
(2016) 08 SHI CK 0016
In the High Court Of Himachal Pradesh
Case No : CWP No. 2056 of 2014

Smt. Meena Devi

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2016) LIC 3777

Hon'ble Judges : Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Mr. Yudhvir Singh Thakur, Advocate, for the Petitioner; Mr. Ashok Kumar Sood with Mr. Dhiraj Thakur, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.—The minimal facts as necessary for the adjudication of this petition are that the husband of the petitioner while working with the respondents-Bank unfortunately died on 01.10.2007. The petitioner initially submitted her case for compassionate appointment, however, the same was rejected on the ground that the respondent- Bank had stopped giving appointment on compassionate ground and a new scheme granting ex-gratia had been started from 14.12.2005.

2. Petitioner thereafter filed application for the payment of ex-gratia, however, the same was rejected vide order dated 27.01.2009, but such rejection was not conveyed to the petitioner. Despite prolonged correspondence and despite directions passed by this Court on 25.11.2013 in CWP No. 7833 of 2013 whereby the respondents had been directed to consider the case of the petitioner for grant of compassionate appointment, the petitioner is still in the dark regarding the fate of her case and has, therefore, filed the instant writ petition with the following substantive prayers:

"(i) That the writ of mandamus may be issued directing the respondents to give

employment to the son of petitioner under the policy of compassionate appointment. (i-a) That the impugned order dated 27.1.2009 (Annexure P-3/A) may be quashed and set-aside in the interest of justice and fair play.

(ii) Alternatively, the respondents may be directed to make payment of Ex-gratia in lieu of compassionate appointment to the petitioner.

(iii) That the respondents may be directed to release other benefits i.e. gratuity, leave encashment and reimbursement of medical bills and other expenses incurred by the family on treatment of late Shri Gurdev Singh."

3. The respondents have filed their reply wherein it has been averred that the case of the petitioner has in fact been rejected on the ground that the financial condition of the petitioner at the time of death of her husband was not found to be indigent by the bank while deciding the claim for ex-gratia amount. The family was having a house to live in as the deceased employee had raised loan from the bank for construction of such house. The petitioner was also getting regular family pension and was not brought on road with the death of her husband.

4. In light of the pleadings of the parties, the only question which requires to be determined by this Court is whether the ex-gratia payment could have been denied only because the dependent of the deceased had been receiving some amount by way of family pension. I have heard learned counsel for the parties and also gone through the records of the case carefully and meticulously.

5. At the outset, it may be observed that the arguments had initially been heard on 3.8.2016, however, while dictating judgment, it was felt necessary that the policy prevailing prior to issuance of the scheme for payment of ex-gratia lump sum amount in lieu of appointment on compassionate grounds (Annexure R-1) was necessary for the just and proper adjudication of the case and accordingly the case was ordered to be listed on 4.8.2016, and the respondents were directed to place the said policy on record.

6. In compliance to the directions passed by this Court, the respondents have placed copy of the policy and the same was taken on record.

7. It is evident from the records that Scheme for appointment of dependents of deceased employee and dependents of employees retired on medical grounds was issued by the Indian Banks Association on 23.8.1996, which was based on the observations of the Hon''ble Supreme Court in Umesh Kumar Nagpal v. State of Haryana (1994) 4 SCC 138 whereby the Hon''ble Supreme Court emphasised that the provisions for compassionate appointment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned and that the employment cannot be offered by an individual functionary of the Government or the public authority.

8. Clause V of the Scheme, deals with the financial condition of the family and reads as under:

"V. Financial Condition of the family:

The Hon"ble Supreme Court has observed that dependents of an employee dying in harness can be considered for compassionate appointment provided the family is without any means of livelihood. Therefore, the rules may provide for taking into account the following to determine the financial condition of the family:-

- (a) Family Pension.
- (b) Gratuity amount received.
- (c) Employee"s/Employer"s contribution to Provident Fund.
- (d) Any compensation paid by the bank or its Welfare Fund.
- (e) Proceeds of LIC Policy and other investments of the deceased employee.
- (f) Income for family from other sources.
- (g) Employment of other family members.
- (h) Size of the family and liabilities, if any, etc.

