
(2020) 01 P&H CK 0223

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 706 Of 2013 (O&M)

Gayatri

APPELLANT

Vs

Punjab And Sind Bank And Another

RESPONDENT

Date of Decision : 31-01-2020

Acts Referred:

Citation : (2020) 01 P&H CK 0223

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : Virender Kumar, R.N. Lohan

Final Decision : Allowed

Judgement

Sanjay Kumar, J

Gayatri, the petitioner herein, is the widow of Sarwan Kumar, an employee of the Punjab and Sind Bank. He died in harness on 14.02.2011 while working as the Manager of its Branch at Kauhrian, Sunam, State of Punjab. The petitioner applied to the Bank for employment on compassionate grounds in April, 2011. However, by order dated 09.07.2011, the Bank turned down her request on the ground that there was no scheme to provide employment on compassionate grounds and that only payment of ex-gratia would be permitted if the eligibility conditions were fulfilled. Thereafter, upon considering the request of the petitioner for grant of ex-gratia, the Bank passed order dated 22.03.2012 holding that she was not eligible as her case did not fall within the ambit of the scheme for providing financial assistance in lieu of appointment on compassionate grounds.

She thereupon filed this writ petition assailing the aforesaid orders dated 09.07.2011 and 22.03.2012.

The scheme for payment of ex-gratia amount in lieu of appointment on compassionate grounds was promulgated by the Bank VIDE Staff Circular

No.2769 dated 10.12.2007. Thereunder, ex-gratia was to be granted only if the monthly income of the deceased employee's family from all sources was less than 60% of his/her last drawn salary (net of taxes). Be it noted that the order dated 22.03.2012 did not spell out in clear terms as to how and why the case of the petitioner did not fall within the four corners of the scheme. It was only by way of its written statement that the Bank detailed the reasons therefor. According to the Bank, the monthly income of the petitioner and her family, after the death of her husband, was in excess of 60% of his last drawn net salary and therefore, she was not eligible for grant of ex-gratia.

Having received a copy of the written statement setting out this ground, the petitioner amended her prayer in this writ petition. Thereby, she also challenged the validity of sub-paras (6)(i) and (ii) of para-5 of the Policy dated 10.12.2007, on the basis of which notional/deemed interest on terminal benefits and notional interest on investments had been taken to be part of her family income for the purpose of deciding her eligibility for grant of ex-gratia. She sought a consequential direction to the Bank to provide employment to her or to her son or daughter on compassionate grounds apart from seeking grant of ex-gratia financial assistance as per the Policy dated 10.12.2007 along with interest on such delayed payment.

The Bank then filed an additional written statement reiterating its stand that the total monthly income of the petitioner's family, after the death of her husband, exceeded 60% of his last drawn net salary and that she was ineligible for grant of ex-gratia. As regards her challenge to the norms, the Bank stated that its Policy was neither arbitrary nor unreasonable and that it was legal and valid. According to the Bank, the Supreme Court had affixed its seal of approval upon the methodology followed by it and therefore, its Policy dated 10.12.2007 should be upheld.

In her replication filed in response to the aforestated written statement, the petitioner claimed that the norms impugned by her had already been held to be illegal by this Court in Smt. Santosh Devi v/s. Oriental Bank of Commerce and another [2009(3) S.C.T. 416]. She accordingly reiterated her prayer for relief.

While so, Mr. Virender Kumar, learned counsel, informed this Court that the petitioner is no longer interested in pressing her prayer for compassionate employment being provided either to her or to one of her children. Learned counsel asserted that the petitioner only wants to press for grant of ex-gratia in lieu of compassionate appointment in terms of the aforestated scheme, after holding the impugned norms therein to be illegal.

