

* **HIGH COURT OF DELHI : NEW DELHI**

Judgment reserved on : August 17, 2009

Judgment delivered on : August 25, 2009

+ **W.P. (C) No.166/2009**

% Smt. Kamlesh ... Petitioner
Through: Mr. Kartar Singh, Advocate.

versus

The Chief General Manager,
State Bank of India & Ors. ... Respondents
Through: Mr. S.L. Gupta and Mr. Virender Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. Petitioner's husband had died in harness. She is seeking employment on compassionate grounds. In the alternative, prayer is for 'ex-gratia' payment under the SBI Scheme for payment of ex-gratia lump sum amount.

2. Petitioner, upon untimely death of her husband, had sought employment with Respondent – Bank, vide application (Annexure P-6). According to the Petitioner, Respondent No. 2 had recommended

Petitioner's application for appointment on compassionate ground vide communication (Annexure P-7) to the Higher Authorities. In December, 2006, Petitioner was verbally informed by the officials of Respondent No. 2 (hereinafter referred to as Respondent – Bank) that the Scheme of Employment has been replaced by new scheme (Annexure P-8) vide which instead of employment on compassionate ground, 'ex-gratia' lump sum amount is paid. On 23rd January, 2007, Petitioner claims to have applied for 'ex-gratia' payment and on 27th July, 2007, Petitioner was informed vide letter (Annexure P-9) that her request for 'ex-gratia' lump sum amount payment cannot be considered as the last date for applying for the same was up to 31st August, 2006. However, Petitioner was again informed on 26th June, 2008, vide communication (Annexure P-10) that delayed submission of the application, was the reason for denial of 'ex-gratia' lump sum amount to her.

3. In this petition, Petitioner claims that the new Scheme (Annexure P-8) came into force on 4th August, 2006 and although, Petitioner's application for appointment on compassionate ground was pending, Respondent - Bank did not inform the Petitioner about the new Scheme (Annexure P-8) and when Petitioner was verbally informed about it, in December, 2006, she immediately applied for the 'ex-gratia' payment.

4. Respondent - Bank in its counter affidavit, asserts that compassionate appointment cannot be offered to the Petitioner in view of the decision of the Apex Court in case of '*Umesh Kumar Nagpal vs. State of Haryana and Others*', **JT 1994 (3) SC 525**. Regarding the grant 'ex-gratia' payment to the Petitioner, the stand of the Respondent - Bank is that the time for applying for the same was up to 31st August, 2006 and the Petitioner had applied for the same beyond the last date and so, the alternate relief prayed for, cannot be granted. It is also pointed out that the Petitioner had refused to accept the 'ex-gratia' lump sum amount vide her letter of 28th January, 2006 (Annexure R-1).

5. In the rejoinder, filed by the Petitioner, it has been denied that the Petitioner had refused to accept the 'ex-gratia' lump sum amount in lieu of appointment of compassionate ground. However, the Petitioner does not state that the letter (Annexure R-1), purportedly written by her, is not signed by her.

6. After having heard both the sides and upon perusal of the material on record, I find that the scope of the power to issue writ of mandamus has been highlighted by the Apex Court in '*State of U.P. & Others vs. Harish Chandra & Others*' (1996) 9 SCC 309, in the following words:-

“Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a

legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force in law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law.”

7. Whether letter (Annexure R-1) refusing to accept ‘ex-gratia’ payment was written by the Petitioner is a disputed question of fact, which cannot be gone into these writ proceedings. The only option is to let the Petitioner negate letter (Annexure R-1) by resorting to file a civil suit. For want of proof, the relief prayed for cannot be granted in these proceedings. Fresh attempt in January, 2007, to obtain relief prayed for, cannot be acceded to, till petitioner succeeds in dislodging the letter Annexure R-1.

8. Consequently, this writ petition is disposed of while giving liberty to the Petitioner to take recourse in civil remedy as available under the law. In case, Petitioner chooses to file a civil suit, then anything stated herein shall have no bearing on merits.

9. No costs.

Sunil Gaur, J.

August 25, 2009

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