



2024:DHC:1405



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 6<sup>th</sup> February, 2024**

+ **W.P.(C) 314/2019 & CM APPL. 1510/2019**

**UNION BANK OF INDIA** ..... Petitioner

Through: **Mr.O.P. Gaggar and Mr.Sachindra  
Karn, Advocates**

versus

**SUMAN RANI** ..... Respondent

Through: **Mr.Sandeep Bhalla, Advocate**

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

**CHANDRA DHARI SINGH, J (Oral)**

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

*“I. The Hon'ble Court may be pleased to issue a writ or order in the nature of certiorari or any other appropriate writ direction quashing the order dated 16.10.2018 of the CGIT cum Labour Court No. 1, New Delhi in LCA No. 12/2014.*

*II. The Hon'ble Court may be pleased to stay the effect, operation, implementation and execution of the impugned order dated 16.10.2018 in LCA No. 12/2014 till the disposal of this petition and may be pleased to pass any other or further orders as the Hon'ble Court deems fit and proper in facts and circumstances of the case to do complete justice.*

*III. Ad interim/ interim relief in terms of prayer II above.*

Signature Not Verified

Digitally Signed By: SARIKA  
BHAMOO VERMA  
Signing Date: 23.02.2024  
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**W.P.(C) 314/2019**

**Page 1 of 22**



*IV. For cost of the petition.”*

2. The late husband of the respondent, worked at the post of head cashier in Union of India Bank (hereinafter “petitioner Bank”) at Ludhiana, Punjab.

3. As per the averments made in the claim petition, upon being found guilty of embezzling of the petitioner bank’s money, it issued a suspension letter dated 9<sup>th</sup> June, 2009 to the husband of the respondent herein. Pursuant to which the respondent’s husband was issued a show- cause notice dated 24<sup>th</sup> August 2009.

4. Thereafter, on 16<sup>th</sup> July, 2009 a notice was issued to the husband of the respondent thereby stating that he had misappropriated bank funds to a sum of Rs. 2,57,000/-. However, Shri Jaswant Singh passed away on 4<sup>th</sup> September, 2009.

5. It has also been stated that the petitioner bank offers a policy for appointing the successor of a deceased employee on compassionate grounds. If appointment is not possible, a mechanism exists to provide *ex-gratia* payment to clerical personnel up to Rs. 7 Lakhs. Therefore, the respondent had sought compassionate employment vide letter dated 1<sup>st</sup> June, 2010. The respondent also applied for *ex-gratia* payment on 15<sup>th</sup> April, 2010 in terms of the scheme for payment of *ex- gratia* which was denied by the petitioner.

6. Subsequently, the respondent filed an application under Section 33-C (2) of the Industrial Disputes Act, 1947 (hereinafter “the Act”) against the petitioner seeking terminal benefits and other dues accumulated after the death of her husband, late Shri Jaswant Singh, who was employed as the



Head Cashier at the petitioner bank's Dugri branch in Ludhiana, Punjab. The same was registered vide LCA No. 12/2014. In the said application, the learned Central Government Industrial Tribunal – cum- Labour Court-1, Dwarka Courts Complex, New Delhi, passed an order dated 16<sup>th</sup> October, 2018. Aggrieved by the impugned order, the petitioner bank has filed the instant writ petition seeking quashing of the same.

7. Learned counsel appearing on behalf of the petitioner Bank submitted that the impugned order issued by the learned CGIT goes against the settled law. The said order violates the rule of law stated in Article 14 of the Constitution of India and is leading to a breach of the petitioner Bank's rights which makes the same liable to be set aside.

8. It is submitted that the learned CGIT has overlooked the purpose of the *ex-gratia* payment scheme since the said scheme is designed to assist families of employees who have served with utmost dedication, leaving their families in dire circumstances. However, it was not applicable in the case of the respondent's husband as at the time of his death, he was under suspension and facing disciplinary proceedings for serious misconduct involving the misappropriation of the bank's funds amounting to Rs.2,57,000/- and therefore, the respondent's husband does not qualify for the *ex-gratia* payment under these circumstances.

9. It is submitted that the learned CGIT has overlooked a crucial aspect that according to the scheme, dependents of the deceased employee can only claim *ex-gratia* payment if they are eligible for compassionate employment and if no family member is deemed suitable for a position in the bank.



