**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

205 **CWP No.26430 of 2015 (O&M)
Decided on : 26.09.2019**

Hardik Kumar

... Petitioner

Versus

Punjab National Bank and others

... Respondents

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

Present: Mr. Rakesh Nagpal, Advocate
for the petitioner.

Mr. Saurav Verma, Advocate
for the respondents.

G.S. Sandhawalia, J. (Oral)

In the present writ petition filed under Article 226/227 of the Constitution of India the petitioner seeks quashing of the letter dated 18.03.2013 (Annexure P-4) whereby his request for grant of ex-gratia payment on account of the death of his parents has been denied on the ground that the payment is only to be made to the minor children of the deceased employee. Resultantly, the petitioner and his brother Abhishek Kumar were informed that the amount was not payable to them as both of them had attained the age of majority. Resultantly, quashing of the amended clause of Scheme dated 06.12.2008 (Annexure P-5), whereby the definition of the family given, has been challenged to the extent that it would be only inclusive to minor children.

2. The facts of the particular case is that where the respondent-Bank should have acted with compassion rather than take the shield of

technicalities of cut-off-date on account of the fact that the petitioner and his brother were not minor.

3. It is not disputed that the petitioner's father was a Manager and mother was a clerk both of whom, who were working with the respondent-Bank at Karnal. Both of them had died in a road accident on 02.07.2012, orphaning the petitioner and his brother. In view of the circular dated 03.11.2007 (Annexure P-2), the petitioner had applied for the benefit of the ex-gratia. As per the terms of the said circular at that point of time to provide immediate financial assistance and succor to the distressed family and to help them to recover from the deprivation of the income of the breadwinner, the entitlement was there even to major children except married daughters. The relevant clause of the scheme reads as under:-

> "**2. OBJECT OF THE SCHEME**:
>
> a. The scheme envisages a balance between the business objectives of the bank and **its social obligations, and is aimed towards providing financial assistance to the family of an employee**:
>
> - dying in harness
>
> - pre-mature retirement owing to incapacitation on medical grounds before the employee has attained 55 years of age.
>
> b. **To provide relief to the family of such employees, 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."

The definition of the family was provided as under:-

> "**h.** '**Family**' for this purpose for **married employees** would mean and include Spouse and Children (including legally adopted children, but excludes married daughters).
>
> In case of **unmarried employees**, parents and unmarried brothers & sisters, who are wholly dependent on the employee would constitute '**Family**'."

4. The same would show that in case of unmarried employees, the definition had been enlarged to parents and unmarried siblings dependent upon the employees.

5. However, the 'definition' of the same was amended on 06.12.2008 (Annexure P-5) to the disadvantage of the petitioner as only a minor child was to be granted the benefit. The amended clause reads as under:-

> "**Amended Clause**
>
> '**Family**' for this purpose for married employees would mean and include spouse and **<u>minor children</u>** (including legally adopted children).
>
> In case of unmarried employees, parent and unmarried brothers and sisters, individually having monthly income not exceeding Rs.2550/- P.M. would constitute '**Family**'.

6. However, the parents and unmarried siblings continued to be eligible subject to certain conditions. It was in such circumstances the petitioner and his brother have been denied the benefit.

7. The Scheme was discontinued w.e.f. 05.08.2014, however, the Board of the Bank in its meeting held on 19.09.2014 reintroduced the scheme for appointment on compassionate grounds to a dependent of family member of a deceased employee on or after 05.08.2014 and thus

fixing the cut-off-date by virtue of circular dated 25.09.2014 (Annexure P-9). Thereafter, on 03.01.2015 in view of its subsequent meeting, the Board of the Bank on 23.12.2014 reintroduced the ex-gratia scheme, which was discontinued since 06.08.2014 by amending it to the extent that it would remain operative with the provisions that benefit under either of the two schemes is available to the dependents of the deceased employees, subject to their eligibility of the same. Relevant portion of the circular dated 03.01.2015 (Annexure P-11) reads as under:-

