

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1603 OF 2012

Mahesh Singh Bisht, C/o.Kachru M.Mhatre)
A-303 Pravitha CHS, Om Complex)
D D X Road, Thakurwadi,)
Dombivili (W) 421 202.)...Petitioner

Versus

Canara Bank,)
Head Office- 112- J.C.Road,)
Bangalore – 560002 (service through)
Canara Bank Circle Office 14th floor,)
Maker Tower - “E” Cuffe Parade,)
Mumbai-400005.)...Respondent

Mr.S.N.Deshpande with Mrs.N.S.Deshpande & Ms.Swarna Munshi, for
the Petitioner.

Mr.Piyush Shah, for the Respondent.

**CORAM: ANOOP V. MOHTA &
G.S.KULKARNI, JJ.**

**JUDGMENT RESERVED ON: 22 September 2016
JUDGMENT PRONOUNCED ON: 29 September 2016**

Judgment:-(Per G. S. KULKARNI, J.)

1. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner challenges the decision of the Respondent - Canara Bank in refusing to the petitioner employment on compassionate ground

and /or the benefits of the lumpsum ex-gratia amount under the 2005 Scheme in lieu of compassionate appointment. Therefore, if the relief of compassionate employment is granted to the petitioner then, in that case the relief of ex-gratia payment to be paid would not be available.

2. We may at the outset observe that the application which was made by the Petitioner for compassionate appointment was well in time, however, the manner in which the Petitioner was treated by the Respondent-Bank, as evident from the correspondence, in our opinion, lacked absolute human sensitivity. For the present, we stop at this.

3. The Petitioner's father Mohan K. Singh Bisht was working with the Respondent-Bank as Armed Guard at Currency Chest, Fort branch of the Respondent. On 14 July 2001 while on duty, the Petitioner's father suffered a massive cardiac arrest and expired on the same day leaving behind, the widow and the Petitioner-son.

4. As there was no earning member in the family, the widow Smt.Gangadevi Mohan Bisht addressed a letter to the Respondent dated 23 August 2001 requesting to grant employment to the Petitioner on compassionate ground. The letter categorically stated that deceased Mohan was in good health and his sudden death was a huge calamity on

the family as there was no source of income and the very livelihood was affected. As there was no response, another letter dated 24 December 2001 was addressed to the Respondent. It was again stated that the family pension was insufficient as the last drawn salary of the deceased Mohan was Rs.286/- after deduction. It was also stated that she was aged and suffering from different ailments due to which she was unable to work and, therefore, the Petitioner be appointed on compassionate ground.

5. The Petitioner also submitted an application for compassionate appointment in the prescribed form dated 20 December 2001 which was received by the concerned office of the Respondent. The Senior Manager of the Respondent made an endorsement on the said Application dated 29 December 2001 that the Petitioner's Application be considered sympathetically. For substantial time, no decision was taken on the application despite recommendation.

6. Thereafter, the Respondent appears to have started processing the Petitioner's application and by a letter dated 8 March 2002 sought certain details in regard to the personal borrowings of the Petitioner. The Petitioner by his letter dated 2 April 2002 complied with the said requirements interalia stating that as the Petitioner's father was ex-army

servicemen, his mother was getting army pension at normal rate of Rs.1275/-. The Respondent thereafter by another letter dated 18 July 2002 demanded further documents. As no decision was taken despite submission of the documents, the Petitioner addressed one more letter dated 20 March 2003 reiterating the financial problems on the family and requesting for an early decision.

7. Thereafter by another letter dated 10 September 2003, the Respondent purportedly sought further documents from the Petitioner. In fact the contents of the letter are almost the same to that of earlier letter dated 18 July 2002 which were complied. The Petitioner however again by his letter dated 16 September 2003 complied with the said requirement as well. Despite all these compliances by the Petitioner, for almost a period of two years, no decision was taken by the Respondent.

