

(2009) 05 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14432 of 2007

Smt. Santosh Devi

APPELLANT

Vs

Oriental Bank of Commerce and Another

RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:

Citation : (2009) 2 ILR (P&H) 631 : (2009) 7 SLR 403

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : S.K. Yadav, for the Appellant; R.N. Lohan, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The husband of the Petitioner, Kabul Chand, was working as Peon in the Branch office of the Respondent bank at Nagina, District Mewat. Later on, he was promoted as Clerk. He was working with the Respondent bank for the last 8-9 years. On 24th December, 2005, when he was going to attend his duty, Unfortunately, he met with an accident and expired. At the time of his death, he was more than 30 years of age. He left behind his widow aged 27 years, one son aged 9 years and two daughters, aged 5 years and 3 years. The financial condition of the family was penurious. The family was having no sufficient means of livelihood. On 16th June, 2006, the Petitioner moved an application (Annexure P-2) to the Respondent bank for granting her appointment under the Ex gratia scheme of the Respondent bank. The Respondent bank,--vide its letter dated 27th June, 2006 (Annexure P-3) informed the Petitioner that the bank has stopped to provide appointment under the Ex gratia Scheme. In place of that policy, a new policy (circulated,-- vide circular dated 5th May, 2005) has been framed and as per the new policy, only one time financial assistance is to be provided to the dependent of the deceased employee, if the family is not able to earn the livelihood. The Petitioner was advised to send an application on performa for getting financial assistance under the said Ex gratia scheme. Accordingly, on 10th July, 2006, the Petitioner moved an application to the

Respondent bank on the prescribed performa for grant of financial assistance under the Ex gratia scheme. When no financial assistance was released, the Petitioner sent a reminder to the Respondent bank regarding her grievance. Vide letter dated 23rd February, 2007 (Annexure P-4), the Respondent bank rejected the claim of the Petitioner for grant of financial assistance under Ex gratia scheme, but in the said letter, no reason was disclosed for rejecting the said claim of Petitioner. Thereafter, the Petitioner served a legal notice dated 24th May, 2007 (Annexure P-5) to the Respondent bank for providing financial assistance to her under the Ex gratia scheme. Vide letter 22nd June, 2007 (Annexure P-6), the Respondent bank replied to the legal notice and stated that claim of the Petitioner for Ex gratia financial assistance in lieu of appointment on compassionate ground was considered and rejected by the Respondent bank and the said decision has already been conveyed to the Petitioner. In this reply also, the Respondent bank did not disclose the reason/ground, on which the claim of the Petitioner was rejected. Hence, the Petitioner filed the instant petition.

2. Pursuant to the notice of motion issued, the Respondent bank filed written statement, in which it is stated that in view of the para 8 of the Ex gratia scheme, the Petitioner is not entitled for payment of the Ex gratia financial assistance, as her income from all sources is not less than 60% of the last drawn gross salary of the deceased employee. It is stated that after the death of her husband, the Petitioner received an amount of Rs. 2,86,202.50 as net terminal dues from the Respondent bank and according to para 8 of the Ex gratia "Scheme circulated,--vide circular dated 5th May, 2005 (Annexure P-7), the monthly interest at the bank's maximum term deposit rate on the net corpus of terminal benefits come to Rs. 1,434. It is further stated that the Petitioner is also getting the monthly family pension of Rs. 3,277.12, and she is also getting the monthly of Rs. 500 from the OBC Welfare Society. Thus, the total income of the Petitioner is Rs. 5,208.12 whereas the gross salary of the deceased employee i.e. husband of the Petitioner was Rs. 6,720.70. Thus, the monthly income of the Petitioner is more than 60% of the gross salary of the deceased employee.

3. During the pendency of the petition, the aforesaid scheme for payment of Ex gratia, circulated,--vide circular dated 5th May, 2005, was further revised/modified,--vide circular dated 26th September, 2007. This scheme came into force with retrospective effect from 31st July, 2004, and all the applications pending as on 31st July, 2004 were to be considered in accordance with the revised scheme. In this scheme, a provision for appointment of dependent of the deceased employee on compassionate ground has also been introduced. According to Clause 1 (B) of the scheme, the compassionate appointment can be given in a case where (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. On the asking of the Court, the claim of the Petitioner was agreed to be considered under the new scheme. The Respondent bank,--vide CM No. 7926 of 2009 has

placed on record copy of the order dated 9th April, 2009 as Annexure R-I, whereby the claim of the Petitioner has been rejected while holding that the Petitioner is not entitled to either compassionate appointment or payment of Ex gratia in view of Clause 2 (b) of the revised scheme, as he does not fulfil the criteria laid down under the said scheme.