Public Sector Banks may amend the present policy of compassionate appointment of dependants of deceased employees and dependants of retired employees on medical grounds, keeping in view the judgment of the Hon"ble Supreme Court."

9. Now, insofar as the current Scheme is concerned (Annexure R-1), the relevant clause regarding financial condition of the family reads thus:

"7. Ex-gratia may be granted to the family of the employee/employee who has retired on medical ground due to incapacitation, in the manner and subject to the ceilings specified below, if the monthly income of the family from all sources is less than 60% of the last drawn salary (net of taxes) of the employee.

Calculation of monthly income

(I) Terminal benefits:

- (i) Provident Fund
- (ii) Gratuity.
- (iii) Leave Encashment
- (iv) Any other amount paid under Bank"s

Scheme(s)?????

Sub-Total (A)?????

(II) Liabilities:

Loans taken from bank and/or other financial Institutions with the prior approval

of the bank ????

Sub-Total.(B)????..

(III) Net corpus of terminal benefits

(C=A-B) ????.

(IV) Investments:

Deposits

NSCs

PPF

LIC Policies

Others

Sub Total(D) ?????

????

(V) Details of movable property, if any, held and monthly income derived therefrom.

(VI) Details of immoveable property, if any, held and monthly income therefrom.

(VII) 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 (C)

(ii) Monthly income from investments.

(iii) Monthly income from moveable and immoveable property.

(iv) Monthly income of dependent family members.

(v) Any other income of the family

????..

Total monthly income of the family

????

(8) If the total monthly 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 as under will be payable.

(i) In case the monthly income of the family as calculated above is less than 60% of the last drawn gross salary (net of taxes) of the employee, an ex-gratia amount calculated @ 60% of the last drawn gross salary (net of taxes) for each month of remaining service of the employee (i.e. upto the age of superannuation

in terms of extant service rules/conditions) at the time of his death/incapacitation subject to the cadre-wise ceiling of "Maximum Amount" mentioned under (ii) below, will be payable.

(ii) The cadre-wise ceiling on ex-gratia amount payable will be as follows:-

Category

Maximum Amount

Officers

Rs. 8 lacs

Clerical Staff

Rs. 7 lacs.

Subordinate Staff

Rs. 6 lacs.

Full Time Safai karamchari

Rs. 6 lacs,

3/4th Part Time Safai Karamchari

Rs. 4.5 lacs.

? Part Time Safai Karamchari

Rs. 3 lacs.

1/3rd Part Time Safai Karamchari

Rs. 2 lacs.

The TDS will be applicable on the ex-gratia amount as per the rules.

(iii) In case of death of an employee performing official duty within or outside the office premises (excluding travel from residence to place of work and back) due to dacoity/robbery/terrorist attack, the family will also be eligible to receive, additionally, the one-time monetary compensation in terms of extant Government guidelines depending on the cadre of the employee."

10. It would be evident from the relevant clauses of the earlier policy and the ex-gratia scheme dated 16.6.2006 (Annexure R-1) that computation of family pension has been excluded while computing the monthly income of the family. The Scheme only refers to terminal benefits of provident fund, gratuity, leave encashment and any other amounts paid under the bank's scheme and, therefore, the family pension cannot be included while computing the monthly income of the petitioner.

11. Though, the learned counsel for the respondents would vehemently argue

that the family pension has to be included under the head "any other amount under bank's Scheme". However, such contention cannot be accepted in the absence of "family pension" being specifically mentioned in the later scheme. This is in the background of the original policy wherein the family pension was included, whereas the modified scheme dated 16.6.2006 (Annexure R-1) has consciously excluded family pension component for the purpose of computing the monthly income of the family. The intent of the formulator of the scheme is 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 or else there is no reason to have excluded family pension as a component in the modified scheme.

