

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 18-01-2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.32236 OF 2014

M.Kalavathi

...

Petitioner

-vs-

1.The Assistant General Manager,
State Bank of Mysore,
Regional Office,
No.231, N.S.C.Bose Road,
Chennai-600 001.

2.The Manager,
State Bank of Mysore,
Tiruvanmiyur Branch,
No.113, Tiruvalluvar Salai,
Kamaraj Nagar, Tiruvanmiyur,
Chennai-600 041.

3.M.Dhilipan

...

Respondents

(R3 impleaded as per order
dated 23.3.2015 in
M.P.No.1/15 in W.P.32236/2014)

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, directing the respondents to appoint the petitioner as an Office Assistant/Clerk in the respondent Bank on compassionate ground.

For petitioner : Mr.R.Sathiamoorthi

For respondents 1 and 2 : Mr.S.Sethuraman

For respondent 3 : Mr.K.N.Selvabharathi

O R D E R

Petitioner has filed this Writ Petition, praying for a direction to the respondents 1 and 2, to appoint her as an Office Assistant/Clerk in the respondent Bank, on compassionate ground.

2. According to the petitioner, her husband late Meganathan joined the service of the respondent bank as an Office Assistant (Peon) in the year 1987; thereafter, he was promoted as Cashier, and he died in harness on 09.02.2012, leaving behind the petitioner and her son Dilipan, as his legal heirs. The petitioner would further state, that though she approached the respondent bank to pay the service benefits of her husband and also submitted a representation, dated 10.09.2014, seeking for appointment on compassionate ground, no order has been passed by the respondents, and, therefore, she has come forward with this Writ Petition.

3. Respondents 1 and 2 have filed a counter affidavit, stating, that the bank is not aware, whether the petitioner is the wife of late Meganathan; late Meganathan nominated his son Dilipan as the nominee in the records of the bank, for the purpose of Provident Fund, Gratuity, insurance and other terminal benefits; the said Meganathan died on 09.02.2012; the nominee Dilipan, who was minor at the time of death of the employee, attained majority on 26.08.2013, and, thereafter, the bank, on the representation made by the nominee Dilipan, has settled the entire terminal benefits, due to the deceased employee. The respondents have further stated, that, at present, there is no scheme for compassionate appointment in the bank, and, therefore, the bank is not in a position to provide any employment to the petitioner.

4. Mr.R.Sathiamoorthi, learned counsel for the petitioner, would contend, that the third respondent Dilipan was born to the petitioner, through the deceased employee, namely, Meganathan; the third respondent was a minor at the time of nomination; and, that as per Section 38 of the Indian Succession Act, the said nomination itself is illegal. The learned counsel would also contend, that respondents 1 to 3 have colluded among themselves to defeat the right of the petitioner, and, in the counter, it is admitted that the petitioner's husband died on 09.02.2012, but the respondent bank made payments only after the third respondent attained majority, on 26.08.2013; and, that since the appointment of the third respondent as nominee is illegal, the payments made pursuant to the said appointment should also be termed as illegal, and, therefore, the petitioner is entitled for the entire payments, which are due to her late husband.

5. Per contra, Mr.S.Sethuraman, learned counsel for respondents 1 and 2, would submit, that the late employee of the respondent bank nominated his son Dilipan as nominee in the records of the bank; and, as per the nomination, the respondent bank has disbursed the entire service benefits of its employee to the said nominee. He would also submit, that there is no scheme for compassionate appointment, and, therefore, the

request of the petitioner for compassionate appointment cannot be acceded to, by the respondent bank. He would finally submit that if the petitioner is one of the legal heirs of the deceased employee, she has to work out her remedy before the Civil Court, and the Writ Petition is not maintainable, in law.

6. I have heard the learned counsel for the parties.

7. Petitioner claims to be the wife of the deceased employee, namely, Meganathan, of the respondent bank. However, the respondent bank has filed a counter affidavit, disputing the status of the petitioner. The stand of the respondent bank is, that late Meganathan had nominated his son Dilipan, as the nominee, in the records of the bank, and, as such, the bank has disbursed the entire amount to the said Dilipan, third respondent herein, who is, admittedly, the son of the deceased.

8. It is axiomatic, that disputed questions of fact cannot be decided in the writ jurisdiction. If the petitioner is aggrieved over the action or inaction of the respondent bank, she has to exhaust her remedy before an appropriate forum or a Civil Court, having competent jurisdiction. Since the respondent bank has taken a specific stand, that there is no scheme for compassionate appointment, I do not find any ground to entertain this Writ Petition.

9. Writ Petition is dismissed accordingly. No costs. Consequently, the connected M.P.No.1 of 2014 is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The Assistant General Manager,
State Bank of Mysore,
Regional Office,
No.231, N.S.C.Bose Road,
Chennai-600 001.

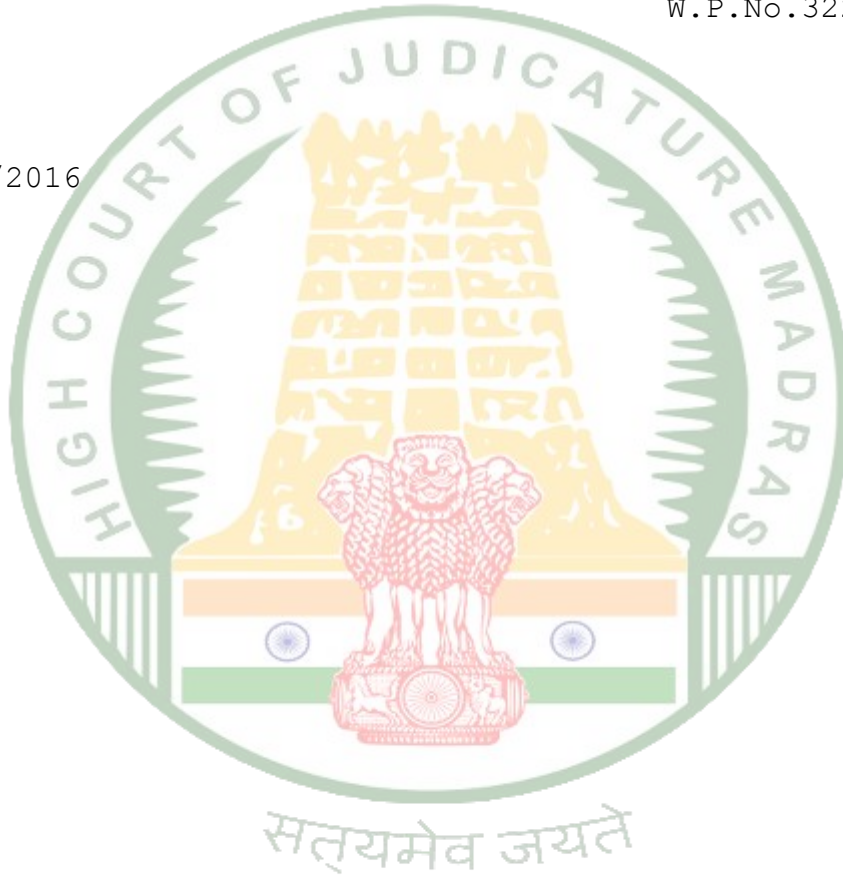
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2.The Manager,
State Bank of Mysore,
Tiruvanmiyur Branch,
No.113, Tiruvalluvar Salai,
Kamaraj Nagar, Tiruvanmiyur,
Chennai-600 041.

+2cc to Mr.R.Sathiyamurthy, Advocate Sr.2768
+1cc to Mr.S.Sethuraman, Advocate Sr.2631

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srg 08/02/2016



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