4. Learned Counsel for the Petitioner contends that under the revised scheme/policy dated 26th September, 2007, the terminal benefits i.e. (i) Provident Fund (ii) Gratuity (iii) Leave Encashment and (iv) Any other amount paid under Bank's Scheme are to be included while calculating the monthly income of the family of the deceased employee. Learned Counsel contends that this scheme/policy of the Respondent bank is totally unjust and unreasonable, as the terminal benefits should not have been included, while calculating the income of the family of the deceased employee. These terminal benefits are the savings of the deceased employee, which the dependents of the deceased employee are legally entitled to receive. According to learned Counsel, these benefits are not the permanent income of the family of the deceased employee. Therefore, these should not be counted in the family income. Learned Counsel submits that the Respondent bank has acted contrary to the Ex gratia scheme, while taking into account the "Family Pension" received by the dependents of the deceased employee. He further submits that the Respondent bank has also acted arbitrarily, while calculating the notional interest from the amount of terminal benefits paid to the Petitioner and counting the same in the monthly income of the family. He submits that if the "Family Pension" and such amount of deemed interest is taken into account, while calculating the monthly income of the family of the deceased employee, then no family can avail the benefit of Ex gratia scheme. Learned Counsel further submits that there is also no justification for adding the monthly financial help of Rs. 500 given to the Petitioner by the OBC Welfare Society.

5. On the other hand, learned Counsel for the Respondents submits that claim of the Petitioner for Ex gratia appointment or financial assistance has been duly considered under the scheme/policy dated 26th September, 2007 and keeping in view the service period, age of the deceased and the monthly income of the family of the deceased employee, which is more than 60% of the gross salary of the deceased employee, the Petitioner was rightly not found entitled either for the Ex gratia appointment or the financial assistance under the Ex gratia scheme. Learned Counsel contends that such kind of scheme, framed by various banks has been upheld by the Hon'ble Supreme Court. Therefore, it cannot be said that the scheme dated 26th September, is illegal and unconstitutional.

6. I have heard the arguments of learned Counsel for the parties.

7. 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 Vs. State of Haryana and Others, .

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 dependment 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 Bank's 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 Bank's Association was accepted in the scheme, which was finally formulated by the Respondent bank on 1st January, 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 Bank's Association from time to time. The present scheme was adopted by the Board of Directors in pursuance to the fresh Government/Indian Banks' Association guidelines, approved in its meeting held on 17th August, 2007. The Revised Model Scheme for payment of Ex gratia amount in lieu of appointment on compassionate ground and appointment of dependents of deceased employees on compassionate grounds was circulated to all Branches/Offices in India,--vide circular dated 26th September, 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 ceiling 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 NS Cs 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 31st July, 2004 and all applications pending as on 31st July, 2004 shall be considered in accordance with the revised scheme. Any application disposed of prior to 31st July, 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 23rd August, 1996, which are based on Supreme Court judgment dated 4th May, 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 31st July, 2004 and all cases of death occurring after 31st July, 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 alongwith 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, NS Cs, 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 26th September, 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.

8. 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 and PB) and Others Vs. Kunti Tiwary and Another, 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 Vs. Ashwini Kumar Taneja, 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 State Bank of India and Others Vs. Jaspal Kaur, and observed that the High Court while determining the financial condition of the family shall be taken into account the scheme formulated regarding the same.

9. 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 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.

10. 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's 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 26th September, 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 Motional 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 26th September, 2007.

11. In view of the above, the instant writ petition is allowed. The order dated 9th April, 2009 (Annexure R-I) rejecting the claim of the Petitioner is hereby set aside. The Respondent bank is directed to grant financial assistance to the Petitioner under the revised Ex-gratia scheme dated 26th September, 2007, within a period of three months. If the financial assistance is not provided within three months, the Respondent bank is liable to pay interest at the rate of 6% per annum on the said amount from the date of its accrual.