10. It is further submitted that in the present case, the employee passed away at the age of 50 after completing 24 years of service, which does not align with the criteria outlined in clause 4(B)(ii) of the scheme. Therefore, the petitioner bank contends that the dependents are not eligible for *ex-gratia* payment under these circumstances.

11. It is submitted that the learned CGIT has failed to recognize that the scheme for the payment of *ex-gratia* specifies that applications must be submitted within six months of the employee's death. However, the respondent's application was significantly delayed, exceeding the time frame as stipulated by the scheme.

12. It is submitted that the learned CGIT has failed to acknowledge the evolving service law as per which compassionate employment cannot be guaranteed as a right and should only be considered in exceptional circumstances. The petitioner bank has formulated a policy outlining specific criteria, which the respondent does not meet. The *ex-gratia* payment is also extended to families left in destitution due to the death of an employee, and the eligibility criteria for *ex-gratia* mirrors is that of compassionate employment.

13. It is submitted that the learned CGIT has overlooked a crucial aspect that the management of the petitioner bank is the competent authority to determine eligibility for *ex-gratia* entitlement. Unless there is substantial evidence of serious error in the management's decision, it should not be subject to a legal challenge.



14. It is submitted that the learned CGIT has failed to recognize a critical point that the Section 33-C of the Act, does not provide a framework for adjudicating upon considerations for *ex-gratia*.

15. It is submitted that the learned CGIT has neglected to recognize the gravity of the act of embezzlement by an employee of the bank. Such misconduct is a severe offense, and numerous judgments by the Hon'ble Supreme Court have established it as sufficient grounds for terminating the employee's services.

16. It is submitted that the learned CGIT has failed to grasp a fundamental aspect that the *ex-gratia* payment signifies a gesture of appreciation from an obligated employer to an employee for their dedication and commitment to the employer's cause. It cannot be extended to the family of an individual who was on the verge of facing disciplinary action for misconduct.

17. In view of the foregoing submissions, the learned counsel for the petitioner bank prayed that the petition may be allowed, and the reliefs as claimed may be granted.

18. *Per contra*, learned Counsel on behalf of respondent vehemently opposed the instant petition and submitted that the learned CGIT has duly considered the facts and circumstances while passing the impugned award.

19. It is submitted that the claim before the learned CGIT was filed to recover terminal benefits owed by the petitioner bank due to the death of her late husband, or any other sums determined to be due to her under the respondent's schemes. The respondent, as the rightful legal heir of her deceased husband, also has a mentally challenged son who requires care.



20. It is submitted that the petitioner bank has continuously altered its position to arbitrarily deny benefits to the respondent under the scheme moreover, in the office memo (MW-1/14), the respondent cited a 42-day delay in the application for *ex-gratia* compensation as grounds for denial, however, the said delay was only due to the fact that the respondent had initially applied for appointment on compassionate grounds.

21. It is submitted that during the course of the proceedings, when it became evident that all previous grounds for denial were baseless, a novel argument was introduced by the petitioner bank's witness i.e., MW-1 Shri Anil Chadha, wherein, he claimed that the family conditions of the respondent did not meet the pecuniary conditions.

22. It is further submitted that the scheme itself, states that it is practically difficult to determine penury conditions of the deceased employee's family, and the current Scheme has eliminated the requirement of pecuniary conditions. Furthermore, penury cannot be equated with begging conditions. Moreover, the same witness has stated that the respondent receives a meagre pension of Rs. 7,496/- per month. According to the petitioner's own assessment, this amount, slightly over Rs.200/- per day, is considered substantial. Therefore, the petitioner contends that the respondent's argument regarding the petitioner's financial condition lacks merit.

23. It is submitted that the petitioner alleged that the late husband of the respondent embezzled Rs. 2,57,000/-, and consequently issued an office memo dated 16<sup>th</sup> July, 2009 for the same. However, as per the office memo dated 24<sup>th</sup> May, 2014 no charge sheet was issued to the late husband of the



respondent which makes it evident that the allegation was never proven at any stage.

24. It is submitted that there is no clear evidence indicating that embezzlement took place, and the legal heirs of the respondent were unjustly pressured to repay an amount that was never lost in the first instance. Additionally, it seems evident that the deceased employee was a victim of office politics, if not outright conspiracy, which led to false allegations being made to tarnish his reputation. Hence, the accusations against him were fabricated, possibly motivated by ulterior motives within the workplace environment.

25. In view of the aforesaid submissions, the learned counsel for the respondent submitted that the instant writ petition is devoid of any merit and may be dismissed by this Court.