8. The Respondent ultimately by the impugned letter dated 21 March 2005, referring to the application of the Petitioner dated 28 December 2001 for employment on compassionate ground, informed the Petitioner that the Respondent had formulated a scheme for payment of ex-gratia lumpsum amount and thus there was no provision for employment on compassionate ground and therefore the Respondent will not be in a position to consider the Petitioner's request for employment

on compassionate ground. It was stated that if a request is received from the Petitioner for providing financial relief under the said new scheme, such request would be processed subject to satisfying eligibility criteria under the Scheme. A fresh set of application was enclosed to be completed and submitted by the Petitioner. It was stated that no correspondence would be entertained with regard to providing of employment on compassionate ground.

9. The Petitioner under a bonafide belief responded to the said letter of the Respondent and made an application dated 23 September 2005 for lumpsum ex-gratia amount, on the presumption that there is no provision for employment on compassionate ground. The Respondent, however, by its letter dated 6 January 2006, informed the Petitioner that on placing the matter before the Competent Authority, the request of the Petitioner for lumpsum ex-gratia amount cannot be considered as the Petitioner does not satisfy the eligibility norms laid down under the scheme. No reason was given as to on what ground the Petitioner lacks eligibility. The Petitioner therefore made a detailed representation being aggrieved by both the issues namely for non grant of compassionate appointment and/or rejection of the eligibility for lumpsum ex-gratia amount. The representation was replied by the Respondent by its letter dated 28 July 2007. Again in rejecting the request, no reason was set

out.

10. The Petitioner thereafter again addressed a letter dated 2 August 2007 now to the General Manager of the Respondent making a grievance that his case was pending since 2001. However there was no response even to this letter. The Petitioner in this situation approached the Ministry of State for Labour and Employment, Government of India and also the Ministry of Finance by his representation dated 27 August 2009 and 27 March 2010 respectively. The Petitioner also made application under the Right to Information Act which revealed that between 2001 to 2005 the Respondent had implemented the compassionate appointment scheme in case of 101 employees which shows that the Petitioner was discriminated.

11. The Petitioner accordingly approached this Court in the present Writ Petition. At the hearing of this Petition on 27 July 2014, this Court considering the decision of the Supreme Court in Respondent's own case namely in “*Canara Bank & Anr. Vs. M.Mahesh Kumar*¹”, permitted the Petitioner to file a fresh representation based on the said decision and directed the Respondent to consider the said representation. However, the Respondent by its communication dated 21 August 2015 rejected the said representation. This is how the matter stands before us.

¹ (2015 II CLR 563)

12. Learned Counsel for the Petitioner having pointed out all the above facts and the documents as placed on record submits that the case of the Petitioner is of absolute discrimination. It is submitted that the Petitioner had applied for compassionate appointment immediately on demise of his father at which point of time the scheme of appointment on compassionate ground was very much in vogue. It is submitted that the Petitioner had made all compliances required by the Respondent. It is submitted that however without giving up his right for compassionate appointment the Petitioner under a bonafide belief applied for lumpsum ex-gratia amount. It is submitted that his application for lumpsum ex-gratia amount cannot amount to taking away his right of appointment on compassionate ground, when his application for compassionate appointment was a legitimate application and which was illegally not considered by the Respondent. The learned Counsel for the Petitioner in making this submission has relied on the letter dated 21 March 2005 of the Respondent which is a composite letter informing the Petitioner that his application for appointment on compassionate ground was not considered as the scheme itself was not available and called upon him to apply for lumpsum ex-gratia amount under the 2005 scheme. It is submitted that it is no fault of the Petitioner to have bonafide made an application under the 2005 Scheme. It is submitted that in fact about 101 cases of compassionate appointment were considered during the

period from 2001 to 2005 and that there is gross discrimination meted out to the Petitioner. It is submitted that by the impugned action of the Respondent the fundamental rights entitled to the Petitioner under Articles 14 and 21 of the Constitution stand breached at the hands of the Respondent.

