IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

223 **CWP-32630 of 2018**
Date of Decision:01.05.2023

Anandi Devi and another

....Petitioners

Versus

Oriental Bank of Commerce and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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Present: Ms. Rajni Bala Rohilla, Advocate,
for the petitioners.

Ms. Neha Rana, Advocate,
for the respondents.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari*/*mandamus* for quashing of the action of the respondents in not releasing her the financial aid (*ex-gratia)* in terms of the scheme of the bank and further quashing of the order dated 28.01.2006 (Annexure P-7) whereby her prayer for grant of financial relief for *ex-gratia* has been declined arbitrarily.

2. Learned counsel for the petitioners submitted that petitioner No.1 is a widow of late Shri Jagdish Parshad who was working in the respondent-Bank and unfortunately died on 20.08.2003 while on duty. The petitioner had prayed for grant of compassionate appointment to her son and also for *ex-gratia* payment and

the same relief has also been claimed in the present petition but the petitioner confines the scope of the present petition only to the extent of grant of *ex-gratia* relief and not for the grant of compassionate appointment and has submitted that the respondent-bank has unlawfully declined to grant the *ex-gratia* relief to the petitioner. She submitted that earier there was a scheme pertaining to grant of compassionate appointment in case of death of the employees of the respondent-Bank which is Oriental Bank of Commerce but thereafter the scheme of compassionate appointment was discontinued by the bank itself and in lieu of the same, the scheme for payment of *ex-gratia* amount in lieu of the appointment on compassionate ground was framed by the respondent-Bank. The aforesaid scheme dated 05.05.2005 has been attached alongwith the present petition as Annexure P-4 which provided for the grant of *ex-gratia* amount in lieu of appointment on compassionate basis and this scheme came into force from 04.06.2005. So far as the husband of petitioner No.1 is concerned, he died on 20.08.2003 and vide letter dated 01.09.2005 (Annexure P-3), it was verified that the request for payment of *ex-gratia* amount shall be considered only if the request of the same is received within six months from the date of the circulation of the scheme i.e. upto 04.11.2005. In this way, the petitioner applied for the *ex-gratia* within the aforesaid period of six months and rather the application of the petitioner was referred to the head office by the bank itself vide Annexure P-5 on 29.09.2005 which is a concrete proposal for sanction of the *ex-gratia* amount and therefore the petitioner well within time made an application for the grant of *ex-gratia* amount and the proposal was sent to the head office. However, the head office vide impugned order Annexure P-7 dated 28.01.2006 declined to grant *ex-gratia* on the ground that she does not fulfill the provisions of the scheme.

3. Learned counsel for the petitioner submitted that a perusal of the Annexure P-7 would show that on the face of it, it was a cryptic and arbitrary order. The only reason which has been so stated in the impugned order was that the petitioner does not fulfill the provisions of the scheme and is not based upon any material or any reasoning and therefore the order was totally cryptic and non-speaking order. She submitted that from a query being raised by her from the bank as to what was the reason, to which, it was so stated by the bank at that point of time that the scheme of *ex-gratia* grant as per Annexure P-4 would be applicable in case the family income of the person seeking *ex-gratia* amount is less than 60% of the salary of the deceased. The aforesaid provision is so referred in Column No.8 of Annexure P-4, which is reproduced as under:-

8	Procedure for calculation of Ex-gratia amount	Ex-gratia may be granted to the family of the employee in the manner and subject to the ceilings 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.

4. She submitted that, however, the aforesaid expression "monthly income of the family" is further so stated in the next column, which defines the monthly income of the family from all sources, which is as under:-

"(7) 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_______________"

5. Learned counsel for the petitioner further submitted that the aforesaid list does not include the family pension whereas at the time of calculation of the family income, the bank had included the family pension of the petitioner which could not have been included because there was no provision pertaining to the same. She referred to Annexure P-8 which is the office note prepared by the bank itself whereby the total income of the petitioner has been mentioned as Rs.6468.30 which includes Rs.4166.30 as family pension and monthly help from welfare society and it was because of this reason that the total figure comes upto more than 60% and therefore she was not granted *ex-gratia*. She submitted that the aforesaid component of the family pension or monthly help from welfare society could not have been included in pursuance of the aforesaid scheme dated 05.05.2005 (Annexure P-4).

