

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.Nos.21303 & 31402 of 2003
and W.M.P.Nos.26459 & 38185 of 2003

C.Senthamarai

... Petitioner
in both Wps.

...Vs...

1. Indian Bank
rep. by Chairman &
Managing Director,
Rajaji Salai, Chennai 600 001.
- 2.General Manager &
Disciplinary Authority,
Circle Office,
Chennai South,
No.55, Ethiraj Salai,
Chennai 600 008.

...Respondents in both W.Ps.

Prayer in W.P.No.21303/03 : Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records on the file of the second respondent pertaining to his proceedings bearing No.Nil, dated 16.07.2003 as published in Dinamalar daily dated 16.07.2003 and quash the same and consequently, direct the respondents to consider the case of the petitioner for compassionate appointment in Indian Bank in suitable post.

Prayer in W.P.No.31402/03 : Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent pertaining to his order bearing No.Ref.CO(S):CH:VIG:DPC 325, dated 03.10.2003 and quash the same and consequently, direct the respondents to consider the case of the petitioner for compassionate appointment in Indian Bank in suitable post.

For petitioner
in both W.Ps. : Mr.N.Pragasam

For respondents
in both W.Ps. : M/s. Aiyar & Dolia

C O M M O N O R D E R

Since in both the writ petitions, the writ petitioner is one and the same and the relief sought for in both the writ petitions are inter connected and the issue is also one and the same between the parties, therefore, with the consent of both the learned counsel for the parties, both the writ petitions were heard together and are being disposed of, by this common order.

2. W.P.No.21303 of 2003 prays for issuance of a Writ of Certiorarified Mandamus, calling for records on the file of the second respondent, pertaining to his order bearing No.Ref.CO(S):CH:VIG:DPC 325, dated 03.10.2003, and quash the same and consequently, direct the respondents to consider the case of the petitioner, for compassionate appointment in Indian Bank in the suitable post.

3. W.P.No.31402 of 2003 prays for issuance of a Writ of Certiorarified Mandamus, calling for records on the file of the second respondent pertaining to his proceedings bearing No.Nil, dated 16.07.2003, as published in Dinamalar daily dated 16.07.2003 and quash the same and consequently direct the respondents to consider the case of the petitioner for compassionate appointment in Indian Bank in suitable post.

4. The husband of the petitioner, one E.Chandrasekaran, was the employee of the respondent Bank i.e., Indian Bank, as he was employed as clerk. Whiles, he attended duty till 26.10.1996 and from the next day i.e., from 27.10.1996 onwards, he did not attended duty. Without giving any leave letter or getting any authorisation, he had been continuously absent for months together and in fact, such an unauthorised absence continued for more than two years. Therefore, it seems that on 11.11.1999, the respondent Bank issued a charge sheet against the said Chandrasekaran, husband of the petitioner herein, on the ground of unauthorised absentee and all the notices issued by the bank, including the copy of the charge sheet sent to the said employee, since had been returned, the Bank, having no other option except to go for to proceed the enquiry, ex-parte. Accordingly, an ex-parte enquiry was conducted on 30.04.2002 where also, the said

employee did not appear. Therefore, the enquiry officer held that, the charges framed against him were proved. Thereafter, show cause notices were issued on 03.12.2002 and on 13.12.2002 proposing punishment of compulsory retirement on the said employee, as per clause 6(c) of the Bipartite Memorandum of Settlement dated 10.04.2002.

5. In spite of all these procedures having been adopted by the respondent Bank in concluding disciplinary proceedings, nothing was forthcoming from the employee, as he had not only been unauthorisedly absent but also not responded to any of the said notices, sent by the Bank including the final notice. Therefore, the Bank decided to issue a public notice through public advertisement, accordingly, a notice in Tamil daily in 'Dinamalar' was issued on 16.07.2003 where the following has been given:

"Shri E.Chandrasekaran, SR.No.54457, CL/SH of our Saidapet Branch, Chennai was charge sheeted on 11.11.1999 for his unauthorised absence since 27-10-1996. After giving adequate opportunity, enquiry conducted exparte on 31.05.2002 due to the non-appearance of Shri.Chandrasekaran. The Enquiry Officer held the charges as proved. No comments on the findings were submitted by him. Show cause notices dated 03.12.2002 and 13.12.2002 proposing the punishment of 'Be compulsory retired with superannuation benefits as per the clause 6(c) of the Bipartite/Memorandum of Settlement dated 10.04.2002 and dates for personal hearing, issued were returned undelivered with reason 'not found'.

Notice is hereby given to him to show cause as to why the proposed punishment of 'be compulsory retired with superannuation benefits' should not be imposed on him and to appear for personal hearing before me on 31.07.2003 at 4.30p.m. In case there is no response, it is hereby informed that the matter shall be proceeded with further without any

further notice to him in this regard.

J.M.GARG
GENERAL MANAGER &
DISCIPLINARY AUTHORITY."

6. At that juncture, challenging the said public notice dated 16.07.2003, issued by the Bank proposing the punishment of compulsory retirement against her husband, the wife, has moved the writ petition in W.P.No.21303 of 2003 with the aforesaid prayer.