26. Heard the learned counsel appearing on behalf of the parties and perused the record.

27. It is the case of the petitioner that the learned CGIT has passed the impugned order without considering the law settled by the Courts with regard to grant of compassionate appointment as well as *ex- gratia* compensation. It is further submitted that the deceased husband of the respondent was involved in embezzlement of funds hence, his legal heirs are not entitled to any *ex- gratia* compensation.

28. In rival contentions, the respondent submitted that the impugned award does not suffer from any illegality and the order has been passed after taking into consideration the factual scenario and settled position of law. It is



further submitted that it is an admitted position of fact that the allegation of embezzlement on the respondent's husband was never proved by the petitioner.

29. The position as to what must be observed by the High Court while exercising an issuance of writ in the form of certiorari can be fairly summed *via* two cardinal principles of law, *firstly*, the High Court does not exercise powers of an appellate authority and it does not review or peruse the evidence upon which the consideration of the inferior Court purports to have based. The writ of certiorari can be issued if an error of law is apparent on the face of the record. *Secondly*, in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority. Simply put certiorari is issued for correcting errors of jurisdiction exercised by inferior Courts, for Courts violating principles of natural justice and acting illegally and, the Court issuing such a writ shall act in supervision and not appeal.

30. This Court has perused the impugned order passed by the learned CGIT and the relevant extracts of the same are as under:

*“3. On the pleadings of the parties, following issues were framed on 29.08.2016:-*

*(i) Whether the claimant is entitled for tentative amount Of Rs. 9 Lakhs with interest from the date of death of her husband as alleged?*

*(ii) Whether the claimant is entitled for payment of Ex-gratia amount of Rs. 7 Lakhs as alleged?*

*(iii) Relief.*



4. The claimant in support of her case examined herself as W.W.1 and tendered her affidavit Ex.WW1/A along with documents Ex.WWW1/1 to Ex. WWW1/26.

5. On the other hand, the Management in order to rebut the case of the claimant examined Shri Anil Chadha, Chief Manager, Service Branch, Ludhiana as MW1 and he tendered his evidence by way of affidavit Ex.MW1/A along with documents Ex.MW1/1 to Ex.MW1/15.

6. I have heard A/Rs. for both the parties and have perused the records carefully. My findings on the above issues are as follows:- Issue No. 1 & 2

7. Both these issues are taken up together as the same can be disposed of conveniently on the basis of pleadings and evidence adduced on record.

8. The claimant has averred in Para 27 of her claim application that an amount of Rs. 13,37,509.07 paise under following heads was to be paid by the Management Bank:- Provident Fund : Rs. 5,36,75-04 Gratuity : Rs. 3,45,123-00 Leave Encashment : Rs. 2,06,311-00 Death Relief Fund : Rs. 2,50,000-00 Rs. 13,37,509-97 Whereas the Management Bank has made payments of Rs. 4,73,417/- as follows:- 13-10-2009 - Rs.2,00,000/- 13-12-2009 -Rs.2,06,311/- 21-12-2010 -Rs. 4,877/- 04-05-2011 -Rs. 62,229/- As such, the claimant is entitled to be paid about Rs. 9 Lakhs by the Management towards terminal benefits of her deceased husband. During the Course of arguments learned A/R for the claimant submitted that the claimant was coerced to deposit Rs. 2,57,000/- towards embezzled amount, though there was no proof of embezzlement.

9. On the other hand, the A/R for the Management submitted that though entire amount of Rs. 13,37,509-97 towards Provident Fund, Leave Encashment, Gratuity and Death Relief Fund has been paid to the claimant family, however, the liability/outstanding amount of Rs. 7,30,858/- against the deceased employee towards Housing Loan, SOD, NSE, Credit



*Card and Coop- Society was adjusted therefrom and as such, the claim of the claimant is wrong and false.*