> " **SCHEME FOR COMPASSIONATE APPOINTMENT TO A DEPENDENT FAMILY MEMBER OF A DECEASED EMPLOYEE/EMPLOYEE RETIRED ON MEDICAL GROUNDS DUE TO INCAPACITATION BEFORE REACHING THE AGE OF 55 YEARS – RETENTION OF THE SCHEME FOR PAYMENT OF EX- GRATIA LUMP SUM AMOUNT**
>
> **(Source : PAD CIRCULAR NO. 244 dated 03.01.15**)
>
> The Board in its meeting held on 23.12.2014 decided to reintroduce the scheme of ex-gratia (discontinued since 05.08.2014), along with the scheme of appointment on compassionate grounds. <u>Both the schemes viz. the Scheme for Compassionate Appointment & the Scheme for Payment of Ex- gratia Lump sum Amount, shall remain in operation, with provision that benefit under **either** of the two schemes is available to the dependents of the deceased employees subject to their eligibility for the same</u>. However, the option for Payment of Lump sum Ex-gratia Amount can be used only when the other conditions of compassionate appointment are met."

8. The amount of ex-gratia payable under the scheme was also subject to certain conditions and eligibility regarding the total monthly

income of the family which has to be less than 60% of the last drawn notional gross salary of the employee. The relevant portions read as under:-

> "**<u>ELIGIBILITY TO SEEK FINANCIAL ASSISTANCE UNDER THE SCHEME</u>**:
>
> **APPLICABLE UNDER THE FOLLOWING CIRCUMSTANCES**:-
>
> i. Employee dying in harness (other than due to injuries sustained while performing official duty as a result of violence, terrorism, robbery or dacoity).
>
> **AMOUNT OF EX-GRATIA PAYABLE UNDER THE SCHEME** :
>
> If otherwise eligible to seek assistance under the scheme, the family of an employee may be considered for receiving this assistance where the total monthly income of the family arrived, as per calculation shown below, is less than 60% of the last drawn notional gross salary of the employee (net of notional taxes) for the complete month, during which he/she has expired or has been approved for premature retirement owing to incapacitation on medical grounds.
>
> In such cases, the amount of Ex-Gratia payable shall be equivalent to 60% of the last drawn notional gross salary (net of notional taxes), payable for each month of remaining notional service of the employee (i.e. up to the notional age of normal superannuation in terms of extant service rules / conditions) at the time of his death / incapacitation, **subject to cadre-wise ceiling of "Maximum Amount" as follows** :-

Category	**Maximum Amount Payable**
Officers	Rs.8.00 lakhs
Clerical Staff	Rs.7.00 lakhs
Subordinate Staff	Rs.6.00 lakhs"

9. Thus, it is apparent that the petitioner has been put to an disadvantage on account of an amendment which was made on 06.12.2008 when the cause of action as such has arisen, on account of the unfortunate death of his parents on 02.07.2012. Thereafter, as noticed the scheme was discontinued, but re-introduced w.e.f. 05.08.2014 by providing the cut-off-date for compassionate appointment only. Vide the latest circular dated 03.01.2015 (Annexure P-11), the scheme is now open for either compassionate appointment or ex-gratia to the dependents of the deceased employee and there is no such criteria fixed that it is for minor children only. Only a condition has been put that the eligibility is to be considered.

10. In such circumstances, keeping in view the fact that the purpose of the ex-gratia scheme is only to provide the benefit to immediate sufferer of the family, who has survived and there could be no better example as in the present case the petitioner and his brother have lost their parents in a road accident in a single stroke. The benefits as such of the circular dated 03.01.2015 (Annexure P-11) would have to be read in continuity of the earlier scheme dated 03.11.2007 and it would not be justifiable for the respondent-Bank as such to deny the benefit of the ex-gratia by falling back on the technicalities of the scheme. The same would only be frustrating the whole purpose of the scheme, which is only to help the children of the deceased employees to re-establish themselves in life, once the earning hand has been snatched. In the present case not one, but both the earning hands have been snatched and, therefore, the

requirement of giving succor is much more.

11. Resultantly, the order dated 18.03.2013 (Annexure P-4) is quashed. A writ of mandamus is issued to respondent No.2 to take a decision on ex-gratia amount as per the Scheme dated 03.01.2015 (Annexure P-11), subject to the eligibility clause as reproduced above without being fettered by the cut-off-date of 05.08.2014 in the peculiar facts and circumstances of the case. The consideration be done within a period of 4 months from the receipt of the certified copy of this order. In case the petitioner is found eligible, the necessary benefit be paid. In case the benefits are to be denied, a speaking order be passed and communicated to the petitioner by the competent authority.

12. The writ petition stands allowed, accordingly.

(G.S. SANDHAWALIA)
JUDGE

SEPTEMBER 26, 2019
Naveen

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No