

(JPA. Sulit 2538/9B/Jld. 2.)

**KERAJAAN SERI PADUKA BAGINDA**

**MALAYSIA**

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**PEKELILING PERKHIDMATAN BIL. 26 TAHUN 1974**

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**DERIVATIVE PENSIONS AND/OR GRATUITIES PAY-  
ABLE UNDER SECTION 15 (1) OF THE PENSIONS  
ORDINANCE, 1963 OF SABAH AS AMENDED BY THE  
PENSIONS (SABAH) (AMENDMENT) ACT, 1973**

In respect of public officers to whom the provisions of the Pensions Ordinance, 1963 of Sabah as amended by the Pensions (Sabah) (Amendment) Act, 1973 apply, subsection (1) of section 15 thereof provides the statutory authority for the grant, in respect of a public officer who dies in the public service under the Government of the Federation in Sabah or under the Government of Sabah and who would have become eligible to be granted a pension, retiring allowance or gratuity if he had retired at the date of his death in the circumstances described in sub-paragraph (vii) of paragraph (a) of subsection (1) of section 6 of the afore-said Ordinance, of a derivative pension and/or gratuity as appropriate to his case; and where a derivative pension is granted, such a derivative pension may be paid for a period not exceeding 12½ years with effect from the date immediately following the date of the death of the officer.

2. A derivative pension and/or gratuity may be granted by the Yang di-Pertuan Agong to such of the deceased's dependants as the Yang di-Pertuan Agong may think fit, or if there are no dependants, a derivative gratuity may be granted to the legal personal representative.

3. Except in the case of contract officers to whom the provisions of paragraph 9 of this Circular shall apply, a grant may be made as set out below:

(1) *In the case of an officer holding a pensionable office in which he has been confirmed and having completed a period of not less than ten years' qualifying service—*

(a) if his dependants include a widow, a widow and minor children or minor children:

(i) a derivative gratuity of an amount equivalent to the officer's commuted pension gratuity to the dependants; and

(ii) a derivative pension to the widow, widow and minor children or minor children, for a period not exceeding 12½ years commencing from the date immediately following the date of death of the officer; or

- (b) if his dependants do not include a widow or minor child, a derivative gratuity of an amount equivalent to the officer's commuted pension gratuity or of one year's pensionable emoluments, whichever is the greater, to such dependants or, in the absence of any such dependants, to his legal personal representative.
- (2) *In the case of an officer holding a pensionable office in which he has been confirmed and having completed a period of less than ten years' qualifying service—*
- (a) if there is a widow, a widow and minor children or minor children, a derivative gratuity of an amount of one year's pensionable emoluments of the officer to such widow, widow and minor children or minor children; or
- (b) if there is no widow or minor child, a derivative gratuity of like amount to the dependants or, in the absence of any dependants, to his legal personal representative.
- (3) *In the case of an officer holding a non-pensionable office who would have become eligible to be granted a retiring allowance if he had retired at the date of his death in the circumstances described in subparagraph (vii) of paragraph (a) of subsection (1) of section 6 of the Pensions Ordinance, 1963 of Sabah—*
- (a) if his dependants include a widow, a widow and minor children or minor children:
- (i) a derivative gratuity of an amount equivalent to the officer's commuted retiring allowance to the dependants; and
- (ii) a derivative pension to the widow, widow and minor children or minor children, for a period not exceeding 12½ years commencing from the date immediately following the date of death of the officer; or
- (b) if his dependants do not include a widow or minor child, a derivative gratuity to the dependants or, in the absence of any dependants, to his legal personal representative calculated at the rate of one one-hundred-and-sixtieth (1/160th) of his annual salary for each completed month of service, up to a maximum of twelve times last drawn monthly pay.
- (4) *In the case of an officer holding a non-pensionable office who would have become eligible to be granted only a gratuity if he had retired at the date of his death in the circumstances described in sub-paragraph (vii) of paragraph (a) of subsection (1) of section 6 of the Pensions Ordinance, 1963 of Sabah—*
- (a) if there is a widow, a widow and minor children or minor children, a derivative gratuity to such widow, widow and minor children or minor children, calculated at the rate of one one-hundred-and-sixtieth (1/160th) of his annual salary for each completed month of

service, subject to a minimum of three months' last drawn monthly pay and a maximum of twelve times last drawn monthly pay; or

(b) if there is no widow or minor child, a derivative gratuity calculated as at (a) above to the dependants or, in the absence of any dependants, to his legal personal representative.

