

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

+ **Writ Petition (Civil) No. 6697/2006**

Reserved on : 27.04.2009

Date of Decision : 25.05.2009

Pramod Kumar Dixit

..... Petitioner

Through: Mr.V.N. Sharma, Advocate

Versus

State Bank of India & Ors.

..... Respondents

Through : Mr.A.K. Sharma, Advocate

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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

V.K. SHALI, J.

1. This is a writ petition filed by the petitioner seeking appointment on compassionate ground in compliance to the letter dated 5th July, 2005 issued by the respondents. Another prayer made in the writ petition is that the respondents be restrained from enforcing the new scheme dated 4th August, 2005, by virtue of which the respondents are directing payment of ex-gratia payment to the petitioner in lieu of appointment on compassionate ground.

2. Briefly stated the facts leading to the filing of the present petition are that the father of the petitioner was employed with the respondent/bank as an Assistant at Palwal Branch, District

Faridabad, Haryana. On 29th January, 2004 he suffered a cardiac attack while on his way to office and expired. The father of the petitioner was survived by his widow aged about 40 years, daughter aged about 22 years, petitioner himself aged 20 years and another son aged about 19 years. On 10th April, 2004 the mother of the petitioner submitted a letter of request to the respondents that on account of their poor financial condition the family of the deceased may be provided employment on compassionate ground so that some regular source of income is fixed. On 25th April, 2005 a reminder was sent. The matter was examined and on 5th July, 2005 a letter was sent to the Palwal Branch Office intimating that the competent authority has in principle granted the approval for giving employment on compassionate ground to Pramod Kumar Dixit son of the deceased. He was required to furnish an undertaking that he will look after the dependants of the deceased employee apart from completing all other formalities. It was also said in the letter that he should keep himself ready for the interview to be held shortly, in respect of which the date, time and venue shall be intimated to him separately. Pursuant to this approval, a letter dated 2nd August, 2005 was sent by the petitioner enclosing therewith the requisite documents by way of an undertaking that he will take care of his mother and other dependants of the deceased. Since the petitioner did not hear anything after this, he was constrained to file the present writ petition on 27th April, 2006 for seeking a mandamus against the

respondent to appoint the petitioner on compassionate ground. It is alleged by the petitioner that he had learnt about the factum of respondents having introduced a new scheme of granting of ex-gratia payment in lieu of appointment on compassionate ground on 4th August, 2005, the said scheme was also challenged and it was prayed that the said scheme may not be enforced against the petitioner.

3. The respondents in the counter affidavit have contested the claim of the petitioner for appointment on compassionate ground on the ground that w.e.f. 4th August, 2005 a new scheme had been adopted by the respondents/management under which the petitioner at best is entitled to as ex-gratia payment, therefore, the petitioner could not be granted employment on compassionate ground.

4. I have heard the learned counsel for the parties and perused the record.

5. It has been contended by the learned counsel for the petitioner that competent authority had granted approval in principle about the appointment of the petitioner on compassionate ground, and therefore, merely on account of adoption of new policy of 4th August, 2005, the petitioner could not be deprived of the benefit of compassionate appointment. It was further contended as the petitioner had completed some part of the formalities for such an appointment. Therefore, he will be governed by the old policy not by the new policy dated 4th August, 2005.

6. As against this, Mr. Raju Ramachandran, learned senior counsel for the respondent/bank contended that the case of the petitioner will be governed by the new policy dated 4th August, 2005. This is on account of the fact that although the case of the petitioner for appointment on compassionate ground may have been approved in principle by the respondents but that approval was never communicated to petitioner and there were number of other formalities to be completed by the petitioner only after which he would actually be offered letter of appointment. This is evident from the letter dated 5th July, 2005 on the basis of which the petitioner was basing his claim wherein it is specifically stated that the petitioner shall keep himself ready for the purpose of interview at the time, place and venue which shall be intimated to him separately. It was also contended by the learned counsel for the petitioner that the appointment on compassionate ground cannot be said to be conferring a vested right on an individual, therefore, till the time the communication of appointment on compassionate ground is not handed over to the petitioner, the same cannot be said to be fully binding on the respondents/management.

