IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203 **CWP No.15319 of 2015**
Decided on : 14.10.2019

Manju Sondhi

... Petitioner

Versus

Punjab National Bank and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Praveen Gupta, Advocate
for the petitioner.

Ms. Harpreet Kaur, Advocate
for the respondents.

G.S. Sandhawalia, J. (Oral)

The present writ petition under Article 226/227 of the Constitution of India has been filed for quashing of the impugned letter dated 17.06.2015 (Annexure P-13), whereby the claim of ex-gratia amount of ₹6 lakhs to the petitioner on account of death of her husband had been declined.

2. The reasoning given as such to decline the relief in the impugned order is that the cases which had been sanctioned or declined were not to be reviewed on account of the pay revision w.e.f. 01.11.2007. It is pertinent to notice that on 15.12.2008 (Annexure P-6) at the first instance the claim had been rejected on account of the petitioner having more than 60% of the last drawn monthly gross salary from other sources, on account of which the entitlement had not been granted.

3. Counsel for the petitioner has vehemently submitted that the case has been positively recommended on an earlier occasion vide Annexure P-5 by the Senior Regional Manager and it had been found as a matter of fact that the petitioner was in receipt of less than 60% of the last drawn gross salary (net of taxes), as per the eligibility. It is further submitted that even recently as much as on 08.01.2015 (Annexure P-15) after giving the benefits of pay revision which had come into effect from 01.11.2007, the Chief Manager had recommended to the Chief Manager, HRD Division, Head Office, New Delhi that the petitioner was in receipt of the ₹7484.81, which was less than 60% of the net amount of salary, which would work out ₹8462.43. Thus, the revision as such was declined only on the ground that the case was not to be reopened.

4. It is not disputed that the petitioner's husband was working as Cash Peon and had died on 09.11.2007 while in harness of the respondent-Bank. A circular dated 03.11.2007 (Annexure P-1) was already in force wherein in case of sub-staff, to which the petitioner's husband belongs ₹6 lakhs is permissible as ex-gratia amount. The eligibility clause of the ex-gratia scheme reads as under:-

> "**7. PAYMENT OF EX-GRATIA (LUMP-SUM) AMOUNT:**
>
> If otherwise found to be eligible, sanction of Ex- Gratia is subject to the following ceilings:-
>
> a. In case of sub-staff: Rs.6.00 lakhs
>
> b. In case of Clerical Staff: Rs.7.00 lakhs

c. In case of Officer Employees: Rs.8.00 lakhs

If otherwise found to be eligible, payment of Ex-Gratia (lump-sum) amount may be considered if the monthly income of the family from all sources, after the death/pre-mature retirement on medical grounds of the employee, is less than 60% of the last drawn gross salary (net of taxes) of the employee concerned.”

5. Since, the basis of the calculation of the monthly income is also provided in Clause 8 as to how the total monthly income etc. and amounts are to be calculated, this Court is not discussing the same, as the decision making process is yet to be completed as the earlier decision making process dated 15.12.2008 (Annexure P-6) is apparently suffering from vital flaws and does not advert as to how the petitioner is not entitled to the said benefits. The pay revision had already come into effect from 01.11.2007 and resultantly vide the Pension Payment Order (PPO) in favour of the petitioner dated 23.12.2010 (Annexure P-14), the last drawn pay as such of the petitioner was ₹12,550/-. However, while recommending the case of the petitioner vide Annexure P-5, the basic pay was taken as ₹11578.18 and in spite of that the petitioner's case was to be considered positively, as per the recommendations of the Zonal Manager, Divisional Head.

6. As noticed the case of the petitioner was rejected on 15.12.2008 (Annexure P-6) on the ground that the monthly income from other sources was more than 60% of the last drawn gross salary. The petitioner being mis-guided initially approached the Consumer Court,

whereby the complaint was dismissed on 31.05.2010 (Annexure P-9) on the ground that grant of ex-gratia amount would not be considered "any service rendered to the employee or dependents" and, therefore, they would not fall within the ambit of the 'Consumer' as defined under the Consumer Protection Act, 1986. In appeal, however, the State Consumer Redressal Commission, Punjab addressed the issue on merits and came to the conclusion that the petitioner was not entitled to any ex-gratia amount as it was not their legal entitlement.