12. An identical question came up for consideration before a learned Single Judge of the Hon'ble Punjab and Haryana High Court in Santosh Devi v. Oriental Bank of Commerce, decided on 4th May, 2009 and it was held :

"I have heard the arguments of learned counsel for the parties. From the averments made and documents produced in this case, it appears that the respondent bank has originally framed the scheme for compassionate appointment and Ex-gratia payment in pursuance of the decision of the Supreme Court in the case of Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138. According to the said judgment, the public authority is required to frame rules or instructions for providing employment on compassionate ground, which is an exception carved out of the general rule for appointment on the basis of open invitation of application and merit. It was held that this exception was to be resorted to in the cases of penury where the dependents of an employee are left without any means of livelihood and that unless some source of livelihood was provided, a family would not be able to make both ends meet. The Indian Banks' Association adopted the directive of the Apex Court and proposed for appointment of heirs of the deceased employees in case of penury. In that proposal, it was recommended that in order to determine the financial condition of the family of the deceased employee, the following amounts have to be taken into account :

- (a) Family pension
- (b) Gratuity
- (c) Employee's/Employer's contribution to Provident Fund
- (d) Any compensation paid by the Bank or its Welfare Fund
- (e) Proceeds of LIC policy and other investments of the deceased employee
- (f) Income of family from other sources
- (g) Employment of other family members
- (h) Size of the family and liabilities, if any.

This recommendation of the Indian Banks' Association was accepted in the

scheme, which was finally formulated by the respondent bank on 1.1.1998, where the same criteria for determining the financial condition of the family of the deceased employee was laid down. The said policy was amended by the respondent bank on the guidelines issued by the Government and the Indian Banks' Association from time to time. The present scheme was adopted by the Board of Directors in pursuant to the fresh Government/Indian Banks' Association guidelines, approved in its meeting held on 17.8.2007. The Revised Model Scheme for payment of Exgratia amount in lieu of appointment on compassionate grounds & appointment of dependents of deceased employees on compassionate grounds was circulated to all Branches/Offices in India vide circular dated 26.9.2007. Paras 1, 2 and 3 of the Revised Model Scheme read as under :

"1. (A) The Scheme for the grant of ex-gratia will be applicable in the following cases of employees :

(i) Employee dying in harness (other than due to injury sustained while performing official duty as a result of violence, terrorism, robbery or dacoity).

(ii) Employee dying due to injury sustained while performing official duty within or outside office premises (other than due to violence, terrorism or dacoity and excluding travel from residence to place of work and back).

(iii) Employee seeking premature retirement due to the incapacitation before reaching the age of 55 years.

(B) The Scheme for Compassionate Appointment will be applicable in the following cases :

(a) Employee dying while performing his official duty, as result of violence, terrorism, robbery or dacoity;

(b) Employee dying within five years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a dependent spouse and/or minor children.

2. Ex-gratia Payment

(a) In cases as in para 1 (A), Ex-gratia amount will be paid to the family of the employees if eligible and if requested for within six months from the date of the death of the employee. The family shall be in indigent or penurious circumstances. "Family" for this purpose would mean and include spouse, wholly dependent children (son, including legally adopted son/unmarried daughter including legally adopted unmarried daughter). In case of unmarried employee, parent who are wholly dependent on the employee will constitute "family".

(b) Ex-Gratia may be granted to the family of the employee in the manner and subject to the ceilings specified below, if the monthly income of the family from all sources is less than 60% of the last drawn salary (net of taxes) of the employee.