(5) *In the case of an officer paid from an open vote who would have become eligible to be granted a retiring allowance if he had retired at the date of his death in the circumstances described in sub-paragraph (vii) of paragraph (a) of subsection (1) of section 6 of the Pensions Ordinance, 1963 of Sabah—*

(a) if his dependants include a widow, a widow and minor children or minor children:

(i) a derivative gratuity of an amount equivalent to the officer's commuted retiring allowance to the dependants; and

(ii) a derivative pension to the widow, widow and minor children or minor children, for a period not exceeding 12½ years commencing from the date immediately following the date of death of the officer; or

(b) if his dependants do not include a widow or minor child, a derivative gratuity to the dependants or, in the absence of any dependants, to his legal personal representative, calculated at the rate of one two-hundred-and-fortieth (1/240th) of his annual salary for each completed month of service, up to a maximum of twelve times last drawn monthly pay.

(6) *In the case of an officer paid from an open vote who would have become eligible to be granted only a gratuity if he had retired at the date of his death in the circumstances described in sub-paragraph (vii) of paragraph (a) of subsection (1) of section 6 of the Pensions Ordinance, 1963 of Sabah—*

(a) if there is a widow, a widow and minor children or minor children, a derivative gratuity to such widow, widow and minor children or minor children, calculated at the rate of one two-hundred-and-fortieth (1/240th) of his annual salary for each completed month of service, subject to a minimum of two months' last drawn monthly pay and a maximum of twelve times last drawn monthly pay; or

(b) if there is no widow or minor child, a derivative gratuity calculated as at (a) above to the dependants or, in the absence of any dependants, to his legal personal representative:

Provided that—

(i) in the case of an officer who dies as a direct result of:

(a) injuries received in the actual discharge of his duty by some injury specifically attributable to the nature of his duty which is not wholly or

mainly due to, or seriously aggravated by, his his own serious and culpable negligence or misconduct; or

- (b) contracting a disease to which he is exposed by the nature of his duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct,

the derivative gratuity payable under sub-paragraphs (3) (b), (4), (5) (b) and (6) above shall be twelve times last drawn monthly pay;

- (ii) where the deceased officer was in respect of a part of his service a contributor to the Employees Provident Fund, the provisions of section 6B of the Pensions Ordinance, 1963 of Sabah shall apply to a derivative pension or gratuity payable in accordance with the provisions of this Circular.

4. For the purpose of computing derivative pensions and/or gratuities—

- (a) "salary" or "pay" shall include any allowance which would have been pensionable had the officer been the holder of a pensionable office;
- (b) "one year's pensionable emoluments" or "annual salary" shall mean the emoluments or salary, as the case may be, which would have been taken for the purpose of computing the pension, retiring allowance or gratuity of an officer on retirement;
- (c) "commuted pension gratuity" or "commuted retiring allowance" shall mean the gratuity which might have been granted to an officer under any regulation providing for the grant of a reduced pension or retiring allowance together with a gratuity, if his public service had been wholly under the Government of the Federation in Sabah or under the Government of Sabah and if he had retired at the date of his death in the circumstances described in sub-paragraph (vii) of paragraph (a) of subsection (1) of section 6 of the Pensions Ordinance, 1963 of Sabah; and for the purpose of calculating the same the officer shall be deemed to have elected to be paid a pension or retiring allowance at the rate of three fourths of the pension or retiring allowance granted to him; and further for this purpose, any regulation providing for the grant of a reduced retiring allowance together with a gratuity shall be deemed to have been made applicable to an officer paid from an open vote;
- (d) "derivative pension" to or in respect of a widow, a widow and minor children or minor children shall mean the equivalent in amount of the reduced pension or retiring allowance which might have been granted to an officer in accordance with any regulation providing for the grant of a reduced pension or retiring allowance together with a gratuity, if his public service had been wholly under the Government of the Federation in Sabah or under the

Government of Sabah and if he had retired at the date of his death in the circumstances described in sub-paragraph (vii) of paragraph (a) of sub-section (1) of section 6 of the Pensions Ordinance, 1963 of Sabah; and for the purpose of calculating the same the officer shall be deemed to have elected to be paid a pension or retiring allowance at the rate of three-fourths of the pension or retiring allowance granted to him; and further for this purpose any regulation providing for the grant of a reduced retiring allowance together with a gratuity shall be deemed to have made applicable to an officer paid from an open vote;

- (e) "service" shall mean gross unbroken service, or the aggregate of service in cases where the service has been interrupted by abolition of office or other temporary suspension of employment not arising from misconduct or voluntary resignation, and in respect of a derivative gratuity payable under sub-paragraphs (3) (b), (4), (5) (b) and (6) of paragraph 3 of this Circular, shall include service under any age or as an apprentice or on probation or on no pay leave; except in the case of contract officers in which case the provisions of paragraph 9 will apply;
- (f) the grant of a derivative pension and/or gratuity shall be determined on an officer's status (pensionable/non-pensionable/open vote) in the public service at the date of his death.