It would be appropriate to first consider the nuances of the scheme. Staff Circular No. 2769 dated 10.12.2007 lays down the details of the scheme for appointment of dependents of deceased employees on compassionate grounds in exceptional cases and also the details of the scheme for payment of ex-gratia amount in lieu of appointment on compassionate grounds. As the petitioner is no

longer desirous of pressing her claim for compassionate appointment, the scheme relating thereto need not be examined. As regards the scheme for payment of ex-gratia, the same is detailed in paras 4A and 5 of the Staff Circular. Para 4A provides that the scheme for grant of ex-gratia would be applicable to employees who die in harness in certain named circumstances. Para 5 is titled 'Ex-gratia Payment'. Para 5(a) provides that in the cases falling within para 4A, ex-gratia amount would be paid to the family of the employee, if eligible and if requested for within six months from the date of the death of the employee and if the family is in indigent or penurious circumstances. Para 5(b) states that ex-gratia would be granted to the family of the deceased employee subject to the monthly income of the family from all sources being less than 60% of the last drawn salary (net of taxes) of such employee. The mode of calculation of the monthly income is detailed thereunder and sub-para (1) of para 5(b) sets out the components of terminal benefits, viz., Provident Fund, Gratuity, Leave Encashment and any other amounts paid under the Bank's scheme(s). Liabilities, as per sub-para (2) of para 5(b), include the loans taken from the Bank or any other financial institution with the prior approval of the Bank and the net corpus of terminal benefits is to be arrived at after deducting the aforesaid liabilities from the terminal benefits. Sub-para (3) of para 5(b) speaks of investments in the form of deposits, National Savings Certificates, PPF, LIC policies etc. and the same are also to be added to the net corpus of terminal benefits. Details of movable and immovable property, if any, held by the family are also to be taken into account to arrive at the monthly income, as per sub-paras (4) and (5) of para 5(b). Sub-para (6) of para 5(b) details 'Monthly Income of the family from all sources'. It reads as under:

'(6) Monthly Income of the family from all sources; (i) Monthly Interest at the Bank's maximum term deposit rate on the net corpus of terminal benefits.

(ii) Monthly income from investments.

(iii) Monthly income from movable and immovable property

(iv) Monthly income of dependent family members (v) Any other monthly income (Pension etc.)'

Para 5(c) provides that in the event the total income of the family arrived at as above is less than 60% of the last drawn gross salary (net of taxes) of the employee, ex-gratia amount would be payable as provided thereunder. The cadre-wise ceiling limit in the ex-gratia amounts payable is set out and insofar as officers are concerned, the maximum amount is stipulated as Rs. 8 lakh. It further provides that if the monthly income of the family is less than 60% of the last drawn gross salary (net of taxes) of the deceased employee, the ex-gratia amount calculated @ 60% of such salary for each month of the remaining service of the employee, i.e., up to the age of superannuation, is to be calculated and the same would be payable as ex-gratia, subject to the ceiling limit of Rs. 8 lakh.

These being the parameters of the scheme, it may be noted that the Bank does

not dispute the eligibility of the petitioner to seek ex-gratia in terms of para 4A of the scheme. It is only on the ground that the monthly income of the petitioner and her family exceeds 60% of the last drawn net salary of her husband that her case was rejected. The basis for this action of the Bank is the calculation set out by it in its written statement. According to the Bank, the petitioner is getting Rs. 2,000/- per month as pension from the Punjab and Sind Bank Employees Welfare Society. She was paid Rs. 4,82,183/- towards Provident Fund; Rs. 7,14,742/- towards Gratuity; Rs. 3,07,987/- towards Leave Encashment; and Rs. 75,000/- under various other heads, totalling to Rs. 15,79,912/-. The deductible liabilities, being the loans availed by the petitioner's husband, came to Rs. 7,91,429/- and therefore, the net corpus of terminal benefits realized by her stood at Rs. 7,88,483/-. The Bank worked out notional interest on this sum @ 9.60% and arrived at the figure of Rs. 6,307-86. That apart, the Bank also took into account the fact that the petitioner had investments of Rs. 51,844/- in PPF; Rs. 7,01,712/- in a LIC policy and Rs. 1,05,007/- in other investments, aggregating to Rs. 8,58,563/-. The Bank again worked out notional interest on this sum @ 9.60% and arrived at the figure of Rs. 6,868-50. In effect, the bank quantified the total monthly income of the petitioner and her family at Rs. 28,941/- per month [$6,307-86$ (notional interest on terminal benefits) + Rs. 6,868-50 (notional interest on investments) + Rs. 13,765/- (pension) + Rs. 2,000/- (pension)]. As the petitioner's husband's last drawn net salary stood at Rs. 46,726/- and 60% thereof came to Rs. 26,957-40, the Bank asserted that her monthly income of Rs. 28,941/- was in excess of the permissible maximum limit, rendering her ineligible for grant of ex-gratia.

