

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA
RAO**

WRIT PETITION No.6394 of 2013

ORDER:

The case of petitioner is that her husband was working as a messenger in the respondent No.2 Branch. He died on 26.02.2012 at the age of 52 after putting in 24 years of service. He left behind himself the petitioner and his minor son. The petitioner submitted an application on 29.06.2012 seeking her appointment on compassionate grounds. She was qualified to be appointed as messenger. But, the respondent No.1 vide his letter dated 18.09.2012 informed that the application for appointment on compassionate grounds cannot be considered and she is entitled for only ex-gratia payment in lieu of compassionate appointment. Certain terminal benefits were paid to the petitioner. She submitted another letter on 24.11.2012 seeking appointment on compassionate grounds, but not ex-gratia amount. Respondent No.1 again rejected her claim by proceedings dated 28.01.2013. The present writ petition was filed challenging the action of respondents in not providing a suitable job based on her qualification on compassionate grounds.

A counter affidavit is filed on behalf of the respondents admitting that the husband of petitioner joined as a Messenger-cum-Sweeper on 01.03.1988 in the erstwhile Rayalaseema Grameena Bank. It was

amalgamated with two other Grameena Banks with effect from 01.06.2006 in Andhra Pragathi Grameena Bank, which was newly formed. He died on 26.02.2012 after putting in 24 years of service. It is also admitted that the petitioner and her minor son are the legal heirs. The petitioner initially requested for payment of ex-gratia and accordingly, she was informed by letter dated 18.09.2012 to furnish the information in the documents stated therein. When the proformae were supplied to the petitioner, she submitted a letter on 24.11.2012 requesting for employment on compassionate grounds. A reply was given on 28.01.2013 stating that the Bank cannot consider employment on compassionate grounds and advised the petitioner to apply for ex-gratia payment. There was a scheme for employment on compassionate grounds till 2005 and as per the service regulations applicable, as on the date of death that scheme was not in vogue. The Bank formulated the scheme with effect from 01.09.2008 for payment of ex-gratia in lieu of appointment on compassionate grounds and the guidelines were communicated by Circular dated 20.01.2009. Hence, there is no provision for appointment on compassionate grounds. It was stated that the petitioner was paid amounts due to the deceased on 18.06.2012, 10.09.2012 and 03.04.2012. It was further stated that the Bank issued the letters from time-to-time in tune with the guidelines issued by the Government of India and in the absence of any scheme for providing employment on compassionate

grounds, the petitioner cannot claim appointment.

Learned counsel for the petitioner submitted that in view of decisions of the Supreme Court in **Balbir Kaur v. Steel Authority of India Ltd.**^[11] and **Canara Bank v. M.Mahesh Kumar**^[12], the petitioner is entitled for appointment on compassionate grounds.

Admittedly, the husband of petitioner died on 26.02.2012. The Bank framed the scheme with effect from 01.09.2008 providing for payment of ex-gratia in lieu of appointment on compassionate grounds and as on the date of death of the petitioner's husband, the said scheme is in operation. The Supreme Court while considering the previous cases on the point held that the scheme, which was in force at the time of the death of employee, is applicable and the subsequent circulars, if any modifying the said scheme, cannot have any retrospective effect. The observations of the Supreme Court are as follows:

“17. Applying these principles to the case in hand, as discussed earlier, the 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 8-5-1993 which was in force at that time. The appellant Bank rejected the respondent's claim on 30-6-1999 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 the 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

Circular No.154 of 1993 dated 8-5-1993 was in force. Thus, as per the judgment referred in *Jaspal Kaur* case [(2007) 9 SCC 571], 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.”

Since there is no scheme providing for appointment on compassionate grounds as on the date of death of the husband of petitioner, the Writ Petition fails and is accordingly dismissed. No order as to costs. However, it is open to the petitioner to claim ex-gratia amount, if she is entitled for the same as per the scheme applicable to her.

Miscellaneous petitions pending, if any shall stand closed.

A.RAMALINGESWARA RAO, J

30.06.2016
MVA

[\[1\]](#) (2000) 6 SCC 493

[\[2\]](#) (2015) 7 SCC 412