Calculation of monthly income

(1) Terminal Benefits

(i) Provident Fund

(ii) Gratuity

(iii) Leave Encashment

(iv) Any other amount paid under Bank's Scheme (s)

Sub-total (A) _____

(2) Liabilities

Loans taken from bank and/or other Financial Institutions with the prior approval of the Bank Sub-total (B) _____ Net corpus of terminal benefits (C=A-B) _____

(3) Investments Deposits NSCs PPF LIC policies Others Sub-total

(D) _____ (4) Details of movable property, if any, held and monthly income

derived therefrom (5) Details of immovable property, if any, held and monthly

income therefrom (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 (C)

(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 Total monthly income of the family _____

(c) If the total monthly 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 as under will be payable

(i) The cadre-wise ceiling on ex-gratia amount payable will be as follows :

Category

Maximum Amount

Officers

Rs. 8 lacs

Clerical Staff

Rs. 7 lacs

Subordinate Staff

Rs. 6 lacs

(ii) In case the monthly income of the family as calculated as above is less than 60% of the last drawn salary (net of taxes) of the employee, an ex- gratia amount calculated @ 60% of the last drawn gross salary (net of taxes) for each month of remaining service of the employee (i.e. up to the age of superannuation in terms of extent service rules/conditions) at the time of his death/ incapacitation subject to the cadre-wise ceiling of "Maximum Amount" mentioned under (i) above, will be payable.

(d) In case of an employee seeking premature retirement due to total incapacitation for work, the ex-gratia is payable only if all the extant provisions for such retirement are fully satisfied and the retirement has been approved by the competent authority specified therefore.

(e) While dealing with proposals for grant of ex-gratia as above in cases where disciplinary action had been taken/ was pending against the employee dying in harness or the deceased employee was involved in financial irregularities, embezzlement of funds, committing frauds etc. bank will continue to abide by the guidelines issued by the Government of India requiring consideration and decision in each case by the Board of the Bank.

(f) The ex-gratia amount in eligible cases will be paid within 3 months of receipt of application, complete in all respects.

(g) The ex-gratia relief under the above Scheme is not an entitlement but may be granted at the sole discretion of the Bank looking into the financial conditions of the family and in deserving and eligible cases only.

(h) The Scheme will come into force with retrospective effect from 31.07.2004 and all applications pending as on 31.07.2004 shall be considered in accordance with the revised scheme. Any application disposed of prior to 31.07.2004 and any order passed thereon shall not be reopened.

3. Appointment on compassionate grounds :

(a) In cases covered by Para 1 (B), appointment on compassionate grounds may be offered to one among the next of kin of the deceased employees.

(b) The appointment shall be made only in the clerical and sub-staff cadre.

(c) Application for employment under the scheme from eligible next of kin should be received by the Bank at the earliest in any case not later than 12 months from the date of death of an employee

(d) The appointment made shall conform to the guidelines of the Government of India issued from time to time

(e) The appointment made under this Scheme shall also conform to Government of India guidelines regarding recruitment on compassionate grounds as contained in IBA's Circular No. PD/CIR/76/532/813, dated 23.08.1996, which are based on Supreme Court judgement dated 04.05.1994 in the case of Shri Umesh Kumar

Nagpal v. State of Haryana and Others wherein it was held that only in case of any employee dying in harness and leaving his family in penury and without any means of livelihood, appointment on compassionate grounds to dependents of the deceased employee can be considered.

(f) The Scheme shall come into force with retrospective effect from 31.07.2004 and all cases of death occurring after 31.07.2004 in the circumstances as in Para 1 (B) will be dealt with according to this Scheme.

(g) Appointment under the Scheme is not an entitlement but may be granted at the sole discretion of the bank looking into the financial conditions of the family and in deserving and eligible cases only.

(h) The Board of the Bank reserves its right to substitute, amend or vary from time-to-time any provisions of the Scheme mentioned above.

Application for Payment of ex-gratia amount in lieu of appointment on compassionate grounds or appointment on compassionate grounds from the family/dependents of the deceased employee, as the case may be and proposal for payment of the same by the concerned branch incumbent along with concerned Regional Head's recommendations are to be sent in the proforma enclosed herewith."