*10. At the outset I may mention that under the provisions of Section 33-C(2) of the Act, this Tribunal is not empowered to decide the issue as to whether the disciplinary proceedings were wrongly initiated by the Management against the deceased employee and whether there was any proof of embezzlement against the deceased employee or not. The scope of enquiry under Section 33-C(2) of the act is limited to the extent as to the amount of money due or as to the amount at which such benefit should be computed as per service conditions, if entitlement to receive money is in dispute, application under Section 33-C(2) of the Act is not maintainable and the appropriate course would be to seek reference under Section 10 of the Act. Thus to my mind, the issue as to whether the claimant herein was coerced by the Management to deposit Rs. 2,57,000/- towards embezzlement/appropriate amount, can not be adjudicated upon by this Tribunal under Section 33-C(2) of the Act inasmuch as the said issue does not relate to pre-existing right or entitlement of the employee. Reference may be made to the decision in Municipal Corporation of Delhi Vs. Ganesh Razak and another wherein their lordships of Hon'ble Mr. Justice J.S. Verma, Hon'ble Mr. Justice S.P. Barucha and Hon'ble Mr. Justice K.S. Paripuma of Hon'ble Supreme Court, inter -alia observed as under:-*

*"The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on the basis in exercise of its powers under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's Power under Section*



*33C(2) like that of the Executing Courts power to interpret the decree for the purpose of its execution."*

*11. It is pertinent to mention here that Hon'ble High Court of Delhi in the case of Jeet Lai Sharma Versus Presiding Officer Labour Court (2000) ILLJ 1472 Delhi while dealing with the provisions of Section 33-C(2) of the Act considered entire spectrum of law and held as under:-*

*"To invoke the jurisdiction of the Labour Court under the present Section 33-C(2) either of the two ingredients must be present. The first is that a workman must be entitled to receive from the employer any money or benefit which is capable of being computed in terms of money and the second one is that a question must have arisen as to the amount of money due, or as to the amount at which such benefit should be computed. A plain reading of the section shows that the Labour Court has jurisdiction to decide both these ingredients. Thus, in a case where both these ingredients are satisfied or either these ingredients is satisfied, the Labour Court will have jurisdiction to determine the question. The Legislature has empowered that Labour Court to decide a dispute as to the right of workman to receive from the employer any money or any benefit which is capable of being computed in terms of money and also has authorized it to decide the question as to the amount of money due or as to the amount at which such benefit should be computed. Thus, the crux of the matter is that the workman can file an application under Section 33-C(2) only when he is "entitled to receive" money claimed by him. His entitlement to receive money is referable to pre-existing right which would be established if it has been earlier adjudicated upon or provided for i.e. recognized by the employer. This recognition can be either in the form of settlement or as per the service conditions."*



*It is clear from the perusal of above paragraphs that the workman is entitled to receive money from his/her employer. Thus, in case where rights of the parties are recognized by the employer. Thus, in case where rights of the parties are recognized by the employer or same has earlier been adjudicated, in that eventually the court has jurisdiction to decide the application. The situation would be different where rights are highly complicated and disputed or which requires adjudication by way of reference under the law.*

*12. During the course of arguments, learned counsel for the Management put much stress on the fact that the deceased workman was involved in misappropriation of funds, as a result of which he was issued show cause notice. Even the workman had already deposited the amount of Rs. 2,57,000/- which prima facie proves that the amount was embezzled by the workman. However, it was fairly conceded that no regular charge sheet was issued to the workman during his life time. To my mind, deposit of money by the workman during his lifetime has nothing to do with the compassionate appointment or with the release of terminal benefits to the workman and/or his legal heirs to which he is otherwise entitled to. Both the issues are independent of each other. Had there been launching of criminal proceedings resulting into conviction of the workman or holding of any regular departmental enquiry, whereby the workman was found to be guilty or misconduct, in that situation finding was not desirable on the question of release of terminal/retiral benefits to the workman or his legal heirs/dependents.*

*13. As regards the terminal benefits of her deceased husband, the claimant in her affidavit Ex.WW1/1A (In para 30 and 31) has stated that total payment made to her by the Management Bank was Rs. 473,417/- as against total entitlement of Rs. 13,37,509-97 towards PF, gratuity, Leave Encashment & Death Relief Fund. According to her, the Management has wrongly deducted Rs. 7,30,858/- without any explanation, while*



*admitting in her cross examination that she received terminal dues of her late husband, she could not give details of shortfall of Rs. 7 Lakhs as mentioned in her affidavit, on the contrary, MW1 Shri Anil Chadha specifically deposed that the deceased had certain liabilities in respect of the Housing Loan Account and other dues in the Co- operative Society Account and Credit Card Account which were recovered from the amounts paid to the deceased family, as per undertaking furnished by the deceased employee at the time of taking the loans. In the cross examination, this witness of the Management Explained the term "TOD" as Temporary Overdraft".*

