

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.11.2016

DELIVERED ON : 22.12.2016

C O R A M

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.24499 of 2014

and

M.P.Nos.1 & 2 of 2014

M.Santhosh

... Petitioner

Vs.

1.The Chief General Manager,
State Bank of India,
Chennai Local Head Office, "Circletop House",
16, College Lane,
Nungambakkam,
Chennai - 600 006.

2.Assistant General Manager (HR),
HR Department, LHO,
State Bank of India,
Chennai Local Head Office, "Circletop House",
P.O.No.737, 16, College Lane,
Chennai - 600 006.

3.The Deputy General Manager
(Personal and HR),
State Bank of India,
Zonal Office,
No.86, Rajaji Salai,
Chennai - 600 001.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 2nd respondent, dated 06.08.2014, rejecting the petitioner's claim for compassionate appointment and also rejecting his claim for ex-gratia compensation in terms of the new scheme introduced on 04.08.2005, quash the same and consequently direct the respondents to give compassionate appointment to the petitioner taking into account of demise of his father T.Munusamy, Armed Guard in respondent Bank.

(c) The petitioner, later on, came to know that there was a lot of inter-bank correspondence with regard to consideration of his application between the years 2001-2005. In fact, the Chief Manager, Tiruvannamalai Branch of the respondent Bank, vide his proceedings dated 30.09.2004, recommended to consider the case of the petitioner for compassionate appointment sympathetically to the Assistant General Manager of the respondent Bank. On 02.04.2014 the petitioner's mother sent a letter requesting for petitioner's appointment on compassionate appointment, for which the second respondent, on 05.06.2014, replied that the request for compassionate appointment had already been turned down.

(d) On 18.07.2014 the petitioner made a representation to the respondent Bank requesting for compassionate appointment, for which the 2nd respondent, by the impugned order dated 06.08.2014, replied that the petitioner's claim for compassionate appointment cannot be considered, because the Scheme had been changed and that as they have not received any application requesting to grant ex gratia amount, they could not even grant ex gratia amount to the petitioner. According to the petitioner, while submitting his application for compassionate appointment, there was the scheme for compassionate appointment and if at all there was any change in that scheme, that will apply only for the future and therefore, he should be considered only under the old scheme. Hence, the petitioner has come up with this Writ Petition for the aforesaid prayer.

3. The learned counsel appearing for the petitioner submitted that the petitioner's father was working as an Armed Guard in Thiruvannamalai Branch of the respondent Bank and while in service, he died on 08.09.2000 at the age of 53 years. Within few months thereafter, he submitted an application for compassionate appointment on 16.02.2001, as per the 1997 scheme viz. "Scheme for Appointment on Compassionate Grounds for Dependents of Deceased / Employees Retired on Medical Grounds", which was in force. Inviting the attention of this Court to the series of correspondence exchanged between the official levels, the learned counsel for the petitioner has further submitted that the request of the petitioner was under the active consideration of the respondent Bank. Even the Branch Manager of the respondent Bank has also recommended to provide appointment to the petitioner for the post of Clerk. While so, all of a sudden, the respondent Bank, vide his letter dated 17.10.2005, informed the petitioner that the earlier scheme i.e., 1997 scheme was abolished and requested the petitioner to apply afresh for ex gratia payment scheme. Though the petitioner had sent a letter dated 01.12.2005 insisting for compassionate appointment, the same was not considered by the respondent Bank.

4. The learned counsel for the petitioner would further submit that having waited for a long time, when the petitioner again made a representation dated 18.07.2014 requesting for compassionate appointment, the same was rejected vide impugned order dated 06.08.2014 stating that since the new scheme has been introduced, his claim for compassionate appointment cannot be considered and that since he has not submitted any application for ex gratia compensation, they are not in a position to provide ex gratia amount.

5. The learned counsel for the petitioner would further submit that since the petitioner submitted his application much before the introduction of the new scheme, his claim ought to have been considered under the old scheme. In support of this contention, the learned counsel for the petitioner relied upon the latest judgment of the Hon'ble Supreme Court in Canara Bank and another Vs. M. Mahesh Kumar reported in 2015 (2) LLN 545 (SC), wherein the Hon'ble Supreme Court, in an identical circumstances, has directed the Bank therein to reconsider the claim of the dependant of the deceased employee for compassionate appointment in accordance with the old scheme. Thus, the learned counsel for the petitioner sought for the aforesaid relief.

6. Per contra, the learned counsel appearing for the respondent Bank by filing a detailed counter affidavit submitted that the respondent Bank earlier introduced a scheme called "Scheme for Appointment on Compassionate Grounds for Dependents of the Deceased Employee / Employees Retired on Medical Grounds". The said scheme was amended and modified from time to time and the last amendment or modification was made on 24.01.2003 and the object behind the scheme was to enable the family to tide over the sudden crisis due to the death of the sole breadwinner. Hence, mere death of an employee in harness does not entitle his family to get compassionate appointment. Only when the Bank is satisfied with the financial status of the family of the deceased, the claim for compassionate appointment would be considered.