Para 1 (B) of the scheme provides that the compassionate appointment can be given to the dependent of the deceased in case (a) Employee dying while performing his official duty, as result of violence, terrorism, robbery or dacoity; or (b) Employee dying within five years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a dependent spouse and/or minor children. The case of the petitioner does not fall in either of these two clauses. Therefore, her claim for compassionate appointment has been rightly rejected by the respondent bank. However, in view of Para 1 (A), the petitioner is eligible for the grant of Ex-gratia financial assistance. Sub-para (a) of Para 2 provides that Ex-gratia amount will be paid to the family of the employees, if eligible as per Para 1 (A). According to this sub-para, the family shall be in indigent or penurious circumstances. Sub-para (b) of Para 2 further provides that Ex-gratia may be granted to the family of the employee, if the monthly income of the family from all sources is less than 60% of the last drawn salary (net of taxes) of the employee. This sub-para further provides the method of calculation of monthly income of the family. To calculate the monthly income, the terminal benefits i.e. (i) Provident Fund (ii) Gratuity (iii) Leave Encashment and (iv) any other amount paid under Bank's Scheme, have to be taken into consideration. The liabilities in the shape of loans taken by the family from the bank or other financial institutions have to be deducted and thereafter, the net corpus of terminal benefits has to be arrived at. Further, the investments in shape of deposits, NSCs, LIC policies are to be taken into consideration. It is further provided that the monthly interest at the bank's maximum term deposit rate on the net corpus of terminal benefits has also to be taken into consideration while

calculating the monthly income of the family. Thus, a careful reading of the aforesaid Paras of the revised Ex- gratia scheme dated 26.9.2007, clearly indicates that the 'Family Pension' received by the dependents of the deceased employee is not to be taken into consideration as terminal benefits, for the purpose of calculating the monthly income of the family. The revised scheme clearly provides that to calculate the monthly income, only terminal benefits, such as (i) Provident Fund (ii) Gratuity (iii) Leave Encashment and (iv) any other amount paid under Bank's Scheme, are to be counted. As per this scheme, the terminal benefits do not including the 'Family Pension', which was included in the original scheme, approved by the Indian Banks' Association. This clearly indicates that while framing the revised scheme, the respondent bank has consciously not including the 'Family Pension' as one of the components of terminal benefits, which is to be taken into account for calculating the monthly income of the family of the deceased employee. Inclusion of 'Family Pension' as one of the components of the terminal benefits has to be expressly provided in the scheme, as was provided in the original scheme framed in the year 1998. The said exclusion clearly shows the intention of the policy maker that the 'Family Pension' received by the family of the deceased employee should not be taken into account while calculating the monthly income of the family of the deceased employee. Therefore, in the instant case, the respondent bank has acted illegally, arbitrarily and contrary to the provisions of the revised scheme, while adding the monthly 'Family Pension' received by the family of the deceased employee, for calculating the monthly income of the family. If the 'Family Pension' received by the dependent of the deceased employee and a notional interest at the rate of 6% to 11% on the terminal benefits are clubbed to arrive at 60% of the gross salary drawn by the deceased employee, then there would hardly be any family who could be entitled to Ex-gratia payment under the policy. Such interpretation would defeat the very purpose of the new revised scheme of the Ex-gratia payment. Therefore, the respondent bank, in pursuance to the Government/Indian Banks' Association instructions, consciously does not include the 'Family Pension' in the terminal benefits for the purpose of calculating the monthly income of the family of the deceased employee. The Ex-gratia payment is a socio economic measure and it should be aimed that family of the deceased employee is being benefitted in most of the cases. If the component of 'Family Pension' is excluded from the monthly income of the family of the deceased employee, then the monthly income comes to less than 60% of the last drawn gross salary of the deceased employee.

