

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

-
WRIT PETITION No.18352 of 2012

ORDER:

The father of the petitioner, who was working as a Clerk in the third respondent's branch, died on 13.06.1997. The bank informed the mother of the petitioner on 28.06.1997 stating that two schemes are available in the event of death of any staff member, namely i) availing compassionate appointment to any one of the eligible dependents subject to the norms of the scheme and ii) full term gratuity in lieu of appointment. The second respondent issued proceedings on 07.07.1997 advising the mother of the petitioner to make an application for compassionate appointment within one year from the date of death of the employee, even if the applicant is a minor. The petitioner was a minor on the date of death of his father. Therefore, an application was made to the second respondent through the third respondent and the same was forwarded by the third respondent on 15.09.1997. The petitioner furnished the certificates of the family members issued by the Mandal Revenue Officer and no objection certificate by other members of the family. A translated copy of the legal heir certificate was directed to be produced on 20.01.1998 and the petitioner produced the same. However, the case of the petitioner was rejected on 12.06.2001 on the ground of ban on appointments. The petitioner filed W.P.No.22535 of 2001, but the same was withdrawn in the year 2003. Thereafter, certain new guidelines have come into force with effect from 27.04.2004 followed by another set of guidelines on 28.09.2007 making them applicable with effect from 31.07.2004 to the case of employees' dying after 31.07.2004. The petitioner filed W.P.No.32394 of 2011 and the same was disposed of on 28.12.2011 directing the respondents therein to consider the case of the petitioner for appointment on compassionate grounds as per the scheme applicable to the dependants of the deceased. After disposal of the said Writ Petition, the petitioner submitted a representation on 15.02.2012 along with relevant documents

seeking appointment on compassionate grounds. The said application was rejected on 07.04.2012, challenging which the present Writ Petition is filed.

A counter affidavit is filed stating that, though there is a scheme for appointment on compassionate grounds as per Circular No.190 of 1985 dated 05.11.1985, no person or dependant has a right to seek appointment and it is purely at the discretion of the bank. The bank can amend or withdraw the scheme at any time. However, a new scheme was introduced on 27.04.2004 by rescinding the earlier scheme. The earlier scheme providing for compassionate appointment/cash compensation to eligible dependants of eligible employees dying in harness, is modified to one for payment of ex-gratia to the family of employees dying in harness in lieu of appointment on compassionate grounds. The scheme was further amended with effect from 30.08.2005 and in both the schemes it was specifically stated that the earlier schemes stood rescinded. The scheme dated 30.08.2005 is further modified by Circular dated 28.09.2007 making it applicable to the cases of persons who died after 31.07.2004. In respect of the persons who died prior to 31.07.2004, the scheme communicated on 30.08.2005 is applicable. The order of rejection was passed based on the circulars applicable to the petitioner. The petitioner can claim cash compensation only in lieu of compassionate appointment within the time limit prescribed under the scheme. The counter affidavit placed reliance on the judgment dated 08.01.2007 of the Madras High Court in **Punjab National Bank v. R.Latha.**

Learned Senior Counsel Sri P.Gangaiah Naidu submits that in view of the law laid down by the Supreme Court in **Canara Bank v. M.Mahesh Kumar**^[1], the case of the petitioner is entitled to be considered as per the circular prevailing as on the date of consideration of the original application when the scheme for compassionate

appointment was available.

Learned Counsel appearing for the bank submits that when an order of rejection was passed earlier, the same was challenged in W.P.No.22535 of 2001 and for the reasons best known to the petitioner, the same was withdrawn in the year 2003. The said fact was not disclosed in the affidavit and is suppressed. He further submits that the bank passed the impugned order taking into consideration the circulars prevailing as on the date of disposal of the application and hence, the order does not warrant any interference. He relied on a decision in **State Bank of India v. Vikas Dubey**^[2].

The facts in this case are not in dispute. The petitioner's father who was working as a Clerk died on 13.06.1997 while in service. As per the scheme that was in vogue at that time, the mother of the petitioner submitted an application on 28.08.1997 seeking compassionate appointment to the petitioner. The said application was rejected on 12.06.2001 only on the ground that there was a ban in the recruitment. The said order was challenged in W.P.No.32394 of 2011 and the same was disposed of on 28.12.2011 directing the respondents therein to consider the case of the petitioner for appointment on compassionate grounds within a period of two months. Pursuant to the said order, the petitioner submitted a representation on 15.02.2012 and the same was rejected on 07.04.2012. A reading of the impugned order shows that the case was rejected since the petitioner did not come under any of the exceptional cases mentioned in the scheme provided under circular dated 28.09.2007 modifying the circular dated 30.08.2005. An identical issue was considered by the Supreme Court in **Canara Bank's** case (supra), and after going through the case law it was held as follows:

“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."

In view of the above principle laid down by the Supreme Court, the respondent bank should have considered the case of the petitioner in the light of the scheme prevailing as on the date of application, namely 28.08.1997. Since the same was not done, the impugned order is set aside and the matter is remanded to the first respondent for consideration of the case afresh in accordance with the law laid down in **Canara Bank's** case (supra), and pass appropriate orders, within a period of three months from the date of receipt of a copy of this order.

The Writ Petition is, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

23.06.2016
vs

[\[1\]](#) (2015) 7 SCC 412

[\[2\]](#) (2007) 9 SCC 579