*14. Once the deceased employee had obtained loan from the employer viz. Housing Loan and/or Temporary overdraft and was having liabilities of Cooperative Society and Credit Card Account, the same was recoverable from the terminal benefits payable to the deceased family, after the death of the deceased employee as per the undertaking furnished by the deceased employee and as per the norms of the Bank. Just because the Management bank has recovered amount towards the liabilities of the deceased employee from the total terminal benefits of Rs. 13,37,509-97 and has paid balance sum of Rs. 4,73,417/- to the deceased family, it would be improper to conclude that the action of the Management Bank in making recovery of outstanding amount towards Housing Loan etc. from the terminal benefits was unjust and illegal, inasmuch as the claimant must be enjoying the immovable property for which the deceased workman had taken housing loan.*

*(15) During the course of arguments, learned NR for the claimant strenuously argued that the amount payable towards the Gratuity being a statutory right could not be adjusted against the liabilities of the deceased employee. He relied on the decision of the Apex Court in the case of Jaswant Singh Gill V/s. M/s. Bharat Coking Coal Ltd. and others (Civil Appeal No. 4770 of 2006 - decided on 10.11.2006.*



(16) *There is no dispute about preposition of law that the provisions of the Payment of Gratuity Act, 1972 are no longer in the realm of charity but a statutory right provided in favour of the employee. The Act provides for a closely knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It is not creates a right to payment of gratuity but also lays the principles for qualifications thereof as also the conditions on which he may be denied therefrom. Clause (a) of Sub-section (6) of Section-4 of the Act speaks of termination of services of an employee for any act, willful omission or negligence causing any damage. Clause (b) of sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude.*

17. *I may mention that in the case of Jaswant Singh Gill (Supra), the Management Company had issued an order for withholding the gratuity as a measure of penalty imposed upon the workman and the same was held to be illegal by the Apex Court. However, in the present case the Management has not forfeited or withheld the gratuity which was payable to the deceased workman/his legal heirs, rather gratuity amount of Rs. 3,45,123/- payable to the workman, has been adjusted against the liabilities of the deceased workman. As such, ruling in the aforesaid case of Jaswant Singh Gill (Supra) is of no help to the case of the claimant.*

18. *Learned A/R for the claimant also submitted that the Management has made arbitrary discrimination against the claimant as it has come on record during the course of discovery that the Management had granted benefit of ex-gratia payment of Rs. 7 Lakh to the dependents of deceased employees Charan Das who died on 21.01.2006 and was working in Mahipalpur Branch of Ludhiana Region, besides waiver of*



*outstanding housing loan of Rs. 3,07,460/- and adjustment of staff housing loan of Rs. 60,300/-. Further, the Management has been shifting its stand from time to time for arbitrary denial of claim of Ex-gratia payment. The Office Memo Ex. MW1/14 simply mentions that there was delay of 42 days in applying for Ex-gratia compensation, which has been caused due to the fact that the claimant had first applied for appointment on compassionate grounds.*

*19. Per-contra, learned A/R for the Management submitted that the case of the claimant is not covered under the scheme of the Bank and moreover, the Management had rightly exercised its option in declining the request of the claimant for grant of Ex-gratia payment, vide letter dated 20.06.2011 (Ex. WW1/19) on the grounds that the service record of claimant's husband Jaswant Rai was unsatisfactory owing to misappropriation of Bank's funds and due to delay in submission of the application. Terminal benefits have already been paid to the deceased family and the claimant is getting pension from 2009 onwards and pension @Rs. 7496/- is being paid to her from July, 2017.*

*20. I may mention that the claimant has filed on record copy of the scheme/policy dated 08.09.2007 (EX.WW1/7) of the management for payment of Ex-gratia amount in lieu of appointment on compassionate grounds and appointment of dependents of deceased employees on compassionate grounds. The said Scheme was formulated to provide social cover to the families of employees of the Bank dying in harness or sustaining injuries while performing official duties and was effective from 31.07.2004. A careful perusal of the said Scheme (See Para 4 & 5) clearly shows that the dependent as per Annexure-IV, only where an employee dies while performing his official duty as a result of violence, terrorism, robbery or dacoity, or dies within five years of his first appointment or before attaining the age of 30 years, which is later, leaving a dependent spouse and/or minor children.*



21. It is fairly settled that at present, appointment on compassionate grounds cannot be claimed as a matter of right as the availability of appointment and opportunities are limited. The Authority has its discretion to make a compassionate appointment and/or to grant ex-gratia payment in lieu of employment on compassionate grounds, but the said discretion should be exercised judiciously. It has come on record that Shri Jaswant Rai-husband of the claimant was appointment as clerk on 16.08.1985 and he while working as Head Cashier was suspended vide letter dated 09.06.2009. He expired on 04.09.2009. These facts do not reveal that husband of the claimant died within five years of his first appointment or before attaining the age of 30 years rather the deceased employee dies at the age of about 50 years and had already served the Management Bank for about 24 years. As such, the case of the claimant for appointment of the kin of the deceased employee on compassionate ground was not covered under the scheme.

