondents.

D The Judgment of the Court was delivered by
J. K. MAHESHWARI, J.

1. Leave granted.

E 2. Assailing the order dated 29.10.2018 passed by the Division Bench of the Jharkhand High Court in L.P.A. No. 123 of 2016, the appellant has filed this appeal with the prayer to set-aside the same and restore the order dated 5.2.2016 passed by the learned Single Judge in W.P. (S) No. 4441 of 2010.

F 3. The controversy in the present case is circumscribed to the applicability of the Scheme floated by respondent-University vide letter No. SKU/ACC/202/98 dated 30.7.1998 (for short “Scheme”). Learned Single Judge held that the employees, who retired from the service of the University on or after 1.4.1972, if died before exercising the option, they have one more chance to exercise a fresh option, specified in the said Scheme. It is further held that “one more chance” to exercise the “fresh option” had been offered by the said Scheme and in the similar cases, WP(S) No. 4452 of 2007 and WP(S) No. 4453 of 2007 decided on 27.06.2009, the same benefit had been extended to the petitioners therein. In the said case, L.P.A. Nos. 395 of 2009 and 397 of 2009 were dismissed. Therefore, the appellant was held entitled to the benefit of the Scheme. On filing the LPA by the University, the order passed by

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the learned Single Judge has been set-aside holding that the benefit of the Scheme is applicable to only those, who have not exercised his/her option prior to death on the date so specified. In the present case, the option was exercised by the husband of the appellant. Therefore, the appellant was not entitled to exercise the second option under the Scheme and the learned Single Judge committed an error by not extending the benefit to the appellant. Impugning the said order, the wife of the deceased employee has filed this appeal.

4. After having heard learned counsel for the parties and on perusal of the record, it reveals that the husband of the appellant was appointed as Lecturer in the Department of Chemistry, Godda College, Godda. He was promoted to the post of Reader. He died during the course of employment on 24.2.1995. During service, the husband of the appellant had opted for Contributory Provident Fund Scheme. As per the option, regular deduction @ 10% from the salary was being made. After the death, all the retiral benefits were settled and paid as per option exercised. Thereafter the respondent- University floated a Scheme dated 30.7.1998 for teaching and non- teaching employees of Sidho Kanhu Murmu University, who retired from the service of the University on or after 1.4.1972 for giving them “one more chance” for exercising a “fresh option” as per the terms & conditions specified in Scheme. Clause 5 of the Scheme is relevant for the purpose of present case, which is reproduced thus:

“Siddhu Kanhu University, Dumka

Letter No. KU/ACC/202/98 Dated 30.07.98

From : Registrar

Siddhu Kanhu University, Dumka

To: (1) Administrative Head, P.G. Centre, Dumka
(2) All Principals of constituent Colleges (Godda College, Godda) under Siddhu Kanhu University, Dumka except B.S.K. College, Barharwa and Millat College, Parsa.

Subject : Exercise of fresh option under the grant of retirement benefit statutes.

Sir/ Madam,

I am directed to inform you that the Vice-chancellor has been pleased to order dept. all teaching and non- teaching employees of Siddhu Kanhu University and its constituent colleges

A who have joined university/ constituent colleges service prior to 1.4.78 be given one more chance, if they so like exercise a fresh option for any one of the alternative schemes of the grant of retirement benefit statues under the following terms and conditions:

- B A. General Provident Fund-cum Pension-cum-Gratuity Scheme.
- B B. Contributory Provident Fund-cum-Gratuity Scheme in which employer's contribution to provident fund shall be limited to 8% of pay of the employee.
- C C. Contributory provident fund only, in which the employer's contribution shall be 10% of pay of the employee.

TERMS AND CONDITIONS

1. xx xx xx xx xx xx xx xx xx xx
2. xx xx xx xx xx xx xx xx xx xx
- D 3. xx xx xx xx xx xx xx xx xx xx
4. xx xx xx xx xx xx xx xx xx xx

E "5: In the case of employees who retired from the service of the University on or after 1st April, 1972 but have died before exercising his/her option under Article (4) of the statute, his/her family shall be eligible for exercising the option between the scheme provided that if the family opts for the scheme given in scheme

F A. It shall have to refund the University share of contributory provident fund of the deceased employees, along with interest thereon either in cash or by adjustments from the amount of gratuity or both, and in cash the employer's share to the contributory provident fund of the deceased, that exceed 8% of pay of the deceased along with interest thereon, but then will be entitled for pension/ family pension will be payable to them.

G 6. xx xx xx xx xx xx xx xx xx xx

Yours faithfully,
Registrar,
S.K. University
Dumka"

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5. On perusal of the scheme, it is clear that an employee, who has not exercised the option and retired on or after 1.4.1972, but has died before exercising the option, the family has been offered an opportunity to exercise the fresh option under the Scheme of the provident fund, subject to the conditions, as specified in the Scheme for adjustment of the amount of gratuity with interest. The appellant had prayed for the benefit of the said Scheme before the Writ Court, which was extended by learned Single Judge, interpreting the expression “one more chance” and exercise “a fresh option” erroneously. The said chance for exercising “a fresh option” as one “more chance” was subject to the terms and conditions, as specified in the Scheme dated 30.7.1998. The condition No. 5 of the Scheme clearly spelt out that an employee, who retired from the service of the University, on or after 1.4.1972 have died before exercising his/her option, then his/her family shall be eligible for exercising the fresh option, giving them one more chance subject to the terms and conditions.

6 In the present case, it is not disputed that the husband of the appellant had already exercised the option prior to his death. All the benefits in terms of the option so exercised under the prevalent Scheme have been received by the family members. In the said contingency, as per the terms and conditions of the Scheme, the appellant did not have right to exercise a fresh option to avail one more chance to exercise the option again. By the impugned order, the Division Bench has rightly interpreted Clause 5 of the Scheme and rightly set-aside the order of the learned Single Judge. In our view, the Division Bench has not committed any error in passing the order under challenge. Therefore, interference in this appeal is not warranted.

7. Accordingly, this appeal is dismissed. No order as to costs.