The argument of the petitioner that none of the terminal benefits as mentioned in the revised scheme should be included in the calculation of monthly income, as the same is illegal and unconstitutional, cannot be sustained. The Supreme Court in the case of General Manager (D&PB) and others v. Kunti Tiwary and Another, (2004) 7 SCC 271 observed that scheme formulated by the bank is valid and after considering the terminal benefits, immovable and movable property possessed, it cannot be said that the condition of the deceased family was

penurious. This case has been followed in the case of Punjab National Bank and others v. Ashwini Kumar Taneja, (2004) 7 SCC 265 : AIR 2004 SC 4155, wherein it was held by the Apex Court that the High Court's view that the retiral benefits are not to be taken into consideration while dealing with the request for compassionate appointment is contrary to the decision in Kunti Tiwary's case. The Supreme Court also relied on Kunti Tiwary's case in the case of SBI v. Jaspal Kaur, (2007) 9 SCC 571 and observed that the High Court while determining the financial condition of the family shall taken into account the scheme formulated regarding the same.

But, as has been discussed above, the 'Family Pension' received by the dependents of the deceased employee is not to be counted, while calculating the monthly income of the family of the deceased employee. In Kunti Tiwary's case (supra), the Supreme Court has upheld the inclusion of 'Family Pension' in the terminal benefits for the purpose of calculating the monthly income of the family of the deceased employee, keeping in view the scheme of the Punjab National Bank, namely "Scheme for Employment of the Dependents of the Employees Who Die While in the Service of the Bank - Service on Compassionate Grounds", which provides for inclusion of 'Family Pension' in the calculation of monthly income of the family, but in the instant case, the revised scheme has purposely and consciously not included the 'Family Pension' component in terminal benefits, which are to be taken into account for calculating the monthly income of the family.

Further, the respondent bank has included an amount of Rs.1434/-, as deemed interest on terminal benefits, in view of sub-para (6) (i) of Para 2 of the revised scheme, which provides inclusion of monthly interest at the Bank's maximum term deposit rate on the net corpus of terminal benefits. 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."

13. Notably, the aforesaid decision was assailed by the Bank by filing LPA No. 585 of 2009, but the same was also dismissed by a learned Division Bench of the Court by according the following reasons:

"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 v. State of Haryana, (1994) 4 SCC 138, 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.

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.

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&PB) and others v. Kunti Tiwary and another, (2004) 7 Supreme Court Cases 271, Punjab National Bank and others v. Ashwini Kumar Taneja, (2004) 7 Supreme Court Cases 265 and State Bank of India and others v. Jaspal Kaur, (2007) 9 Supreme Court Cases 571. 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.

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 v. 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 *Mumtaz Yunus Mulani v. State of Maharashtra & Ors.*, 2008(11) SCC 384 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 v. Life Insurance Corporation of India & others*, 2005(10) SCC 289.

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.

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.

Even as per the legal principles, there is little doubt in view of the discussion in *Mumtaz Yunus Mulani v. 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."

14. Importantly, it was the same policy framed by the Indian Banks Association which formed the subject matter of *lis* in *Santosh Devi's* case (*supra*) and this decision would therefore be squarely applicable to the facts of the instant case. Even otherwise, the learned counsel for the respondents has not been in a position to point out any infirmity in the said decision.

15. That apart, I may now refer to a judgment rendered by the Hon"ble Division Bench of this Court in *Surinder Kumar v. State of H.P. and others* 2016 (1) Latest

HLJ (HP), 113 wherein one of the question posed before the Bench was as to whether the amount of family pension and other retiral benefits received by the family of the deceased employee could be included in the family income for denying the compassionate appointment. Answering the question, the Hon"ble Division Bench held as under:-

"44. Thus, from the above discussion of the Policy, as amended from time to time, and from the facts of the cases, which would be enumerated subsequently, the following questions emerge for determination, in order to narrow down and settle the controversy:

(i) Whether the amount of family pension and other retiral benefits, received by the family of the deceased employee, can be included in the family income for denying the compassionate appointment?

(ii) Which date would be relevant viz-a-viz. applicability of the Policy - whether the date of death of the employee or the date when the application was presented, for the first time, for seeking employment on compassionate ground or the date on which the application came up for consideration before the Authorities, and whether a claim for compassionate appointment can be decided on the basis of subsequent amendment, when the application was presented prior to such amendment?

