

(2014) 04 P&H CK 0228

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 585 of 2009 (O & M)

Oriental Bank of Commerce and Another	APPELLANT
Vs	
Smt. Santosh Devi	RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Citation : (2014) 04 P&H CK 0228

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;Arun Palli, J

Bench : Division Bench

Advocate : R.N. Lohan, Advocate for the Appellant; Sandeep Kumar Yadav, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.—Late Kabul Chand, who was employed with the appellant-bank, passed away on 24.12.2005 in an accident while attending to his duties when he still had more than 30 years of service leaving behind a hapless widow aged 27 years to look after a son aged 9 years and two daughters aged 5 years and 3 years, respectively. The grant of payment under Ex-gratia Scheme of the appellant-bank has, however, survived for almost 9 years! The amount has since been paid as held entitled by the learned single Judge in terms of the impugned order dated 4.5.2009 and interim stay was declined in the present appeal. Resultantly, what the appellant-bank is claiming is recovery of this amount paid for the benefit of the widow and the minor children.

2. The impugned order is an exhaustive one dealing with both the issues of compassionate employment and ex-gratia payment. Shorn of details, under the then prevailing scheme formulated by the appellant-bank in pursuance to the judgment of the Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, , the respondent was held entitled to ex-gratia payment. It is, however, the case of the appellant-bank that the norm laid down in the Scheme for obtaining such an ex-gratia payment of monthly income of the family from all sources being less than 60 per cent of the last-drawn salary (net of taxes) was

not satisfied in the present case as the learned single Judge has wrongfully excluded the family pension and notional interest on terminal benefits from calculation of such monthly income.

3. The aforesaid is, thus, the only controversy which is being called upon to be adjudicated in the present appeal, as prayed for by learned counsel for the appellants.

4. Learned counsel for the appellants contends that both the aforesaid elements were required to be included in the computation of monthly income. In this behalf, learned counsel has relied on judgments of the Supreme Court in *General Manager (D and PB) and Others Vs. Kunti Tiwary and Another*, *Punjab National Bank and Others Vs. Ashwini Kumar Taneja*, and *State Bank of India and Others Vs. Jaspal Kaur*, . It was held in the first judgment that the High Court could not have diluted the criterion of penury to one of "not very well-to-do" in directing compassionate appointment. In the second judgment, it was clarified that the appointment on compassionate ground is not a source of recruitment, but merely an exception to recruitment with the intent that on the death of an employee the concerned family is not deprived of means of livelihood. The view of the High Court that retiral benefits were not to be taken into consideration while dealing with request for compassionate appointment was negated. In the last of the three judgments referred to, it was observed that family pension as a component has to be included in the computation of income.

5. On the other hand, learned counsel for the respondent points out that out of the two components in question even if family pension is excluded, there is no dispute that the respondent would qualify (an aspect not disputed by learned counsel for the appellants). He submits that family pension was included as a component of income in *State Bank of India and others vs. Jaspal Kaur* case (supra) only because it was so specifically enumerated and provided for as per the Scheme. This is reflected in para-24 of that judgment where family pension was mentioned in the first clause for such computation. He further submits that the first two judgments referred to aforesaid have in fact been examined by the Hon'ble Supreme Court in a subsequent judgment in *Smt. Mumtaz Yunus Mulani Vs. State of Maharashtra and Others*, where it has been held that compassionate appointment could not be denied because the dependent of the deceased had been receiving some amount by way of family pension. It is, thus, submitted that this issue is no more res integra and same is the view expressed in *Govind Prakash Verma vs. Life Insurance Corporation of India & others*, 2005(10) SCC 289.

6. We are not getting into an elaborate discussion on the matter in issue because of the limited controversy. The important aspect is that if family pension is excluded from computation of monthly income, there is no dispute of the entitlement of the respondent towards ex-gratia payment. It is also not in dispute that as per the Scheme applicable, family pension is not mentioned as one of the components to be included. This revised Ex-gratia Scheme dated

26.9.2007 applicable refers to terminal benefits of provident fund, gratuity, leave encashment and any other amounts paid under bank's scheme. It is in the last item that the appellants seek to bring their case in.

7. In our view, the aforesaid plea cannot be accepted in the absence of "family pension" being specifically mentioned. This is in the background of the original Scheme dated 31.7.2004. This Scheme included family pension as a component to be specifically included. The modified Scheme consciously excluded family pension component and this is what has weighed with the learned single Judge in concluding that the intent of the formulator of the Scheme was quite clear that family pension was not something to be added to the income for determining whether ex-gratia payment is to be made or not. In our view, there can be little doubt about this proposition as it makes no sense otherwise to have excluded family pension as a component in the modified Scheme. The learned single Judge has examined all the judgments exhaustively in this behalf.

8. Even as per the legal principles, there is little doubt in view of the discussion in *Mumtaz Yunus Mulani vs. State of Maharashtra & Ors.* case (supra) cited by learned counsel for the respondent. It is a subsequent judgment and has taken into consideration the earlier judgments by specifically referring to the aspect of computation of income and holding that family pension is not to be included for the said purpose.

9. We are, thus, of the view that the impugned judgment cannot be faulted and the appeal is meritless.

Dismissed.