13. The Respondent opposed the Writ Petition relying on the reply affidavit dated 3 September 2012. The contention of the Respondent is nothing but reiterating the stand as recorded in the letters addressed to the Petitioner as noted above. The Respondent contends that the Petitioner cannot be granted compassionate appointment as the scheme itself is not available. It is submitted that it is not a matter of legal right for the Petitioner to ask for compassionate appointment. To support this submission reliance is placed on the decision of the Supreme Court in the case “*State Bank of India & Ors. Vs. Smt.Vindhwashini Devi & Anr.*”², and “*Umesh Kumar Nagpal Vs. State of Haryana & Ors.*”³ In fact a contrary stand is taken in the written notes that as the Petitioner had not furnished the information, the Respondent could not process his application till 14 February 2005.

14. We have heard the learned Counsel for the parties. We have also perused the averments made in the Writ Petition and the reply and

²(2009(120) FLR 461)

³ (1994)4 SCC 138

the rejoinder affidavits as also the documents. It is an admitted position that when the Petitioner submitted an application for compassionate appointment on 28 December 2001, the scheme for employment on compassionate ground was very much available when an employee of the Respondent-bank died in harness. There is no dispute that the Petitioner was eligible being son of the deceased employee. Notwithstanding the obligation under the Scheme to decide the application in fair and non-arbitrary manner, the Respondent, in our opinion, without any reasonable cause and despite compliances, kept the said application pending for almost four and half years and by the impugned communication dated 21 March 2005 without rejecting the Petitioner's application for compassionate appointment, informed the Petitioner that the Respondent will not be in a position to provide the Petitioner appointment on compassionate ground giving a reason of a new scheme for payment of ex-gratia lumpsum amount as a substitute to the compassionate appointment scheme. A perusal of this communication clearly shows that the Petitioner's application for compassionate appointment is not rejected. In fact the tenor of the letter indicates that the Petitioner was compelled and called upon to apply now for ex-gratia lumpsum amount. In our opinion, this position taken by the Respondent clearly shows that the Petitioner's application for compassionate appointment was considered to be void and that is how he was asked to

make an application for ex-gratia lumpsum amount. If it was to be a genuine case of rejection of the Petitioner's application for compassionate appointment in that case the reasons would have been different. In these circumstances there was nothing wrong that the Petitioner being outsider, in bonafide belief responded and applied for ex-gratia lumpsum amount. However, the said application was also turned down by the Respondent by a cryptic communication dated 6 January 2006 stating that the application is rejected as it does not satisfy the eligibility norms under the scheme. No reason whatsoever is given as to how the application of the Petitioner had become ineligible.

15. We are deeply pained to read the nature of the letters as addressed by the Respondent to the Petitioner. In our opinion the approach of the Officers of the Respondent is absolutely insensitive to the peculiar requirements of dealing with the cases on compassionate appointment. The human consideration as the situation requires in attending to such application is completely forgotten. There is no application of mind of any degree, to the Petitioner's application for compassionate appointment and it appears that deliberately no decision on the Petitioner's application for compassionate appointment was taken. Such a conduct is not expected from the public officers and a public body like the Respondent.

16. In our opinion, the Petitioner had complied with all the requirements under the appointment on compassionate ground scheme and was eligible for compassionate appointment as the Petitioner's father died in harness. The Respondent for the reasons best known to it did not decide the Petitioner's application for compassionate appointment. In the entire correspondence, the Respondent did not set out any reason to hold the Petitioner dis-entitled for compassionate appointment. Probably there were no reasons and /or the Respondent was acting on extraneous considerations. However, in this situation the Respondent foisted on the Petitioner letter dated 21 March 2005 informing that "in view of the scheme for payment of ex-gratia lumpsum amount, the Respondent-bank will not be in a position to consider your request for employment on compassionate ground." This clearly indicates that the Petitioner's application for no reason whatsoever was not decided. The Respondent could not demonstrate from any prior correspondence that the Petitioner for some reason was held ineligible for compassionate appointment. In our opinion, the Petitioner could not have been foisted with the letter dated 21 March 2005 informing to apply for payment of ex-gratia lumpsum amount. Such action on the part of the Respondent was definitely arbitrary and unjust. We, are therefore, of the clear opinion that the prayer of the Petitioner for compassionate appointment ought to be granted. The learned counsel for the Petitioner in support of his