7. The learned counsel for the respondent Bank would further submit that clause 10 of the old scheme provided for the factors to be taken into account for determining the financial condition of the family. As per Clause 12 of the old scheme, the appointment under the scheme would be considered subject to availability of vacancy. Clause 13 of the old scheme provided for the applicants subjecting themselves for the interview and

thereafter, the selected candidates should undergo medical fitness. Thus, no person could claim compassionate appointment as a matter of right or as a matter of course, as compassionate appointment is subjected to various criteria and norms provided in the scheme.

8. The learned counsel for the respondent Bank would further submit that so far as the present case is concerned, the petitioner's father died on 08.09.2000 and the application seeking compassionate appointment was submitted on 16.02.2001. However, the said application could not be processed for want of particulars, which were the subject matter of correspondence between the Zonal Office and Thiruvannamalai Branch of the respondents Bank. In the meanwhile, the respondent Bank devised a scheme viz., "Scheme for Payment of Ex-gratia Lumpsum In Lieu of Appointment on Compassionate Grounds" with effect from 04.08.2005. Clause 11 of the new scheme states that payment of ex gratia compensation would be considered provided a request in writing is made on the prescribed application format by the dependant within a period of six months from the date of death of the employee. Clause 14 of the new scheme provides that the applications pending under the compassionate appointment scheme, as on date, on which the new scheme is approved by the Executive Committee of the Central Board, would be dealt with in accordance with the new scheme for payment of ex gratia lumpsum. Thus, according to the respondent Bank, the claim of the petitioner cannot be considered under the old scheme and he cannot be provided with compassionate appointment. In support of this contention, the learned counsel for the respondent Bank has invited the attention of this Court to the judgment of the Hon'ble Supreme Court reported in (2010) 11 SCC 661 (State Bank of India and another Vs. Raj Kumar). Thus, he prays for dismissal of the Writ Petition.

9. Keeping the above submissions made on either side, I have carefully gone through the material available on record. Admittedly, the petitioner's father died while in service on 08.09.2000 and the petitioner submitted his application for compassionate appointment on 16.02.2001 and it was within the time limit prescribed under the old scheme. A perusal of the inter-bank communications would go to show that the application submitted by the petitioner was under the active consideration of the respondent Bank. In fact, the Chief Manager, Tiruvannamalai Branch of the respondent Bank, vide his letter dated 30.09.2004, made a recommendation to the Assistant General Manager at Zonal Office, Chennai, to consider the case of the petitioner sympathetically at the earliest.

10. Though the learned counsel appearing for the respondent Bank submitted that the application of the petitioner could not be processed for want of particulars, the application submitted by the petitioner was not rejected for want of particulars. In fact, the perusal of the inter-bank communications would go to show that the Zonal Office had frequently sought for certain clarifications and the same was subsequently clarified by the Branch Office and the last such letter sent by the Branch Office was on 30.09.2004. Thereafter, the said application was kept pending for almost four years without any reasonable cause. While so, on 17.10.2005, the respondent Bank, without rejecting the petitioner's application for compassionate appointment, informed the petitioner that since the new scheme has been introduced, his claim for compassionate appointment cannot be considered and for ex gratia compensation under new scheme, he has to apply afresh. A perusal of the said communication would go to show that the petitioner's application for compassionate appointment was not rejected and in fact, he was called upon to apply for ex gratia lumpsum amount. Since the application for compassionate appointment was not rejected by the respondent Bank, on 01.12.2005 the petitioner has sent a representation to the respondent Bank clarifying his stand that he wants only compassionate appointment and not cash compensation. Even thereafter, the respondent Bank did not reject the petitioner's application nor considered the same.

11. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress and it is improper to keep such a case pending for years. In this case, the respondent Bank, even after four years from the date of application of the petitioner, has not chosen to provide compassionate appointment. The inter-bank communications would go to show that the respondent Bank has been protracting the case of the petitioner in an insensitive manner and kept the same pending for years together, due to which now the petitioner has been suffering. The informations obtained by the petitioner under the Right to Information Act reveal that between 2000 to 2005, the respondent Bank had implemented the compassionate appointment scheme in the case of several others, but the petitioner was discriminated.

12. In an identical circumstances, a Division Bench of the Bombay High Court in an unreported decision in W.P.No.1603 of 2012, dated 29.09.2016, in Mahesh Singh Bisht Vs. Canara Bank case, has held in paragraph No.15 as follows;

"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 case on compassionate appointment. The human consideration as the situation requires in attending to such application is completely forgotten. There is non application of mind on 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."

13. The main contention of the learned counsel for the respondent Bank is that since new scheme has been introduced, pending consideration of the application of the petitioner, his claim for compassionate appointment cannot be considered under the old scheme. In support of this contention, the learned counsel appearing for the respondent Bank has relied upon the decision of the Hon'ble Supreme Court in (2010) 11 Supreme Court Cases 661 (State Bank of India Vs. Raj Kumar), whereby and whereunder the Hon'ble Supreme Court has set aside the judgments of the learned Single Judge and the Division Bench directing the appellant Bank to reconsider the case of the respondent therein for compassionate appointment and directed the Bank to process the application to be submitted by the respondent therein for lumpsum ex gratia compensation. But, in the said case, the employee died in the year 2004 and the application was submitted only in June, 2005 and hardly within two months, the old scheme was abolished and the new scheme came into force on 04.08.2005. The Bank had not started to process the application. Under such circumstances, the Hon'ble Supreme Court has held that the new Scheme which came into force on 04.08.2005 alone will apply and accordingly, set aside the order of the Courts below and directed the Bank to consider the application to be submitted by the respondent therein for granting lump sum ex gratia amount.

