

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WP(C).No. 20862 of 2005 (H)

PETITIONER:

**K.JAYARAJAN (LATE)
S/O.SUDHAKARAN, SECURITY GUARD, S.B.T.MALAPPURAM
RESIDING AT VAIRAKALATHIL, HOUSE, KUZHIMANNA
MALAPPURAM.**

**BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH**

RESPONDENTS:

- 1. THE MANAGING DIRECTOR,
STATE BANK OF TRAVANCORE, POOJAPURA, TRIVANDRUM.**
- 2. THE CHIEF MANAGER,
PERSONNEL ADMINISTRATION, STATE BANK OF TRAVANCORE
HEAD OFFICE, POOJAPURA, TRIVANDRUM.**
- 3. THE ASSISTANT GENERAL MANAGER,
STATE BANK OF TRAVANCORE, ZONAL OFFICE, CALICUT.**
- 4. THE CHIEF MANAGER,
STATE BANK OF TRAVANCORE, MALAPPURAM BRANCH
MALAPPURAM.**

BY ADV. SRI.P.RAMAKRISHNAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :-

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|---------|---|--|
| EXT.P1 | - | COPY OF THE APPLICATION MADE BY THE PETITIONER BEFORE THE 4TH RESPONDENT SEEKING APPOINTMENT UNDER THE DYING IN HARNESS SCHEME DATED 24.04.2003. |
| EXT.P2 | - | COPY OF THE LETTER OF DISCLAIM DATED 24.04.2003. |
| EXT.P3 | - | COPY OF THE REPRESENTATION OF PETITIONER'S MOTHER TO THE 1ST RESPONDENT DATED 22.09.2003. |
| EXT.P4 | - | COPY OF THE COMMUNICATION OF 4TH RESPONDENT TO THE PETITIONER. |
| EXT.P5 | - | COPY OF THE REPRESENTATION OF THE PETITIONER'S MOTHER DATED 26.05.2004. |
| EXT.P6 | - | COPY OF THE COMMUNICATION TO THE PETITIONER'S MOTHER FROM 3RD RESPONDENT DATED 08.06.2005. |
| EXT.P7 | - | COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, KUZHIMANNA DATED 23.07.2004. |
| EXT.P8 | - | COPY OF THE PRESCRIPTION ISSUED BY THE DOCTOR DATED 05.03.2004. |
| EXT.P9 | - | COPY OF THE PRESCRIPTION ISSUED BY THE DOCTOR DATED 18.07.2004. |
| EXT.P10 | - | COPY OF THE CERTIFICATE ISSUED BY A CONSULTANT NEURO PSYCHIATRIST DATED NIL. |

RESPONDENTS' EXHIBITS:-

- | | | |
|-----------|---|---|
| EXT.R1(A) | - | COPY OF SCHEME DATED 31.10.1998 ISSUED BY THE STATE BANK OF TRAVANCORE [ASSOCIATE OF THE STATE BANK OF TRAVANCORE HEAD OFFICE, THIRUVANANTHAPURAM]. |
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//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.20862 of 2005-H

Dated this the 2nd day of December, 2015.

JUDGMENT

The petitioner seeks compassionate appointment to the respondent Bank. The petitioner's father, who was a Security Guard, died while in service on 12.08.2002. The deceased was survived by his wife, mother, two sons and two daughters. The eldest of the daughters was also mentally challenged. The petitioner, who was the eldest son, applied for compassionate appointment as per Ext.P1 within a reasonable time, ie. on 15.12.2003. The application was rejected by the Bank as per Ext.P4, finding that the condition of the family of the deceased employee does not conform to the guidelines stipulated in the scheme, which alone would entitle a compassionate appointment. The mother of the petitioner is said to have made a representation produced at

Ext.P5, which also was rejected at Ext.P6. Ext.P6 dated 08.06.2005 is the immediate cause of action for filing the above writ petition, which was filed in the year 2005.

2. The learned counsel for the petitioner would contend that both the orders are non-speaking orders and the contention of the Bank in the Counter Affidavit that the terminal benefits of the deceased employee was taken into account to deny the appointment, cannot be countenanced, since the same would go against the very principle, on which compassionate appointments are made. As to the conditions of the family, not conforming to the guidelines, the petitioner has amended the writ petition, raising a challenge to the guidelines also.

3. At the outset, the contention with respect to the challenge against the guidelines has to be considered. The claim for compassionate appointment could only be, on the guidelines made, by the respondent Bank for compassionate appointment. The

petitioner cannot claim compassionate appointment other than under the provisions of the guidelines. It is also to be noticed that the Hon'ble Supreme Court and this Court time and again noticed that the compassionate appointment is an exercise, going against the principles of Article 16 of the Constitution of India and hence would have to be strictly interpreted and conceded, to only those persons or families, who are in dire need of such support, for reason only of the family being thrown to penury by the death of the sole bread-winner. The employer is entitled to prescribe conditions for grant of such compassionate appointment, which has to be strictly complied with. This Court cannot entertain the challenge against the guidelines, especially since the legal claim raised by the petitioner is based on the guidelines and hence he would have to concede to the conditions stated therein.

4. True, the impugned orders at Exts.P4 & P6 are non-speaking orders, however this Court has to take into account that a remand at this stage, after 13

years of the death of the employee would not serve the interest of justice, especially going by the principle on which the compassionate appointments are to be made. The Hon'ble Supreme Court and this Court has time and again reiterated that compassionate appointment should be granted in such a manner as to provide immediate succour to the family, who by the bereavement of the sole bread-winner would otherwise be thrown to the streets. Further such appointment, it is oftener than ever been stated, should be immediate to the death and it cannot be said to serve the purpose, if made after a long distance of time; and that would defeat the very purpose of the scheme.

5. In the present case, it is to be noted that the petitioner had applied for appointment under the Scheme as per Ext.P1 within a reasonable time of the death of the petitioner's father. However, the Bank had rejected the petitioner's claim by Ext.P4 dated 15.12.2003. The petitioner, in such circumstances, ought to have approached the appropriate forum for redressal of

grievance, within a reasonable time proximate to the rejection. The contention that a representation was preferred by the mother, cannot be countenanced, since unrepresented memorials would not save delay. The laxity in so far as not approaching the Court, would only indicate that the family of the petitioner, did not suffer from such a need as to have one of the legal heirs appointed under the compassionate scheme; for the family to survive.

6. In this context, it is also to be noticed that the Scheme provides for taking into account the terminal benefits due to the deceased employee to consider the benefit of compassionate appointment. The family of the deceased employee is said to have received Provident Fund coming to Rs.73,000/-, Leave Encashment benefit coming to Rs.59,000/, insurance amount coming to Rs.98,000/- and gratuity of Rs,77,000/-. The deceased employee is also said to have Fixed Deposits of Rs.54,000/-. As against these the liability was only Rs.3,605/-. The wife of the deceased

employee was also sanctioned family pension of Rs.2,077/- and had landed properties of around 3.098 Acres with a house valued at Rs.7.5 lakhs. The learned counsel for the petitioner points out that Ext.P7 produced along with the Reply Affidavit would indicate that from the landed properties the family derived only an income of Rs.3,800/-. However, this has to be treated as an income, in addition to the family pension.

Considering all the said facts as also the law on the subject, this Court is not inclined to grant the reliefs prayed for by the petitioner. Hence, the writ petition would stand dismissed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

//True Copy//

P.A. to Judge.

sp/09/12/15