submissions is justified in relying on the recent decision of the Supreme Court which was in case of this very Respondent namely in ***Canara Bank & Anr. Vs. M.Mahesh Kumar*** (supra) wherein the Supreme Court considered the issue proximate to the facts of the present case. The Supreme Court considered the very same assertion as made by the Respondent of non-availability of compassionate appointment scheme in view of ex-gratia lumpsum payment in lieu of compassionate appointment scheme. Considering the law and the submissions of the Appellant-Bank in the said case it is observed that the father of the Respondent's in the said case had died on 10 October 1998 while he was serving as a clerk in the bank and that a timely application for compassionate appointment was made under the 'Dying In Harness Scheme' which was in force at that point of time. It is held that the cause of action for considering the application for compassionate appointment arose when the scheme "dying-in-harness scheme" was in force. The appeal of the Respondent-bank was dismissed directing the Respondent – Bank to consider the case of the Respondent therein, for compassionate appointment as per the said scheme which was in force. It will be profitable to note the observations of the Supreme Court in paragraphs 13 to 17 which read thus :-

“13. Applying these principles to the case in hand, as discussed earlier, respondent’s father died on 10.10.1998 while he was serving as a clerk in the appellant-bank and the respondent applied timely for compassionate appointment as per the scheme ‘Dying in

Harness Scheme' dated 8.05.1993 which was in force at that time. The appellant-bank rejected the respondent's claim on 30.06.1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7.11.2001, the appellant-bank sought for particulars in connection with the issue of respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when the Circular No.154/1993 dated 8.05.1993 was in force. Thus, as per the judgment referred in Jaspal Kaur's case, the claim cannot be decided as per 2005 Scheme providing for ex-gratia payment. The Circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993.

14. It is also pertinent to note that 2005 Scheme providing only for ex-gratia payment in lieu of compassionate appointment stands superseded by the Scheme of 2014 which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant-bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.

15. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependent of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.

16. In *Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.*, (2000) 6 SCC 493, while dealing with the application made

by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

“13.But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family — this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.”

Referring to Steel Authority of India Ltd.’s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents’ family is having any other income to negate their claim for appointment on compassionate ground.

17. Considering the scope of the Scheme ‘Dying in Harness Scheme 1993’ then in force and the facts and circumstances of the case, the High Court rightly directed the appellant-bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference.”

17. We have not dealt with the various decisions referred by the

Respondent in the written submissions. These decisions relied upon by the respondents lay down certain propositions of law which are well established and with which there cannot be any disagreement, but for the purposes of this case they are academic.

18. In the light of the above discussion, we may unhesitatingly conclude, that the facts and circumstances of the present case clearly demonstrate an arbitrary action on the part of the Respondent in depriving the petitioner benefit of the compassionate appointment. There is no material to indicate that the Respondent had held the petitioner ineligible for compassionate appointment and in fact kept dilly dallying the Petitioner's application for a period of more than four years, significantly, during the same period Respondent granted compassionate appointment in more than hundred cases, however foisted on the Petitioner, closure of the scheme for compassionate by Respondent's letter dated 21 March 2005. This decision of the Respondent, as contained in the letter dated 21 March 2005, in our opinion, is patently illegal and deserves to be quashed and set aside. The facts which we have noted in detail thus justify a direction to the Respondent grant of a compassionate appointment to the petitioner. We accordingly direct the Respondent to grant to the Petitioner, employment on compassionate ground as per his application dated 28 December 2001 within a period of four weeks from today.

19. Writ Petition is allowed in the aforesaid terms however with costs of Rupees Twenty Five thousand to be paid by the Respondent to the Petitioner within a period four weeks from today.

(G.S.KULKARNI,J.)

(ANOOP V. MOHTA, J.)