(iii) If an applicant was in lis and his case was directed to be reconsidered, whether the claim of such applicant is to be determined as per the policy which was existing at the time of passing the order or as per the policy which was in place at the time of staking claim for the first time or as per the policy existing at the time of consideration?

(iv) Whether the applicant can claim appointment on compassionate ground against a higher cadre, once he had been appointed in the lower cadre?

(v) In case a person is appointed on contract basis, whether he is within his rights to seek appointment on regular basis?

(vi) In a given set of cases, in one case the appointment on compassionate ground has been offered against a Class-III post and in other case, the appointment has been offered to a Class-IV post, whether it amounts to discrimination?

(vii) Whether a person can claim compassionate appointment after a considerable delay?

(viii) Whether requisite qualification or age can be relaxed?

(ix) In case one or more dependants of a deceased-employee is/are in service, though living separately, whether that can be made a ground to deny compassionate appointment to the other dependant of the deceased-employee?

45. After going through the Policy, dated 18th January, 1990, as amended from

time to time, and the facts, as are emerging, our point-wise findings, on the above points, are as under.

Point No. (i) :Whether the amount of family pension and other retiral benefits, received by the family of the deceased-employee, can be included in the family income for denying the compassionate appointment?

46. Clause 10(c) of the Policy mandates that while making appointment on compassionate ground, the competent Authority has to keep in mind the benefits received by the family on account of ad hoc ex-gratia grant, improved family pension and death gratuity. Therefore, we may place on record at the outset that no maximum income ceiling has been prescribed in the Policy. Only what has been prescribed is that the competent Authority has to keep in mind the benefits received by the family after the death of the employee, as detailed above.

47. The aim and object of granting compassionate appointment is to enable the family of the deceased employee to tide over the sudden financial crisis which the family has met on the death of its breadwinner. Though, appointment on compassionate ground is inimical to the right of equality guaranteed under the Constitution, however, at the same time, we cannot be oblivious to the fact that the concept of granting appointment on compassionate ground is an exception to the general rule, which concept has been evolved in the interest of justice, by way of Policy framed in this regard by the employer. The object sought to be achieved by making such an exception is to provide immediate assistance to the destitute family, which comes to the level of zero after the death of its bread-earner. Thus, we are of the considered view that the amount of family pension and other retiral benefits cannot be equated with the employment assistance on compassionate ground.

48. While reaching at this conclusion, we are supported by the decision of the Apex Court in Govind Prakash Verma v. Life Insurance Corporation of India and others, (2005) 10 Supreme Court Cases 289, wherein it was held that scheme for providing employment assistance on compassionate ground was over and above the service benefits received by the family of an employee after his death. It is apt to reproduce the relevant portion of paragraph 6 of the said decision hereunder:

"6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules.....".

49. The Apex Court in *A.P.S.R.T.C., Musheerabad & Ors. v. Sarvarunnisa Begum*, 2008 AIR SCW 1946, while discussing the aim and object of granting compassionate appointment, has held that the widow, who was paid additional monetary benefits for not claiming appointment, was not entitled to compassionate appointment. It is apt to reproduce paragraphs 3 and 4 of the said decision hereunder:

"3. This Court time and again has held that the compassionate appointment would be given to the dependent of the deceased who died in harness to get over the difficulties on the death of the bread- earner. In *Umesh Kumar Nagpal v. State of Haryana and Others*, (1994) 4 SCC 138, this Court has held as under:

"The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest post in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.

Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV, is legally impermissible."

4. In the present case, the additional monetary benefit has been given to the widow apart from the benefits available to the widow after the death of her husband to get over the financial constraints on account of sudden death of her husband and, thus, as a matter of right, she was not entitled to claim the compassionate appointment and that too when it had not been brought to the notice of the Court that any vacancy was available where the respondent could have been accommodated by giving her a compassionate appointment. That apart, the Division Bench of the High Court has committed an error in modifying the direction of the Single Judge by directing the Corporation to appoint the respondent when no appeal was preferred by the respondent challenging order of the Single Judge."

