

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

Letters Patent Appeal No.325 of 2016 (O&M)

Date of Decision: May 16, 2016

Vimal Kumar

.....Appellant

versus

State Bank of India and others

.....Respondents

**CORAM:** HON'BLE MR.JUSTICE SURYA KANT.  
HON'BLE MR.JUSTICE A.B.CHAUDHARI.

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Present: Mr.Vimal Kumar-appellant-in-person.

Ms.Madhu Dayal, Advocate, for the respondent-Bank.

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1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

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Surya Kant, J. (Oral)

This letters patent appeal is directed against the order dated 13.10.2014 whereby learned Single Judge has disposed of the appellant's writ petition with a direction that if he submits his claim under the 2005 Ex-Gratia Scheme, the respondent-Bank shall consider it in accordance with such Scheme within two months.

[2] The instant appeal pertains to the appellant's claim for appointment on compassionate ground under the ex-gratia Policy on the plea that his father was working as a Messenger (Group-D employee) in the respondent-Bank when he unfortunately died in harness on 04.11.1998. The deceased-employee left behind his widow and two sons including the appellant. The appellant's mother applied for appointment of

appellant under the ex-gratia Policy and her request was favourably recommended on 31.08.1999. The appellant's mother was informed on 23.06.2001 that the claim re: appointment on compassionate ground is still under consideration.

[3] As no decision was communicated, the appellant filed CWP No.14498 of 2009 which was disposed of by this Court on 17.09.2009 with a direction to the respondent-Bank to decide his claim for appointment.

[4] Pursuant thereto, the impugned order dated 07.02.2014 was passed almost after five years, rejecting the appellant's claim on the plea that the Scheme of appointment of dependents of deceased-employees was introduced on 01.01.1979 and thereafter, various amendments have been made therein and as per provisions of the latest Policy, only the payment of ex-gratia lump-sum amount in lieu of appointment on compassionate ground is admissible. Such latest policy came into force w.e.f. 4.08.2005.

[5] It further appears that after the 2005-Policy and during the pendency of writ petition, the respondent-Bank has introduced yet another Policy on 07.08.2014 and based thereupon, it was contended before the learned Single Judge that the appellant's claim for appointment in service was liable to be re-considered as per the new Scheme. The appellant very strongly also raised the plea of discrimination alleging that 78 appointments have been made on compassionate ground in Chandigarh Circle and 43 such appointments in Punjab State during the period from 1998 to 2005 without even considering his claim.

[6] Learned Single Judge, after taking notice of the

facts that (i) the appellant's father had died way back on 04.11.1998; (ii) the appellant himself is more than 40 years old, and (iii) it would not be appropriate to appoint him after almost 16 years, has disposed of the writ petition with a direction that the appellant's claim for payment of lump-sum ex-gratia amount be considered in terms of the 2005 Policy.

[7] Still aggrieved, the appellant has preferred this appeal.

[8] We have heard the appellant-in-person and Ms.Madhu Dayal, learned counsel for the respondent-Bank and have gone through the record.

[9] The undisputed facts are that soon after the unfortunate demise of appellant's father (who was a Class-IV employee) in November, 1998, his mother applied for appointment of her son on compassionate ground and her request was found to be genuine and strongly recommended on 31.08.1999. Except informing the family that the matter was still under consideration, the authorities sat over it and continued to make one after the other appointment as it appears from the information placed on record by the appellant after obtaining it under the Right to Information Act, 2005. It was in these compelling circumstances that he came to this Court in the year 2009 and regardless of the directions issued on 17.09.2009, the Bank took about 5 years in rejecting the appellant's claim on 07.02.2014.

[10] When the authorities themselves are singularly responsible for the exceptional delay in deciding the fate of appellant's claim, can they be heard to say that meanwhile 1998 ex-gratia Policy stood modified/amended or that the Bank has introduced a new Policy in the year 2005 whereunder

only a lump-sum ex-gratia amount was payable?

[11] Truly, appointment on compassionate ground under the ex-gratia Policy is not a legal right, enforceable through the Writ-Court. However, in the matter of exercise of discretionary powers or giving effect to a welfare policy, the authorities must adhere to the binding principles of equality, transparencies, fair and just play, failing which their action would smack the pick and choose policy. The facts of the case in hand suggest that there was none in the Bank to take up the appellant's cause and decide his claim for appointment under the 1998 Policy which remained in force for seven years till it was replaced by 2005 Policy. Further, the order under appeal suggests that a new ex-gratia Policy has been introduced on 07.08.2014. If the plea taken by the Bank that 2005 Policy was applicable as it came into force before the appellant's claim could be decided, is taken to its logical conclusion then on the same analogy, the 2014 policy which came into force while the appellant's claim was sub-judice before the Court, can be applied in his case

[12] It is a matter of record that the appellant was 27 years old when he lost his father and now he is stated to be 45 years old. He submits that his mother is bed ridden and his only brother unfortunately suffers from abnormal behaviour/ mental disorder. The appellant is still unmarried, as according to him, there are no means to sustain a family.

[13] Taking into consideration the totality of circumstances, we allow this appeal in part; modify the order passed by the learned Single Judge and dispose of the appellant's writ-petition in the following terms:-

- (i) the respondents are directed to re-consider the

appellant's claim for appointment on compassionate ground under the ex-gratia Policy which came into force w.e.f. 01.01.1979 and which remained in force till the year 2005. The appellant's merit/claim shall be compared with those candidates who have been appointed under that Policy from 01.01.1979 till the 2005 Policy came into force. In case the appellant earns more merit points than those who have been appointed earlier, in that event, he shall also be offered appointment from the date when first person with less merit was appointed though the appellant shall be given such appointment notionally without payment of any arrears;

- (ii) If the appellant does not come within merit for appointment as directed above, and if the latest ex-gratia Policy dated 07.08.2014 also entails appointment in service, let the appellant's claim be considered under that Policy;
- (iii) If the appellant is not found entitled to appointment on compassionate ground under the 2014 Policy also, then he/his family shall be paid ex-gratia lump-sum amount of compensation under the 2005 Scheme alongwith interest @ 9% per annum w.e.f. 01.01.1999 with special damages of Rs.50,000/- on account of harassment caused to them for not deciding his claim for almost 15 years.

[14] Ordered accordingly.

[15] Compliance shall be made within a period of three months from the date of receiving a certified copy of this order.

[16] Dasti.

[SURYA KANT]  
JUDGE

*May 16, 2016*  
*mohinder*

[A.B.CHAUDHARI]  
JUDGE

CM No.696 of 2016 in  
LPA No.325 of 2016

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Present : Mr.Vimal Kumar-appellant in-person.

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For the reasons mentioned in the application, the same is allowed subject to all just exceptions and 411 days' delay in filing the appeal is condoned.

CM stands disposed of.

**(SURYA KANT)  
JUDGE**

**May 16, 2016**  
*mohinder*

**(A.B.CHAUDHARI)  
JUDGE**