Mr. R.N. Lohan, learned counsel, would concede that in the event notional interest calculated on the terminal benefits and investments is excluded, the petitioner's family's monthly income would be less than 60% of the last drawn net salary of her husband. Therefore, the only issue for consideration is whether the Bank was justified in taking such notional interest into account to work out the monthly family income of the deceased employee's family. Pertinent to note, the scheme itself provides for monthly interest upon the net corpus of terminal benefits, at the Bank's maximum term deposit rate, being included in the monthly income of the family. However sub-para (6) of para-5(b) does not provide for any such notional interest being worked out on investments and only speaks of monthly 'income' from investments.

Significantly, identical norms in the scheme floated by the Oriental Bank of Commerce fell for consideration before a learned judge of this Court in Smt. Santosh Devi v/s. Oriental Bank of Commerce and another [2009(3) S.C.T. 416]. The petitioner in that case was also denied ex-gratia on a similar working out of her family's monthly income after the death of her husband and the Oriental Bank of Commerce quantified the same at more than 60% of her husband's last drawn net salary. The distinction in that scheme and the one presently under consideration is that the Oriental Bank of Commerce did not include pension in the monthly income from all sources, unlike the subject scheme which does so

under sub-para (6)(v) of para 5(b). Basing on this, the learned Judge held that the Oriental Bank of Commerce ought not to have taken into account the family pension drawn by the petitioner in that case while working out her monthly family income from all sources. As regards the notional interest worked out upon the net corpus of terminal benefits, the learned Judge observed thus :-

'..... In my opinion, the inclusion of such notional interest deemed to have been accrued on the terminal benefits is arbitrary and unreasonable. The monthly income on account of interest can be added in the monthly income of the family, if the said interest has actually accrued to the family. There may be a situation where the family of the deceased employee might have spent that amount on the purchase of house or on the marriage of the children of the deceased employee or for clearing the liabilities of the deceased employee. The interest income of the family can be taken into account, if actually there is an income from the deposit of the terminal benefits. On notion, no deemed income could be taken into consideration. Concededly, it has not been stated by the respondent bank that the petitioner family is actually receiving an amount of interest from the deposit of terminal benefits. Therefore, sub-para (6) (i) of Para 2 of the revised scheme dated 26.9.2007, which provides for taking into account the deemed interest on the terminal benefits, without there being any actual accrual, is illegal, arbitrary and unreasonable. Thus, the respondent bank has acted illegally and arbitrarily by including the 'Family Pension' and the notional interest on the terminal benefits, while calculating the monthly income of the family of the deceased employee. In view of these facts, in my opinion, the respondent bank has illegally rejected the claim of the petitioner for Ex-gratia financial assistance under the revised scheme dated 26.9.2007.'

The aforesaid decision of the learned Judge was confirmed in appeal in LPA-585-2009, titled Oriental Bank of Commerce and another v/s. Santosh Devi [2014(12) S.C.T. 808]. The Division Bench affirmed the view taken by the learned Judge that once pension was not included within the ambit of the monthly income from all sources, as set out in the scheme, the Bank ought not to have taken the family pension into account. The issue of notional interest on the terminal benefits was however not touched upon.

