

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CWP-13142-2015 (O&M)
Date of decision: 27.07.2017**

Rahul Sharma

....Petitioner

Versus

Canara Bank and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Namit Kumar, Advocate for the petitioner.

Mr. D.S. Nalwa, Advocate for the respondents.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has questioned the validity of the order dated 20.02.2015 (Annexure P20) by which his claim for compassionate appointment has been rejected with reference to the petitioner's representation dated 27.12.2014. Further petitioner has sought for a direction to the respondents to consider his name to appoint for the post of Clerk with all consequential benefits.

2. Petitioner's father who was a Clerk in the respondent-Bank died on 31.10.1997. At the relevant point of time, petitioner was minor and his mother was also died on 13.10.1997. Thus, petitioner's grand-father submitted application to the respondents seeking appointment to the petitioner as and when he attain major his name be considered for compassionate appointment. Respondents issued communication to the

petitioner's grand-father stating that offer of appointment to the petitioner would be considered as and when he attains major. Petitioner attained major on 25.02.2002. On 26.02.2002 he has submitted application for considering his name for compassionate appointment. Respondents instead of considering petitioner's name for compassionate appointment, issued a communication on 10.03.2005 to the extent that payment of ex-gratia lump-sum would be made available to the petitioner. Petitioner dissatisfied with the communication on 10.03.2005 submitted application to the respondents and insisting for consideration of his name for compassionate appointment instead of ex-gratia amount offered vide communication dated 10.03.2005. From the year 2005 to 2015 he was keep on approaching the respondents insisting for consideration of his name for compassionate appointment. On 20.02.2015 respondents have rejected petitioner's representation dated 27.12.2014 on the ground that petitioner has not complied the requisite format as per the scheme. It was also stated that compassionate appointment scheme was replaced by lump-sum ex-gratia scheme in terms of the Government guidelines. It was also stated that object behind the scheme of compassionate appointment or ex gratia is to meet the immediate harness in the family and so also financial difficulties faced by the dependent members of the deceased employee. Since petitioner's father died 18 years back consideration of petitioner's claim for compassionate appointment has been declined. Thus, the present petition.

3. Learned counsel for the petitioner submitted that when the petitioner's grand-father submitted application stating that petitioner is

minor as and when he attained majority he would make necessary application. In this regard there was an acceptance on behalf of the respondents in the year 2002 and it was also supported by the policy decision of the year 1993 in particularly para 2 relating to period of which employment should be sought. It would be helpful to the petitioner since there is a provision for a minor to make necessary application as and when he attains the age of major. Petitioner attained major on 25.02.2002. On the very next day he submitted his application. However same has been rejected on 10.03.2005 while holding that petitioner is entitled only ex- gratia and not appointment. Thereafter, petitioner was insisting for appointment. Ultimately respondents have taken a decision rejecting the petitioner's claim for compassionate appointment only on 20.02.2015. In terms of the policy decision of the year 1993 petitioner is entitled for compassionate appointment. In fact petitioner had submitted application on 26.02.2002 in the prescribed format. If it is not in the prescribed format they should have rejected the same in the year 2002 itself or in the alternative directing the petitioner to submit application in the prescribed format. The respondents have slept over the matter for a period of 3 years till 10.03.2005. They have offered ex-gratia payment instead of appointment. Therefore, petitioner is entitled for relief sought in the present petition. So also communication dated 20.02.2015 is highly arbitrary and contrary to the fact that petitioner has submitted his application in the prescribed format on 26.02.2002.

4. Per contra, learned counsel for the respondents submitted that petitioner has not questioned the validity of communication dated

10.03.2005 by which respondents have offered ex-gratia payment in lump-sum instead of compassionate appointment with reference to existing scheme of granting ex-gratia payment. Petitioner had the cause of action on 10.03.2005 to approach this court as and when respondents informed that petitioner is entitle to ex-gratia payment. On the other hand, he has slept over the matter by making representations to the respondents during the intervening period from 10.03.2005 to 27.12.2014 . The delay on the part of the petitioner between 2005 to 2015 cannot be condoned. Thus, petitioner has not made out a case both on merits and on the ground of delay and latches in approaching this court.

5. Heard learned counsel for the parties.

6. Object of giving compassionate appointment to one of the member of the deceased employee is to see that immediate harness is to be removed and so also financial difficulties in the family. No doubt in the present petition, scheme of 1993 provides for minor to make necessary application as and when he attains major seeking compassionate appointment. At the same time, petitioner had the cause of action in the year 2002 as and when he submitted application on 26.02.2002. No doubt, respondents slept over the matter between 2002 to 2015. At the same time, petitioner should have approached this court seeking direction to consider his application for appointment. Thereafter, petitioner had cause of action on 10.03.2005 as and when he has been offered ex-gratia payment in lump-sum. On that day, he was aware that his claim for compassionate appointment was declined. Instead of challenging communication dated

10.03.2005 to the extent of denial of compassionate appointment, petitioner keep on approaching respondents and insisting for compassionate appointment between 2005 to 2014. Thus as and when the order was passed by the respondents on 20.02.2015, he has approached this court. Having regard to the conduct of the petitioner between 2002 to 2005 in not approaching court and so also in not questioning 10.03.2005 communication and March, 2005 to February, 2015, in approaching respondents and the fact that compassionate appointment is not a fundamental right so as to assert his right to seek appointment. Further petitioner and his family members survived from 1997 to this day. Therefore, question of harness in the family at this juncture do not arise.

7. Learned counsel for the petitioner relied on the Supreme Court decision reported in 2015(5) JT 156 titled as ***Canara Bank versus M.Mahesh Kumar*** (para 14). Perusal of the para 14 do not deal with the question of delay. What has been dealt by the Supreme court is relating to interpretation of scheme of 2005 and scheme of 2014. Thus, the decision cited by learned counsel for the petitioner do not help the petitioner to condone the delay between 2005 to 2015. Supreme Court in the case of ***Union of India and another versus Shashank Goswami and another*** reported in (2012) 11 SCC 307 held as under:-

“9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone

of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right.

10.As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

Therefore, petitioner has no right to seek compassionate appointment. Accordingly, CWP stands dismissed.

8. Dismissal of this petition would not come in the way of petitioner for claiming ex-gratia payment in lump-sum as offered by the respondents

on 10.03.2005. The respondents are hereby directed to consider for extending benefit of ex-gratia payment in lump-sum to the petitioner and disburse the monetary benefits within a period of 3 months from today.

27.07.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No