

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 19549 of 2005 (B)

PETITIONER(S) :

**RESMI S.RAJAN,
SUJATHA MANDIRAM, MAMBALLIKUNNAM,
CHATHANNOOR P.O, KOLLAM DISTRICT.**

**BY ADVS.DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.K.K.RAJEEV
SRI.T.K.KAMALJITH**

RESPONDENT(S) :

- 1. INDIAN BANK, REPRESENTED BY ITS
GENERAL MANAGER(ADMN), CENTRAL OFFICE, 31 RAJAJISALAI,
CHENNAI-600 001.**
- 2. THE GENERAL MANAGER(PHR),
INDIAN BANK, PERSONNEL DEPARTMENT, HEAD OFFICE,
66 RAJAJISALAI, CHENNAI.**
- 3. THE ASST. GENERAL MANAGER(PL),
INDIAN BANK, PERSONNEL DEPARTMENT, HEAD OFFICE,
66 RAJAJISALAI, CHENNAI.**

BY ADV. SRI.S.SREEKUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-03-2015, THE COURT ON 10-04-2015 DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE RELEVANT PAGE OF THE S.S.L.C. BOOK.

**EXHIBIT P2: TRUE COPY APPLICATION SUBMITTED BY THE PETITIONER
DATED 28.12.1998.**

**EXHIBIT P3: TRUE COPY OF THE DECLARATION FORM PRODUCED BEFORE
THE FIRST RESPONDENT DATED 06.01.1999.**

**EXHIBIT P4: TRUE COPY OF THE LETTER NO.HO/PRNL/RECIT/COMP/69/98
DATED 15.12.2001 GIVEN BY THE ASST.GENERAL MANAGER (PL)
TO THE PETITIONER'S MOTHER.**

**EXHIBIT P5: TRUE COPY OF THE SCHEME ADOPTED BY THE BANK WITH
EFFECT FROM 01.04.2004.**

**EXHIBIT P6: TRUE COPY OF THE RELEVANT PAGE OF THE LETTER
NO.HO:PRNL:COMPASS:2004 DATED 09.07.2004 GIVEN TO
THE PETITIONER'S MOTHER.**

**EXHIBIT P7: TRUE COPY OF THE LETTER NO.69/1998 DATED 16.11.2004 GIVEN
BY THE ASST.MANAGER TO THE PETITIONER'S MOTHER.**

**EXHIBIT P8: TRUE COPY OF THE REPLY GIVEN BY THE PETITIONER'S MOTHER
DATED 24.11.2004.**

**EXHIBIT P9: TRUE COPY OF THE LETTER GIVEN BY THE ASST. GENERAL
MANAGER 14.03.2005 TO THE PETITIONER'S MOTHER.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.M.SHAFIQUE, J

W.P.C.No.19549 of 2005

Dated this the 10th day of April 2015

J U D G M E N T

This writ petition is filed seeking the following reliefs:

“i) to issue a writ of Mandamus or order or direction to the Respondents to give an appointment to the petitioner in the service of the bank on compassionate ground as provided under the scheme on 21-3-1998, the date on which her father expired,

ii) to declare that the petitioner is eligible to get an appointment in the service of the bank instead of money compensation as her Father expired on 21-3-1998 which is admittedly prior to the introduction of the new scheme on 1-4-2004;”

2. The facts involved in the writ petition would disclose that the petitioner claimed employment under the scheme of dying-in-harness. Petitioner's father Sri.R.Rajan died on 21/03/1988 while working as Bank Manager in the respondent Bank at Kaithakkode branch. She submitted an

application dated 28/12/1998 by way of Ext.P2 with all related documents for an employment under the dying-in-harness scheme. Petitioner was informed by letter dated 15/12/2001 that the request for compassionate appointment is not taken up for consideration on the restriction to appoint fresh recruits. Ext.P4 is the said letter. In 2004, a new scheme was introduced by the bank wherein it is provided that the dependents would be given only cash compensation. Petitioner had taken up the matter before the bank by indicating that the petitioner's application was long prior to the new scheme coming into force and therefore the petitioner's case has to be considered in the light of the previous scheme. Hence the petitioner has sought for the reliefs aforesaid.

3. Counter affidavit has been filed by the 1st respondent inter alia contending that as per 2004 scheme, there is no provision to provide employment whereas only compensation was paid. That apart, appointment on

compassionate grounds, not being a vested right, petitioner cannot claim such a benefit. In so far as the family of the deceased had already survived for last several years, the petitioner cannot claim appointment on compassionate basis.

4. Heard learned counsel for the petitioner and the learned counsel for the respondent.

5. The learned counsel for the petitioner relied upon the Division Bench judgment of this Court in W.A.No.1313 of 2003 in **Canara Bank and another v. Mahesh Kumar** wherein the Division Bench, after considering a similar issue, observed that the scheme of dying-in-harness has to be considered in the light of the scheme prevailing as on the date of death of the deceased and not on the date when a new scheme has been formulated by the bank.

6. Learned counsel for the respondent, however, relied upon the judgment of the Supreme Court in **Himachal Road Transport Corporation v. Dinesh Kumar &**

Another [1996(4) SCC 580] wherein the Supreme Court held that, in the absence of a vacancy it is not open to the Corporation to appoint a person to any post which will be a gross abuse of the powers of the public authority. Another judgment relied upon is **Haryana State Electricity Board v. Krishna Devi** [2002 10 SCC 246] wherein the Supreme Court held that employment on compassionate ground is given only on pure humanitarian consideration and no appointment can be made as a matter of right. The main object was to provide immediate financial help to the family of the deceased employee.

7. Having regard to these rival contentions, the short question to be considered is whether at this point, a direction can be issued to the bank to appoint the petitioner on compassionate grounds.

8. In view of the judgment of the Division Bench in W.A.No.1313/2003, it cannot be disputed that the compassionate appointment has to be made taking into

consideration the rules prevailing as on the date of application. During 1998, a scheme was in force and it is for the respondent authority to have given a valid explanation as to why the scheme was not made applicable till the new scheme had been formulated in 2004. Therefore, in between 1998 and 2004, if the bank had appointed any person on compassionate grounds, overruling the seniority of the petitioner based on the date of application, petitioner is also entitled to get the said benefit. It might be true that, for a certain period, no fresh appointments were being made by the bank. The question is whether any appointments were being made during the period i.e. from the date of application till the new scheme has been formulated. No such particulars are available from the averments made in the counter affidavit.

Under such circumstances, I am of the view that the writ petition can be disposed of as follows:

- i) 1st respondent shall verify whether any

appointment under compassionate ground had been made between 28th December 1998 and 1st April 2004.

ii) If any such appointments have been made, petitioner's claim shall be considered based on the previous scheme and appropriate orders shall be passed within a period of three months from the date of receipt of a copy of this judgment.

(A.M.SHAFFIQUE, JUDGE)

jsr