22. It is not in dispute that the payment of Ex-gratia scheme of the Management herein was/is in lieu of the appointment of compassionate grounds. As per Clause/Para 5 of the Scheme Ex.WW1/7, Ex-gratia amount is payable to the family of the deceased employee (who is in indigent or penurious circumstances) if request is made within six month from the date of the employee. Ceiling of ex-gratia amount payable to the clerical staff has been prescribed at Rs. 3 lacs (minimum) to Rs. 7 lacs (maximum), if the total monthly income of the family of the deceased employee is/was less than 100 per cent of the last drawn gross salary of the employee at the time of his death.

23. It is undisputed fact that husband of the claimant expired on 04/9/2009. The claimant made application for exgratia payment on 15.04.2010, to which the Management vide its letter Ex.WWW1/17 (dated 25/5/2011) had informed to the claimant herein that the Competent Authority had declined her request for Ex-gratia in lieu of compassionate appointment on



*the grounds of unsatisfactory service record of Late Shri Jaswant Rai and furthermore, her application was not received by the Bank within six months from the date of death of her husband. The claimant again approached the Management Bank vide letter dated 15.06.2011 (Ex.WW1/18) for payment of Ex-gratia amount and the Management vide reply dated 20.06.2011 (Ex.WW1/19) had conveyed to the claimant that although the fraudulent amount has been recovered, yet the fact remains that the service record of late Shri Jaswant Rai was not found to be satisfactory and there was also delay in submission of the application by her and that is why her request was rejected by the Competent Authority.*

*24. From the above, it is very much clear that the claimant had moved her first application (Ex.WW1/8) on 15.02.2010 for appointment on compassionate ground and it was within six months from the date of death of her husband which fact is also admitted to by MW1 Shri Anil Chadha. Thereafter, the application for payment of Ex-gratia payment was made by the claimant only on 15.04.2010 which was belated only by 42 days as per contention of the learned A/R for the Management. To my mind, firstly there is no delay inasmuch as the claimant had already moved application well within time for appointment on compassionate grounds and payment of Ex-gratia is in lieu of the appointment on compassionate grounds. Secondly, the delay if any in moving the application for ex-gratia payment was not intentional or deliberate by the claimant. Even if it is assumed that there was delay of 42 days in moving the application by widow of the deceased employee for ex-gratia payment, the same was condonable since the claimant was earlier pursuing her case for appointment on compassionate grounds.*

*25. It would not be out of place to mentioned here that the Management vide it letter dated 09.10.2013 (Ex.WW1/25) has observed that request of the claimant of Ex-gratia payment in lieu of compassionate appointment is no considered by the Competent Authority due to unsatisfactory service record of*



*late Shri Jaswant Rai. However, there is nothing on record to suggest that any memo was issued or any inquiry was conducted against the deceased employee Shri Jaswant Rai during his lifetime. As such the observations made by the management vide aforesaid letter Ex.WW1/25 regarding unsatisfactory service record of the deceased workman is totally illegal and liable to be ignored for Ex-gratia payment. MWI Shri Anil Chadha Chief Manager in his cross examination showed ignorance if Ex-gratia amount has been paid to the family of only one employee from 2004 to 2009. The claimant was getting pension from 2009 onwards and pension @ Rs. 7496/- is being paid to her from July, 2017.*

*26. Having regard to the aforesaid discussion, this tribunal is of the considered view that action of the Management is not granting ex-gratia to the claimant after the death of her husband Shri Jaswant Rai is unwarranted and that ends of justice will meet if the claimant is granted ex-gratia amount of Rs. 5 Lakhs (Rupees Five Lakhs). These issues are decided accordingly.*

**RELIEF:**

*In view of the findings on issue No.1 & 2 above, it is ordered that the claimant is entitled to get amount of Rs. 5 Lakhs (Rupees Five Lakhs) towards Ex-gratia payment and the Management is directed to pay the same to the claimant within two months from the date of this order, failing which the claimant will be entitled to recover the same along with interest @ 18% p.a. from the date of filing of this claim application till realization of the amount."*

31. The dispute in the instant petition concerns with the *ex-gratia* scheme of the management, which is provided in lieu of compassionate grounds. The learned CGIT, while dealing with the said dispute adjudicated it on two issues: *firstly*, whether the respondent is entitled for tentative amount of Rs.



