

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

WP(C).No. 14554 of 2006 (G)

PETITIONER:

**RUGHMINI K., AGED 40 YEARS,
ROSE VILLA, NADAKAVU, UDINOR P.O.
KASARAGOD DISTRICT.**

**BY ADVS.SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN**

RESPONDENTS:

- 1. CHIEF MANAGER (PER & HRD)
STATE BANK OF INDIA, ZONAL OFFICE, ERNAKULAM.**
- 2. STATE BANK OF INDIA,
REPRESENTED BY ITS CHAIRMAN, THIRUVANANTHAPURAM.**

R1 & 2 BY ADV. SRI.P.V.SURENDRANATH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1 : TRUE COPY OF APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE RESPONDENT DATED 7.7.2002
- P2 : TRUE COPY OF THE ORDER NO.PER/NO.MISC.324 DATED 28.12.2005
- P3 : TRUE COPY OF THE MEMORANDUM DATED 6.5.2006 WHICH IS SENT
TO THE PETITIONER

RESPONDENT'S EXHIBITS

- R1(A) : TRUE COPY OF THE JUDGMENT DATED 6.2.2006 IN CIVIL APPEAL
NO.996/2006
- R1(B) : TRUE COPY OF THE LETTER DATED 15.6.2005 ISSUED BY THE BANK
TO THE PETITIONER
- R1(C) : TRUE COPY OF THE SCHEME FOR PAYMENT OF EX-GRATIA LUMP SUM
AMOUNT IN LIEU OF APPOINTMENT ON COMPASSIONATE GROUNDS
IN STATE BANK OF INDIA
- R1(D) : TRUE COPY OF THE CIRCULAR NO.48/2012-13 DATED 17.4.2012

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 14554 of 2006 (G)

Dated this the 10th day of September, 2015

J U D G M E N T

The petitioner, the wife of a retired Bank employee, is before this Court claiming compassionate appointment.

2. The petitioner's husband was an Assistant Manager in the respondent Bank at the time of his death on 13.8.2001. The petitioner, immediately on the death of her husband, filed an application evidenced at Ext.P1 dated 7.7.2002 for getting compassionate employment in the subordinate cadre of the Bank. The petitioner in the writ petition contends that though the petitioner came to know that Ext.P1 request is declined, the petitioner was not served with an order and the petitioner again send a request which was replied to by Ext.P2.

3. The respondent Bank has filed a counter affidavit producing the communication dated 15.6.2005, which rejected the prayer of the petitioner for the reason of the

petitioner's financial condition being one which does not warrant a compassionate appointment under the scheme. The financial condition of the family of the deceased could not be termed as 'indigent', was the finding.

4. The learned Standing Counsel for the respondent Bank would specifically refer to Ext.R1(a), the judgment of the Supreme Court, wherein the specific scheme, under which the petitioner applied was referred to.

5. The appointment under the scheme of compassionate appointment has been held to be an exception which runs against the public policy of inviting applications from the open market and ensuring participation of all eligible applicants so as to ensure equality in public employment. However, when an employer has provided a specific scheme under which the employer extends a helping hand to an indigent family, who has lost its sole bread winner; to tide over the impecunious circumstances into which the family is plunged, the Courts

cannot take an exception. But then, the terms of the scheme has to be construed strictly, in granting such appointment, which is an exception to the equality clause. Any delay, as has been often held by the Hon'ble Supreme Court, stands against such consideration, since then it would raise a presumption that the family is not in an indigent circumstance.

6. In the present case the petitioner had filed an application in the year 2002 and had kept silent for about three years, when the petitioner contends that the petitioner send a reminder, to which Ext.P2 was replied. This specifically stands against the ground of indigent circumstance pleaded by the petitioner.

7. Further, it is to be noticed that very same scheme was considered by the Hon'ble Supreme Court in Ext.R1(a) decision. It was held so:

“The High Court again directed
compassionate appointment of the

respondent relying upon certain decisions of the High Court in which it had been held that payment of family pension and dues of the deceased could not be a ground for refusing the claim for compassionate appointment. The appellant has again approached this Court. The view taken by the High Court is wholly unsustainable in law. As can be seen from the narration of the development of law at the outset, the pensionary benefits could be taken into account for the purpose of determining the financial condition of the family of the deceased employee. Besides, in this particular case, this aspect of the matter was covered by the 1997 Scheme which specifically provided for taking into account the retiral benefits. There was no challenge to the Scheme by the respondent. The decision of the High Court cannot, therefore, be sustained and is accordingly set aside. We are of the view that having regard to the settled

legal position, the order of rejection of the application for compassionate appointment of the respondent was correct. Finally, we may observe that the High Court erred in reevaluating the circumstances mentioned in the order of rejection as if it were a Court of appeal completely overlooking the well known parameters for exercising discretion under Art.226 of the Constitution.”

8. The financial situation of the petitioner's family has been clearly laid down in the counter affidavit at paragraph 7. The same takes in the retirement benefits also, and the income of the family was assessed at Rs.10,178/-. Going by the aforesaid decision of the Hon'ble Supreme Court with respect to the very same Bank, no objection can be found on the decision arrived at by the Bank, on the terms of the very scheme, which was considered by the Hon'ble Supreme Court.

9. The learned counsel for the petitioner seeks for amendment of the writ petition incorporating a prayer to afford compassionate appointment to the daughter of the petitioner, Ms.Shimna K. Even going by the affidavit in the amendment application, the daughter is aged 26 years. In addition to the fact that the petitioner's application already stood rejected in the year 2005, it is also to be noticed that the petitioner's daughter also, on attaining majority, or within a reasonable period from that date, never applied before the Bank. In such circumstance, the amendment is not sustainable and the petition would stand rejected.

The writ petition also for the above reasons would stand dismissed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE