IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114 **CWP-27206-2022**
Date of Decision: 31.01.2024

Anil Kumar **…Petitioner**

Versus

Central Bank of India and another **…Respondents**

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Suram Singh Rana, Advocate for the petitioner

Mr. Gaurav Goel, Advocate for the respondents

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of communication/order dated 05.08.2022 (Annexure P-7) and 16.08.2022 (Annexure P-8) whereby application of the petitioner seeking *ex gratia* lump sum amount has been rejected.

2. The father of the petitioner was working with respondent-Central Bank of India as Peon and he passed away on 17.02.2007 in harness. The deceased employee was survived by his wife apart from the petitioner. The wife was also working with respondent-bank as a Sweeper. She applied for *ex gratia* lump sum in 2012 and her application came to be rejected vide communication dated 28.10.2014 (Annexure R-2). The respondent-bank formed an opinion that as per financial condition of the family, she is not

indigent, thus, benefit of *ex gratia* lump sum cannot be extended. The wife of the deceased employee passed away in 2020. The petitioner being son of deceased employee, at this stage, came forward for *ex gratia* lump sum payment. His application was considered by respondent-bank and rejected vide communication dated 05.08.2022 (Annexure P-7) and 16.08.2022 (Annexure P-8).

3. Learned counsel for the petitioner submits that father of the petitioner passed away in 2007 and at that point of time, *ex gratia* lump sum policy of 2006 was in vogue. As per the said policy, the petitioner was entitled to *ex gratia* lump sum of ₹6 Lacs. The respondent-bank has wrongly rejected application of the petitioner because he was wholly dependent upon his father and entitled to aforesaid amount.

4. *Per contra*, learned counsel for the respondent-bank submits that father of the petitioner passed away in 2007 and his mother, who was employee of respondent-bank, claimed *ex gratia* lump sum in 2012. Her application was rejected in 2014 and she did not challenge the said rejection order. The mother of the petitioner passed away in 2020 and after her death, the petitioner has started making claim of *ex gratia* compensation. The claim of the petitioner is neither maintainable in law nor in equity.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. The father of the petitioner passed away in 2007 and at that point of time, policy dated 16.06.2006 of respondent-bank for payment of *ex gratia*

lump sum amount in lieu of appointment on compassionate grounds was in vogue. Paragraph 7 and 8 of the policy specifically provides that payment would be made if monthly income of the family from all sources is less than 60% of last drawn salary of the employee. Paragraph 7 and 8 of the policy read as:

> *"(7) Ex-gratia may be granted to the family of the employee/employee who has retired on medical ground due to incapacitation, in the manner and subject to the ceilings specified below, <u>if the monthly income of the family from all source is less than 60% of the last drawn salary (net of taxes) of the employee</u>.*
>
> *<u>Calculation of monthly income</u>*
>
> *(I) **<u>Terminal Benefits</u>***
>
> *(i) Provident Fund*
> *(ii) Gratuity*
> *(iii) Leave Encashment*
> *(iv) Any other amount paid under Bank's Scheme(s) ________________*
>
> *Sub-Total(A) _______________*
>
> *(II) **<u>Liabilities</u>***
>
> *Loans taken from bank and / or other financial Institutions with the prior approval of the bank___________*
>
> *Sub-Total (B) _____________*
>
> *(III) Net corpus of terminal benefits (C=A-B)*

(IV) ***<u>Investments</u>***

Deposits

NSCs

PPF

LIC policies

Others

Sub-Total (D) __________________

(V) Details of moveable property, if any, held and monthly income derived therefrom

(VI) Details of immovable property, if any, held and monthly income therefrom

(VII) Monthly income of the family from all source-

(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 moveable and immovable property

(iv) Monthly income of dependent family members

(v) Any other income of the family ___________

(vi) Total monthly income of the family ________

(8) If the total monthly income of the family arrived at above is less than 60% of the last drawn gross

salary (net of taxes) of the employees, ex-gratia amount as under will be payable.

(i) In case the monthly income of the family as calculated above is less than 60% of the last drawn gross salary (net of taxes) of the employee, an ex-gratia amount calculated @60% of the last drawn gross salary (net of taxes) for each month of remaining service of the employee (i.e. up to the age of superannuation in terms of extant service rules/conditions) at the time of his death/incapacitation subject to the cadre-wise ceiling of "Maximum Amount" mentioned under (ii) below, will be payable.

(ii) The cadre-wise ceiling on ex-gratia amount payable will be as follows:

Category	*Maximum Amount*
Officers	*Rs. 8 lacs*
Clerical Staff	*Rs.7 lacs*
Subordinate Staff	*Rs.6 lacs*
Full Time Safai Karamchari	*Rs.6 lacs*
3/4th Part Time Safai Karamchari	*Rs.4.5 lacs*
½ Part Time Safai Karamchari	*Rs.3 lacs*
1/3rd Part Time Safai Karamchari	*Rs.2 lacs*

The TDS will be applicable on the ex-gratia amount as per the rules.

> *(iii) In case of death of an employee performing official duty within or outside the office premises (excluding using travel from residence to place of work and back) due to dacoity/robbery/terrorist attack, the family will also be eligible to receive, additionally, the one-time monetary compensation in terms of extant government guidelines depending on the cadre of the employee."*

7. From the perusal of above paragraphs, it is quite evident that in case of death of an employee in harness, the spouse or dependent children are entitled to lump sum payment, however, they should be indigent. The respondent-bank has prescribed criteria to determine question of a person being 'indigent'. The wife of the deceased employee was working with respondent-bank. She was a regular employee and getting salary from the bank. The respondent-bank considering financial condition of the family vide communication dated 28.10.2014 rejected her application. She did not challenge the said order, resultantly, the matter settled between the parties. The petitioner after the expiry of almost 14 years from the death of his father approached respondent-bank for *ex gratia* lump sum payment.

8. The intent and purport of *ex gratia* lump sum payment is to tide over the bereaved family from penury. Every employer wants that no family members of its employee should be driven to destitution on account of death of bread earner of their family. The mother of the petitioner was in job and she was getting salary as Sweeper. The petitioner filed claim after 14 years from the date of death of his father which indicates that he was not

solely dependent upon his father and family was not in destitution. There was no question to tide over from the situation arising on account of death of a family member. The mother of the petitioner apart from getting salary was getting family pension on account of death of her husband.

9. Hon'ble Apex Court in ***Umesh Kumar Nagpal Versus State of Haryana; (1994) 4 SCC 138***, has held that appointment on compassionate ground is a concession and cannot be claimed as a matter of right especially after passage of substantial time. The relevant extracts of the said judgment read as:-

> *"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting*

compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

10. From the perusal of above-cited judgment, it is evident that object of the scheme is to protect family of the deceased from being driven to destitution and penury.

11. In the case in hand, the father of the petitioner died in the year 2007 and at that point of time mother of the petitioner was in service and she got family pension besides her salary. As mother of the petitioner was in Service, it cannot be concluded that there was no source of income of the family and there was possibility of being driven to destitution. Further, a period of 16 years from the date of death of employee has already passed away, thus, claim of the petitioner is barred by doctrine of delay and laches.

12. In the wake of above discussions and findings, this Court is of the considered opinion that present petition sans merit and deserves to be dismissed. Accordingly, dismissed.

(JAGMOHAN BANSAL)
JUDGE

31.01.2024
Mohit Kumar

Whether speaking/reasoned	*Yes/No*
Whether reportable	*Yes/No*