

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

CWP-9447-2016

Date of decision: 26.08.2019

Amarjeet Kaur

....Petitioner

Versus

Chairman-cum-Managing Director/General Manager (HO)
Bank of India & others

...Respondents

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

Present: Mr.Madan Mohan, Advocate, for the petitioner.

Mr.Ranjan Lohan, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 15.04.2015 (Annexure P-8) whereby the request of the petitioner for grant of compassionate allowance, on behalf of the deceased-spouse and family pension for herself, has been declined under Regulations 31 & 39 of the Bank of India (Employees') Pension Regulations.

The reasoning given is that the employee was removed from service on 31.10.2001 and he did not submit his claim for compassionate allowance during his lifetime and was not in receipt of the same. Resultantly, petitioner, being the widow of the deceased-employee late Shri Gian Singh, was held not to be eligible for family pension. Challenge has also been raised to the communication dated 10.06.2015 (Annexure P-7) whereby, while forwarding the said decision, the amount of Provident Fund of Rs.77,316.12 and Gratuity of Rs.56,518/- was paid to her.

The reasoning is unjustified, for the reasons given below, as the respondent-Bank failed to take into consideration the reasons for which the employee, as such, could not have agitated for his right of compassionate allowance during his lifetime. The germane facts, as such, were never kept in mind while taking the decision by the competent authority and resultantly, the order, as such, suffers from non-application of mind and cannot sustain. The Bank seems to have lost sight of the fact that the deceased-employee had served the respondents from 01.08.1987 till the date of his removal from service, i.e. 31.10.2001 and that pension is not a bounty but sustenance not only for the employee but for his other family members.

It is not disputed that the petitioner's husband was employed with the Armed Guard, serving with the respondent-Bank but was removed from service on 31.10.2001 losing his right of pension. The appeal filed against the order of removal was dismissed by the Appellate Authority on 16.02.2002 (Annexure P-1). He raised an industrial dispute before the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh, unsuccessfully and the removal was upheld on 18.02.2013 (Annexure R-1). Having lost the legal battle, after 11 years, the employee filed his representation for grant of his legal dues on 05.07.2013 (Annexure P-2) as he had decided not to challenge the said award. He, unfortunately, expired on 16.03.2014 (Annexure P-3) and accordingly, the petitioner, being the widow and being the nominee of the legal heirs therein, filed various representations dated 29.04.2014 and 23.03.2015 (Annexures P-4 & P-6) for grant of the retiral dues including

family pension. It was, at that stage, the benefit was denied, for the reasons mentioned above.

Regulations 31 & 39 read as under:

“31. Compassionate Allowance:-

(1) An employee, who is dismissed or removed or terminated from service, shall forfeit his pension:

Provided that the authority higher than the authority competent to dismiss or remove or terminate him from service may, if-

(i) such dismissal, removal, or termination is on or after the 1st day of November, 1993; and

(ii) the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of the pensions which would have been admissible to him on the basis of the qualifying service rendered up to the date of his dismissal, removal, or termination.

39. Family Pension :-

(1) Without prejudice to the provisions contained in these regulations where an employee dies-

(a) after completion of one year of continuous service; or

(b) before completion of one year of continuous service provided the deceased employee concerned immediately prior to his appointment to the service or post was examined by a medical office approved by the Bank and declared fit for employment in the Bank; or

(c) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance; the family of the deceased shall be entitled to family pension, the amount of which shall be determined in accordance with Appendix III.”

A perusal of the above Regulations would go on to show that the right of pension, as such, is forfeited when an employee is removed from service. However, the proviso further provides that deserving of

special consideration, sanction of compassionate allowance which would not exceed two-thirds of the pension, which would have been admissible to the employee, on the basis of his qualifying service upto the date of his removal from service, as is in the present case, can be granted by the authority higher than the authority who removed the said employee. Under Regulation 39 (1)(c), an employee, on the date of his death, who is in receipt of the compassionate allowance, the family of the said deceased employee, would be entitled for family pension, the amount of which shall be determined in accordance with Appendix III.

The above sequence of events would go on to show that the said provisions, as such, had not been examined by the respondent-Bank and neither the fact that the employee, as such, had been serving diligently for 14 years and the removal from service was on account of the misbehaviour with the Bank Manager in the year 2001. The Bank, at that stage, did not think it appropriate that the punishment, as such, should be of that kind where the pensionary benefits would also be withheld and there was an order of removal instead of dismissal. However, the benefits of payment of retiral dues in the form of Gratuity, was not forfeited. It was only on losing the legal battle, the employee had asked for his dues, as noticed above, just after a year of the dismissal of the award. The reasoning, as such, which has been given that for a period of over a decade, he had not asked for the compassionate allowance but the authority has not noticed the fact that the employee had raised the labour dispute with the hope that he would be put back in service. In such circumstances, the order dated 15.04.2015 (Annexure P-8), as such,

CWP-9447-2016

is not justified, in the facts and circumstances and the same is, accordingly, quashed. The respondent-Bank shall pass a fresh order, keeping in view the provisions of Regulation 31, for grant of compassionate allowance, which the deceased-employee would have been entitled to, from 01.11.2001 till his date of death, i.e. 16.03.2014 (Annexure P-3). Thereafter, the case of the petitioner shall be processed under Regulation 39, for grant of family pension. Needful be done within a period of 3 months from the receipt of a certified copy of this order.

Writ petition stands allowed, in the above-said terms.

26.08.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*