50. Coming to the Policy in hand, there is nothing on the record to show that the writ respondents have ever made a provision for additional monetary benefit, as a substitute to the employment assistance on compassionate ground, except the terminal benefits to which the family of the deceased-employee is otherwise entitled to.

51. The Apex Court in its latest decision in *Canara Bank & Anr. v. M. Mahesh*

Kumar, 2015 AIR SCW 3212, while relying upon its earlier decision in *Balbir Kaur and another v. Steel Authority of India Ltd. and others*, (supra), has restated the similar position, and held that grant of family pension or payment of terminal benefits, cannot be treated as substitute for providing employment assistance on compassionate ground. It is apt to reproduce paragraphs 15 and 16 of the said decision hereunder:

"15. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.

16. In *Balbir Kaur & Anr. v. Steel Authority of India Ltd. & Ors.*, 2000 6 SCC 493 , while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

"13. .But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation." Referring to *Steel Authority of India Ltd.'s* case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground."

(Emphasis applied).

52. The Clauses contained in the Policy in hand are similar to the Scheme, which was the subject matter before the Apex Court in *Canara Bank's* case (supra). Therefore, the mandate of the said judgment of the Apex Court is squarely

applicable to the cases in hand.

53. From the facts of the cases in hand, another moot question, which arises for consideration, is - Whether instructions contained in letters/communications, made by one Department of the Government to another, can be said to be amendment in the Policy? The answer is in the negative for the following reasons.

54. In order to show that the maximum income ceiling was prescribed by the competent Authority, the respondents have relied upon the letter, dated 1st November, 2008, written by the Secretary (PW) to the Government of H.P., to the Engineer-in-Chief, HPPWD, referred to above, wherein it was mentioned that the income ceiling fixed by the Finance Department, for a family of four members, was Rs.1.00 lac. A perusal of this letter shows that it has been mentioned therein that "the Income Criteria fixed by the Finance Department takes into consideration maximum family income ceiling fixed by the finance Deptt. for a family of 4 members as Rs.1.00 lac."

It is nowhere mentioned in the said letter that the income ceiling was fixed by the competent Authority by making amendment in the Policy. Moreover, the said amendment, if any, has not been placed on record and has not seen the light of the day. Therefore, the letters/communications issued by a Department to another Department cannot be said to be amendment in the Policy unless the said amendment has got the approval of the competent Authority i.e. the Cabinet.

55. Having regard to the above discussion, we are of the considered view that the action of the respondents of denying employment assistance to the dependant of a deceased employee by taking into account the family pension and other terminal benefits is not tenable in the eyes of law. Point No.(i) is answered accordingly."

16. The judgment rendered by the Hon"ble Division Bench of this Court in the aforesaid case is binding on this Court and even otherwise, I see no reason to differ with the same.

17. Notably, the Division Bench while deciding the aforesaid case has taken into consideration the latest judgment of the Hon"ble Supreme Court in *Canara Bank and another v. M. Mahesh Kumar* (2015) 7 SCC 412 wherein the Hon"ble Supreme Court has unequivocally held that grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. Once it is so, then the necessary corollary would be that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing ex-gratia lump sum amount in lieu of appointment on compassionate grounds.

18. In view of the aforesaid discussion, I find merit in this petition and the same is accordingly allowed and all the orders rejecting the claim of the petitioner for grant of ex-gratia amount in lieu of appointment on compassionate ground including order dated 27.1.2009 (Annexure P-3/A) are quashed and set-aside

and consequently the respondents are directed to pay ex-gratia amount in lieu of compassionate appointment along with all other benefits i.e. gratuity, leave encashment, reimbursement of medical bills and other expenses incurred by the family as are due and admissible to the petitioner within a period of three months from today, failing which they shall be liable to pay the said amount along with 9% interest.

19. The petition is disposed of in the aforesaid terms, so also the pending application(s), if any, leaving the parties to bear their own costs.