14. The dictum laid down in the said case is not applicable to the facts of the present case, as in this case, the petitioner submitted his application for compassionate appointment as early as on 16.02.2001 and after keeping the same pending for more than four years, the respondent Bank has stated

that the claim of the petitioner for compassionate appointment cannot be considered in view of the introduction of the new scheme with effect from 04.08.2005. Further correspondence exchanged between the Zonal Office and Thiruvannamalai Branch Office of the Bank would show that the application of the petitioner for providing compassionate appointment was under active consideration.

15. According to the learned counsel for the petitioner, since the petitioner submitted his application much before the introduction of the new scheme, his claim ought to have been considered under the old scheme. In support of his contention, the learned counsel for the petitioner relied upon the latest decision of the Hon'ble Supreme Court in Canara Bank Vs. M.Mahesh Kumar reported in 2015 (2) LLN 545 (SC), wherein, in the identical circumstances, the Hon'ble Supreme Court has held in paragraph Nos.11 & 14 as follows;

"11.The main question falling for consideration is whether the Scheme passed in 2005 providing for ex gratia payment or the Scheme then in vogue in 1993 providing for Compassionate Appointment is applicable to the respondent. Appellant-Bank has placed reliance upon the judgment of this Court in Jaspal Kaur's case (supra) to contend that the respondent's case cannot be considered on the basis of 'Dying in Harness Scheme - 1993' when the new scheme of 2005 providing for ex gratia payment had been put in place. In Jaspal Kaur's case (supra), Sukhbir Inder Singh - Employee of State Bank of India, Record Assistant (Cash & Accounts) passed away on 01.08.1999. Widow of the employee applied for Compassionate Appointment in State Bank of India on 05.02.2000. On 07.01.2002, the Competent Authority of the Bank rejected the Application of Jaspal Kaur in view of the Scheme vis-a-vis the financial position of the family. Against that decision of the Competent Authority, the respondent filed Writ Petition before the Punjab and Haryana High Court, which has directed to consider the case of Jaspal Kaur by applying the Scheme formulated on 4.8.2005 when her Application was made in the year 2000. In that factual matrix, this Court has directed that dispute arising in the year 2000 cannot be decided on the basis of a Scheme that was put in place much after the dispute. By perusal of the

judgment in Jaspal Kaur's case, it is apparent that the judgment specifically states that claim of Compassionate Appointment under a Scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

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14. It is also pertinent to note that 2005 scheme providing only for exgratia 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."

16. In the case cited supra, the Hon'ble Supreme Court, after analysing various decisions of the Hon'ble Supreme Court, including the decision relied on by the learned counsel for the respondent Bank i.e., the State Bank of India Vs. Raj Kumar case [(2010) 11 SCC 661], has held that the claim of compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim and accordingly, directed the Bank to consider the case of the respondent therein for compassionate appointment as per the old scheme. The dictum laid down in the said case is squarely applicable to the facts of the present case.

17. The Division Bench of the Bombay High Court in Mahesh Singh Bisht case, cited supra, in an identical circumstances, after analysing various decisions of the Hon'ble Supreme Court, has finally held in paragraph No.18 as follows;

"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 the 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 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."

(Emphasis supplied)

The dictum laid down by the Division Bench of the Bombay High Court is squarely applicable to the facts of the present case. Here, in this case also, the application of the petitioner has not been rejected and insensitively kept pending for more than four years by the respondent Bank and further, he has been discriminated, when, during the same period, the respondent Bank granted compassionate appointment to several other applicants.

18. Considering the facts of this case in the light of the legal dictum enunciated in the above two cases, this Court is of the view that the petitioner cannot be deprived of the benefit of the compassionate appointment.

19. Under such circumstances, this Writ Petition is allowed and the impugned order, dated 06.08.2014, is hereby set aside. The respondents are directed to consider the application of the petitioner dated 16.02.2001 for compassionate appointment under 1997 scheme i.e., "Scheme for Appointment on Compassionate Grounds for Dependents of the Deceased Employees / Employees Retired on Medical Grounds" and provide compassionate appointment to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gcg
To

1.The Chief General Manager,
State Bank of India,
Chennai Local Head Office, "Circletop House",
16, College Lane,
Nungambakkam,
Chennai - 600 006.

2.Assistant General Manager (HR),
HR Department, LHO,
State Bank of India,
Chennai Local Head Office, "Circletop House",
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3.The Deputy General Manager
(Personal and HR),
State Bank of India,
Zonal Office,
No.86, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.S.Ravindran, Advocate SR.75914
+1cc to M/S.Row & Reddy, Advocate SR.74734

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