5. (1) A derivative pension or gratuity payable in accordance with the provisions of this Circular to the dependants of a deceased officer may be paid in such proportions as the Yang di-Pertuan Agong may determine, and such a determination shall be final.

(2) For the purposes of this Circular:

- (a) "dependants" shall mean the widow or widows, minor children, and mother of a deceased officer, and failing these, provided they were wholly or mainly dependent upon him, the husband, father, step-mother, adult children, minor brothers, minor unmarried sisters, minor grandchildren and grandparents;
- (b) "children" shall include posthumous children, step-children, illegitimate children born before the death of the officer and children adopted before the death of the officer in accordance with any statutory provisions or with the particular law or procedure applicable to the race of the deceased officer;
- (c) "minor" shall mean under eighteen years of age and unmarried;
- (d) a widow in respect of whom a derivative pension is granted under this Circular shall cease to be eligible for such a pension upon her remarriage.

6. (1) No derivative pension under this Circular shall be granted to any dependant in respect of the death of any officer if such dependant is entitled in respect of the same death, to compensation under any written law relating to workmen's compensation for the time being in force in the Federation or any part thereof.

(2) Where a dependant who is not entitled to such workmen's compensation is eligible to receive both a derivative pension under this Circular and benefits payable under the Overseas Superannuation Scheme or under the law in force in respect of any other public service or a pension or allowance under any written law (other than the Widows' and Orphans' Pensions Ordinance), the grant of such derivative pension, benefits, pension or allowance shall be determined by the Yang di-Pertuan Agong whose decision shall be final.

7. A derivative gratuity is payable in addition to any pension or annual allowance or to any compensation for which the dependants may be eligible under section 16 of the Pensions Ordinance, 1963 of Sabah or regulation 7 of the Internal Security (Injury Allowances) Regulations, 1960, or under the Workmen's Compensation Ordinance, as the case may be, and does not debar the dependants from preferring a claim under the Internal Security (Civilian Injuries Compensation) Regulations, 1960, where appropriate (though the payment of a derivative pension and/or gratuity will be taken into account, and may invalidate any claim under the latter Regulations).

8. The payment of a derivative pension and/or gratuity in accordance with the provisions of this Circular to the dependants of a deceased officer does not form part of his legal estate. No letters of administration are therefore necessary and no estate duty is payable thereon. However, a derivative gratuity payable to the legal personal representative, in the absence of any dependants of the deceased officer, will form part of his legal estate.

9. In the application of this Circular in the case of contract officers:

- (a) "service" shall mean service under the contract under which such an officer was serving at the time of death;
- (b) where in a particular case a service gratuity has been provided for in respect of service under the contract, and not otherwise, a grant of a derivative gratuity of an amount equivalent to the *pro-rata* service gratuity of the officer may be made—
  - (i) if there is a widow, a widow and minor children or minor children, to such widow, widow and minor children or minor children; or
  - (ii) if there is no widow or minor child, to the dependants or, in the absence of any dependants, to his legal personal representative; and
- (c) for the purpose of sub-paragraph (b) above, "*pro-rata* service gratuity" shall mean a gratuity of such proportion of the total gratuity which would have been payable under the contract if it had been completed as the period of service prior to death bears to the whole term of the contract service.

10. Every application for a derivative pension and/or gratuity where death occurs while in service shall be made in the form set out in Appendix "A" to this Circular and shall be submitted in 7 copies by the Head of Department to the Federal Establishment Officer, Sabah for local Federal officers and State officers alike. Payment of a derivative pension and/or gratuity shall only be made after the Director of Audit, Sabah has verified the correctness of the computation of such a derivative pension and/or gratuity.

**DATUK ABDULLAH BIN AYUB,**  
*Ketua Pengarah Perkhidmatan Awam,*  
*Malaysia*

**JABATAN PERKHIDMATAN AWAM,**  
**MALAYSIA,**  
**KUALA LUMPUR.**  
*20th August, 1974.*