Mr. R.N. Lohan, learned counsel, would assert that the Supreme Court affixed its seal of approval on the inclusion of deemed interest on terminal benefits in the monthly income from all sources. He would rely upon Punjab National Bank v/s. Ashwini Kumar Taneja [(2004) 7 SCC 265], General Manager (D&PB) and others v/s. Kunti Tiwary and another [(2004) 7 SCC 271] and State Bank of India and others v/s. Jaspal Kaur [(2007) 9 SCC 571]. Be it noted that all these decisions were considered by this Court in Smt. Santosh Devi v/s. Oriental Bank of Commerce and another [2009(3) S.C.T. 416]. Further, perusal of these decisions demonstrates that the issue as to whether deemed interest on terminal benefits could be validly included in the monthly income did not even fall for consideration. These decisions turned on altogether different issues. Merely

because a passing reference was made therein to the action of the Bank in including deemed interest on terminal benefits, it does not have the effect of any approval thereof by the Supreme Court. A decision can only be cited as a precedent for what is actually decided therein. Therefore, these judgments are altogether irrelevant for the purposes of this case.

On the other hand, *Smt. Santosh Devi v/s. Oriental Bank of Commerce and another* [2009(3) S.C.T. 416] is directly on this point and this Court sees no reason whatsoever to differ with the view taken therein. When the monthly income of the deceased employee's family is being worked out for assessing its eligibility to avail ex-gratia, the actuals would have to be taken into account and it is not open to the Bank to notch it up with notional incomes, which, in reality, never materialized, so as to render the deceased employee's family ineligible. It may be noted that such schemes are in the nature of welfare measures to alleviate the crisis and redress the miserable plight of the family of the deceased employee upon the sudden loss of its breadwinner. Therefore, inclusion of notional interest on the net corpus of terminal benefits in terms of sub para (6) (i) cannot be justified when such terminal benefits were never invested and no actual interest income accrued thereon. It is only when the family of the deceased employee earned real interest income that the same can be taken into account while computing the family monthly income for the purpose of assessing its eligibility to avail ex-gratia.

In the case on hand, it is an admitted fact that the petitioner and her family did not garner any interest income on the terminal benefits. In the absence thereof, inclusion of the sum of Rs. 6,307-86 on the premise that she could have earned such interest is wholly unsustainable.

That apart, there is no mention in the scheme with regard to any monthly interest on a notional basis being worked out on the investments made by the petitioner. The relevant norm speaks of 'monthly income from investments' which would imply only actuals and not an illusionary but possible income. In the absence of any such component being provided as per the explicit terms of the scheme, it is not open to the Bank to come up with a new component so as to boost the monthly family income of the deceased employee's family. The logic applied in *Smt. Santosh Devi v/s. Oriental Bank of Commerce and another* [2009(3) S.C.T. 416], which was affirmed in appeal, in relation to inclusion of family pension in that case, in the absence of any such norm in the Oriental Bank's scheme, would apply on all fours and in terms thereof, this Court has no hesitation in holding that inclusion of the sum of Rs. 6,868-50 towards notional interest on investments is unsustainable. Admittedly, the petitioner and her family would come within the eligibility zone once these two figures are excluded.

As the impugned norms were interpreted and applied by the Bank on an erroneous understanding but they are not invalid in themselves if there are actual interest earnings upon terminal benefits and investments, it would suffice to direct the Bank to implement the said norms in terms of what has been stated

hereinbefore.

As the Bank denied the petitioner the benefit of ex-gratia all these years on the aforestated wrongful assessment of her family's monthly income, it would be liable to pay interest upon the delayed payment of such ex-gratia at this stage.

The writ petition is accordingly allowed. The Bank is directed to work out the ex-gratia amount payable to the petitioner and her family in terms of para 5(c)(i) and (ii) of the scheme subject to the maximum ceiling limit of Rs. 8 lakh. The bank shall also pay interest thereon @ 9% per annum from the date of rejection of the petitioner's claim for ex-gratia, viz., 22.03.2012. The entire exercise, including disbursal of the amount ultimately found due, shall be completed expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.