7. I have carefully considered the respective submissions of the learned counsel for the parties and have also gone through the record. There is no dispute about the legal position with regard to the appointment on compassionate ground. It has been laid down by the Supreme Court that the appointment on compassionate ground cannot be claimed as a matter of right

and is only a matter of exception. Secondly, the compassionate appointment is granted to a member of a family so that family in distress is able to tide over the initial period of distress. Reliance in this regard can be placed on the following authorities:

Sanjay Kumar Vs. State of Bihar 2000 (7) AD (SC) 108
Mumtaz Yunus Mulani Vs. State of Maharashtra JT 2008 (4) SC 512

8. The question which arises in the instant case is as to whether the case of the petitioner for appointment on compassionate ground which was approved in principle by the respondents an inter departmental communication dated 5th July, 2005 and not communicated officially to the petitioner, but in pursuance to which the petitioner is purported to have furnished an undertaking, can be said to be a ground for granting him compassionate appointment on the basis of said old policy when the respondents themselves have adopted a new policy on 4th August, 2005.

9. In the new policy instead of granting appointment on compassionate ground the respondents/management after taking note of the observations passed by the Hon'ble Supreme Court in case titled Umesh Kumar Nagpal (1994) 4 SCC 138 has been observed that the said policy is effective with immediate effect and instead of appointment on compassionate ground the family of the deceased shall be entitled to ex-gratia payment. It is provided in the new policy that all pending cases will be governed by the new policy on the date when the new policy

came into existence that is on 4.8.2005 the case of the petitioner was pending because no formal letter/offer of appointment on compassionate ground was sent to him. As a matter of fact he was yet to be subjected to interview.

10. The reason for this change of policy is given by the respondents themselves in the background of the policy as well as the objective. It is observed in new policy that on account of grant of compassionate appointment no immediate financial succor is provided to the family of the deceased because it invariably takes sometime in granting the compassionate appointment to the member of a family of the deceased. It has also been adding to the staff strength of the bank by inclusion of persons who may not be otherwise fully useful to the bank as they may not know operation of the computers or may not be as useful as a normally recruited person. It was because of this change in the policy that the respondent/management of the bank felt that instead of granting appointment on compassionate ground they would give one lump sum ex-gratia payment of varying quantum depending on the status of the deceased employee in the bank and the service rendered by him.

11. The learned counsel for the respondents have also cited authorities wherein it has been observed that till the time the order is not fully communicated to the petitioner, the respondents will be well within their right to review and change the decision. It has been observed in **Bachhittar Singh Vs. State of Punjab**, AIR 1963 SC 395 at page 398:

“Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Minister to consider the matter over and over against and therefore till its communication the order cannot be regarded as anything more than provisional in character.”

12. It is in this background that this Court is of the opinion that the petitioner cannot claim compassionate appointment as a matter of right on the basis of the letter dated 5th July, 2005 because this letter was never addressed or communicated to the petitioner. It was an inter departmental communication that in principle approval have been granted by the competent authority, but the petitioner was still required to fulfill certain formalities and it is for that purpose that he is required to undergo even the interview. This clearly amplifies that the policy which is in vogue at the time when the case of the petitioner for appointment on compassionate ground is considered and it will be applicable to the case of the petitioner also. The petitioners case being only a pending case at the time when the new policy came in existence is necessarily to be governed by the same and not by the old policy as alleged by him.

13. The Division Bench of the Madras High Court in case titled Punjab National Bank & Anr. Vs. R. Latha 2007 W.A.(MD) No.411/2006 & W.A.M.P.(MD) No.1/2006 dated January 08, 2007 has come to a conclusion that the law or the scheme which was last in operation would be applicable to such case of

compassionate appointment. This authority clearly shows that the new scheme would be applicable to the case of the petitioner, accordingly, this Court holds that the petitioner cannot claim appointment on compassionate ground as a matter of right on the basis of the letter dated 5th July, 2005 and since a new policy had been promulgated and made applicable with immediate effect the present case, by virtue of which the petitioner at best was entitled to ex-gratia payment.

14. The respondents are directed to consider the case of the petitioner for release for ex-gratia payment by taking his application for appointment on compassionate ground as a representation for release of his ex-gratia payment and pass an appropriate order for the release of the same within a period of six weeks from the date of the passing of the order. It is made clear that in case the ex-gratia payment is not released within a period of six weeks, it shall carry an interest @ 8% per annum from the date of order till its actual release. With these directions, the writ petition is dismissed as being without any merit.

V.K. SHALI, J.

MAY 25, 2009

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