9 Lakhs with interest from the date of death of her husband as alleged and *secondly*, whether the claimant is entitled for payment of *ex-gratia* amount of Rs. 7 Lakhs as alleged.

32. According to the terms outlined in Para 5 of the *ex-gratia* scheme, the amount is payable to the family of a deceased employee who is in indigent or penurious circumstances, provided the request is made within six months from the date of the employee's demise. The *ex-gratia* amount varies based on the deceased employee's last drawn gross salary and the family's total monthly income.

33. The respondent being wife of the deceased employee of the petitioner bank made an application for *ex-gratia* payment on 15<sup>th</sup> April, 2010, after her husband's death on 4<sup>th</sup> September, 2009. However, the management, vide letter dated 25<sup>th</sup> May, 2011, informed her that the request was declined due to the unsatisfactory service record of the deceased and because the application was not submitted within the stipulated six-month timeframe. Despite this, the respondent persisted and made another request on 15<sup>th</sup> June, 2011, which was also rejected based on the same ground of unsatisfactory service record and delayed submission.

34. The respondent had argued that her initial application for compassionate appointment, made on 15<sup>th</sup> February, 2010, was within the six-month window, and therefore, there was no delay. There was a delay of 42 days in the submission of the *ex-gratia* application, it was not intentional and should be condoned, especially considering her pursuit of compassionate appointment. Moreover, there is contention regarding the



management's assertion of the deceased employee's unsatisfactory service record, as there is no evidence of any prior disciplinary actions against him.

35. Furthermore, it is revealed upon perusal of the cross-examination that only one employee's family had received *ex-gratia* payment from the year 2004 to 2009, raising questions about consistency in the application of the scheme. The respondent in the meanwhile has been receiving a pension since the year 2009, indicating financial dependency.

36. After considering these arguments, the learned CGIT held that the management's refusal to grant *ex-gratia* to the claimant is unwarranted since there is no proof on record filed by the petitioner that the allegations against the respondent's husband were proved or there was any investigation held in this regard. Hence, justice would be served by awarding the respondent an *ex-gratia* amount of Rs. 5 Lakhs.

37. The learned CGIT reached to the decision based on the understanding that the respondent's actions were not intentionally delayed but were coupled with inconsistencies in the petitioner's handling of similar cases and the respondent's financial situation, and the learned CGIT further highlighted her dependence on pension payments.

38. This Court is of the view that in the impugned order, it is correctly held that since the allegations of embezzlement against the respondent's husband were never proved therefore, the same cannot be a ground for denial of the *ex-gratia* compensation to the respondent.



39. It is further opined that the learned CGIT has correctly held that the delay of 42 days in filing application for *ex- gratia* compensation shall be condoned and the respondent is entitled to be paid *ex- gratia* compensation.

40. This Court further observes that the denial of the *ex- gratia* compensation to the respondent is a violation of the legal right of her legal right. Since, being a legal heir and dependent of her husband, she is entitled to be granted *ex- gratia* compensation.

41. In view of the aforesaid discussions, this Court is of the view that the learned CGIT has examined the various documents on record as well as heard the various contentions advanced by both the parties and has accordingly, passed a well- reasoned order.

42. The writ of certiorari cannot be issued in the present matter since for the issuance of such a writ, there should be an error apparent on the face of it or goes to the root of the matter. However, no such circumstances are present in the instant petition.

43. The writ jurisdiction is supervisory and the Court exercising it is not to act as an appellate Court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a Court or a Tribunal. A finding of fact, howsoever erroneous, recorded by a Court or a Tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the Court, or the Tribunal was insufficient or inadequate to sustain the impugned finding.



2024:DHC:1405



44. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and the same is liable to be dismissed.
45. Accordingly, the instant petition stands dismissed along-with pending applications, if any.
46. The order be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**FEBRUARY 6, 2024**  
dy/db/ryp

*Click here to check corrigendum, if any*