6. It was further submitted that in fact this issue as to whether the family pension is to be included as a component for determining the family income or not is no longer *res integra* and has since been decided by a co-ordinate Bench of this Court in CWP No.14432 of 2017 (Annexure P-6) which pertains to the same bank i.e. the Oriental Bank of Commerce and the co-ordinate Bench of this Court was also dealing with the same scheme to which the petitioner was entitled i.e. the scheme of 05.05.2005 which is clear from the first paragraph of the aforesaid judgment itself. She submitted that in reply which has been filed by the bank it has

been so stated that the petitioner is seeking the benefit under the scheme of 2007 which is incorrect. The petitioner is seeking benefit under aforesaid scheme of 05.05.2005 (Annexure P-4) and rather the petitioner had applied for the same on 29.09.2005 vide Annexure P-5 and the proposal was sent by the bank to the head office itself and therefore it cannot be said that the petitioner was seeking any benefit under the scheme of the year 2007 because the entire process was completed in the year 2005 itself in pursuance of the scheme of 05.05.2005. She further submitted that the aforesaid judgment was assailed by the bank by way of an LPA No.585 of 2009 and the same was also dismissed by a Division Bench of this Court on 21.04.2014 and in this way the aforesaid judgment (Annexure P-6) has attained finality. She submitted that reply was filed by the bank in this case in the year 2020 and knowing fully well that the case of the petitioner was fully covered by the aforesaid judgment, still objection has been raised on frivolous grounds and including the ground of delay in filing the present petition. She submitted that so far as the delay aspect is concerned, firstly it is a case of recurring cause of action and secondly it is a case of grant of *ex-gratia* which is to be given by the bank in which the petitioner had already applied and therefore the petitioner was rather entitled for grant of interest on the same.

7. On the other hand, Ms. Neha Rana, Advocate has submitted that the petitioner has herself so stated in the prayer clause that the case of the petitioner be considered for the grant of compassionate appointment in view of the circular dated 26.09.2007 and therefore the petitioner is not entitled for the grant of *ex-gratia*. She further submitted that the petitioner is not entitled for the grant of any *ex-gratia* in view of the circular dated 26.09.2007 (Annexure P-9) because she

was not covered under that.

8. I have heard the learned counsel for the parties.

9. It is a case where the husband of the petitioner died on 20.08.2003 while he was on duty and the scheme was framed on 05.05.2005 (Annexure P-4) and in pursuance of the scheme, the petitioner had applied for grant of *ex-gratia* payment and the concerned bank had also forwarded the same to the head quarters but vide Annexure P-7 a totally cryptic and non-speaking order was passed. A perusal of the judgment Annexure P-6 would show that a co-ordinate Bench of this Court has dealt in detail with regard to as to whether the family pension is to be included in the total family income or not and this Court was dealing with the same scheme under which the petitioner is claiming *ex-gratia* i.e. 05.05.2005 (Annexure P-4) and it was held that since there is no provision for including the family pension, the same cannot be included in the monthly income of the applicant. In the present case, the claim of the petitioner appears to have been declined because of the calculation which has been so prepared vide Annexure P-8 in which it has been so provided that the income of the petitioner was exceeding 60% of the last gross salary of the deceased employee and therefore the petitioner was not entitled for the aforesaid *ex-gratia*. A perusal of the same would show that the total income of the petitioner has been shown to be Rs.6468.30 out of which Rs.4166.30 is coming from the component of family pension of Rs.3666.30 and Rs.500/- from the monthly help from the welfare society. In view of the aforesaid judgment which has now attained finality, the aforesaid component of family pension could not have been included and therefore it was because of the wrong calculation that the petitioner has been deprived the *ex-gratia* payment. Rather the prayer in the

present case is squarely covered by the aforesaid judgment Annexure P-6. So far as objection pertaining to delay in filing the petition is concerned, the same is not sustainable since it is a case of continuing cause of action.

10. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 28.01.2006 (Annexure P-7) is hereby set aside by which the prayer for grant of *ex-gratia* payment has been rejected by the respondent-Bank. The respondent-Bank is directed to grant the financial assistance /*ex-gratia* to the petitioner under the *ex-gratia* scheme which is amended from time to time within a period of three months from today. In case the aforesaid financial assistance/*ex-gratia* is not paid to the petitioner within the aforesaid period of three months, then the respondent-bank shall pay an interest 6% per annum on the said amount from the date of its accrual.

11. Since the present petition has been filed by a widow and the law had already been settled vide Annexure P-6 on 04.05.2009 and even an LPA was also dismissed on 21.04.2014 and thereafter the judgment attained finality and still thereafter 9 years have elapsed, the bank ought to have implemented the judgment for all similarly situated persons which has not been done by the bank and therefore the petitioner shall also be entitled for costs of Rs.25,000/- which shall also be paid within the aforesaid period of three months.

(JASGURPREET SINGH PURI)
JUDGE

May 01, 2023
dinesh

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No