7. It is pertinent to notice that as per the chart which was recommended by the respondent-Bank (Annexure P-5), the monthly income was again depicted as ₹11578.18, on the basis of which the conclusion has been drawn. As noticed the entitlement as such was of ₹12550/- as per the PPO, which would make a material difference for calculation of the eligibility as per the clause reproduced above. The petitioner had, thereafter, represented vide communication dated 25.11.2014 (Annexure P-11) that basic pay of her husband was ₹12,550/- and had given the details of other allowances and calculated the gross salary @ ₹14,407.10. The recommendations dated 08.01.2015 (Annexure P-15) is also on the same basis by giving the benefit of ₹14,104.05. The rejection as noticed is thereafter on the ground that the case has not to be reopened.

8. The basis of the calculation as such suffers from a patent illegality as the petitioner's entitlement to pension is to be

calculated on the basis of the last drawn pay as per the revision, which had already come into force from 01.11.2007 before the death of the petitioner. The respondent-Bank could not justified as such to deny the benefit of the ex-gratia by standing on the technical plea that the cases which had been sanctioned or declined were not to be opened. An illegality which has occurred at the first instance cannot be buried on these technical pleas. Positive recommendation noting that the petitioner's husband last pay was ₹12,550/- would necessarily have to be kept into consideration as per the terms of the policy dated 03.11.2007 (Annexure P-1). The argument as such that the State Commission has rejected the case is without any substance. As noticed the jurisdiction was assumed by the State Commission and it was not a case of deficiency of service. The PPO dated 23.12.2010 (Annexure P-14) wherein the basis pay had been fixed was never kept in mind by the State Commission while deciding the case.

9. As per the terms of the circular dated 03.11.2007 (Annexure P-1), the purpose of the ex-gratia claim is to provide financial assistance to the dependents of the employee who dies in harness. It is to provide immediate relief to family of such deceased to tide over the sudden crisis, brought about by premature death/incapacitation of the earning family member and to offer immediate financial assistance and succor to the distressed family to recover from the unexpected deprivation of the income of the breadwinner.

10. In the petition it has been mentioned that the petitioner was

working on contract basis as typist in a private hospital namely in Guru Nanak Mission, Hospital, Jalandhar. After the death of her husband she had resigned from the said post w.e.f. 01.02.2008 due to family problem, but has not able to get the benefit of the ex-gratia scheme.

11. This aspect seems to be lost sight off by the respondent-Bank at the time of the decision making process by taking recourse to deny the petitioner's benefit over a period of 12 years frustrating the very purpose of the scheme.

12. Counsel has brought to the notice of this court the judgment passed in **'Smt. Santosh Devi Vs. Oriental Bank of Commerce and another' 2009 (4) RSJ 515**, wherein in similar circumstances, it has been held that the notional interest on terminal benefits is arbitrary and unreasonable. It has been further observed that only if the dependents are actual receiving income from the deposit of the terminal benefits, the income is to be kept in mind. The relevant portion of the said judgment reads as under:-

> "8. 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. Similar view has also been taken in **'Om Wati Vs. Canara Bank and others' 2013 (2) RSJ 160**.

14. Accordingly, a writ of certiorari is issued by quashing the order dated 15.12.2008 (Annexure P-6) and the subsequent denial of reopening the issue on 17.06.2015 (Annexure P-13). A writ of mandamus is issued to the respondent-Bank to reconsider the case of the petitioner for the ex-gratia scheme on the basis of the last pay drawn i.e. ₹12,550/-, keeping in view the provisions of the scheme dated 03.11.2007 (Annexure P-1).

15. Needless to say that decision making process should be

completed within a period of 3 months from the receipt of the certified copy of this order. It is expected that the respondent-Bank would keep the above referred judgments of this Court in mind while re-assessing the entitlement of the petitioner.

The writ petition stands allowed, accordingly.

(G.S. SANDHAWALIA)
JUDGE

OCTOBER 14, 2019
Naveen

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No