7. During the pendency of the writ petition in W.P.No.21303 of 2003 since no stay has been granted by this Court, subsequently, by order dated 03.10.2003, the respondent Bank had issued the final order of punishment, against the said employee i.e., husband of the petitioner, by which, the punishment of compulsory retirement was inflicted on him, ofcourse, with superannuation benefits etc.,. The said order reads thus:

"This has reference to the Show cause notice no. CO (S)/CH/VIG/DPC 325 dated 03.12.02 and also our subsequent letter dated 11.12.2002, proposing punishment and giving an opportunity for personal hearing on 23.12.2002. The said letters were returned undelivered. You have been absenting yourself from duty since 27.10.1996. In the names of principles of natural justice, a press notice was also published on 16.07.2003 in the local Tamil newspaper 'The Dinamalar' giving yet another opportunity for personal hearing on 31.07.2003. You had again failed to present yourself for the same.

In view of the seriousness of the lapses on your part, I hereby confirm and impose on you the following punishment, proposed earlier:

"be compulsorily retired with super annuation benefits i.e. Pension and / or provident fund and gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment;"

as per provisions of clause 6(c) contained in the Memorandum of settlement dated 10.04.2002. The punishment is to take effect immediately."

8. Challenging the said order of punishment dated 03.10.2003, the second writ petition i.e., W.P.No.31402 of 2003 was filed with the aforesaid prayer.

9. I have heard Mr.N.Pragasam, learned counsel appearing for the petitioner in these writ petitions, who would submit that, the husband of the petitioner was a physically challenged person and he had already undergone a surgery unsuccessfully, with the result he got dejected.

10. Therefore, he seems to have lost interest in leading a family life with the wife and the three children. Only in that state of mind, the husband of the petitioner, suddenly left the home on 26.10.1996 and thereafter, he never turned up.

11. The petitioner even though had made enormous attempts to find out her husband, nothing succeeded in her attempts. Being a lady, the petitioner suffered a lot, to lead the family with three children, without the help of anyone, as the sole bread winner of the family i.e., her husband suddenly disappeared.

12. Only in that circumstance, since the respondent Bank had issued the public notice proposing him to impose the punishment of compulsory retirement on the employee i.e., the husband of the petitioner and if the said punishment awarded, the employee may not be treated either as dead person or medically invalidated person, with the result, the chance of getting compassionate employment either to the petitioner or to any one of her children would get defeated, therefore, challenging the said proposal of giving punishment of compulsory retirement to her husband, the petitioner moved the writ petition.

13. Learned counsel appearing for the petitioner would further submit that, during the pendency of the writ petition, even though it was submitted on behalf of the bank by the counsel, as claimed in the affidavit filed in this regard that, the bank will explore the possibility of considering the request of the petitioner for compassionate appointment, since nothing was forthcoming and in the meanwhile, the bank had proceeded further to issue the order of punishment of

compulsory retirement on the husband of the petitioner by order dated 13.12.2002, the said order had been challenged by the petitioner in the second writ petition i.e., W.P.No.31402 of 2002.

14. Learned counsel for the petitioner would further submit that, after seven years from the disappearance the death can be legally accepted as per the provisions of law and noting the said limitation period of seven years, within the said seven years period i.e., 6 years and 10 months, these orders have been passed by the respondent Bank, only to defeat the lawful claim of the petitioner for compassionate appointment. Learned counsel would further argue that, as has been agreed upon by the Bank through its counsel before the writ Court, at the time of admission of the writ petition, if the Bank had come forward to consider the request of the petitioner for compassionate appointment, there could not have been any issue. Instead, the Bank proceeded further to issue the order of punishment and therefore, the petitioner had no other option except to challenge the said order also.

15. If the husband of the petitioner was treated as dead person or medically invalidated person, then on both grounds, the petitioner or the children of the employee are entitled to get compassionate appointment. However, not treating in any of these categories, the respondent Bank, since issued the punishment of compulsory retirement on the husband of the petitioner, such benefit accrued on the petitioner's family is being defeated.

16. Learned counsel appearing for the petitioner would also submit that, the petitioner being the lady is suffering a lot for all these years, to lead the family with three children and in order to meet out this kind of contingencies, due to indigent circumstances and penurious situation, the scheme of compulsory appointment is being implemented by the employer and since the respondent Bank is a public sector bank, it must act as a model employer. Learned counsel appearing for the petitioner has also relied upon the scheme called compassionate appointment scheme in public sector banks dated 21.11.2014, the clause 11 relates to non-gazatted missing employees, reads thus:

"MISSING EMPLOYEE :

cases of missing employees are also covered under the scheme for compassionate appointment subject to the following conditions:-

11.1. A request to grant the benefit of compassionate appointment can be considered only after a lapse

of at least 2 years from the date from which the Employee has been missing provided that:

(i) an FIR to this effect has been lodged with the police,

(ii) the missing person is not traceable, and

(iii) the competent authority feels that the case is genuine;

11.2. This benefit will not be applicable to the case of an Employee:-

(i) who had less than two years to retire on the date from which he has been missing; or

(ii) who is suspected to have committed fraud, or suspected to have joined any terrorist organisation or suspected to have gone abroad.

11.3. Compassionate appointment in the case of a missing employee also would not be a matter of right as in the case of others as it will be subject to fulfilment of all the conditions, including the availability of vacancy, laid down for such appointment under the scheme;

11.4. While considering such a request, the results of the police investigation should also be taken into account; and

11.5. A decision on any such request for compassionate appointment should be taken only at the level of the Chairman & Managing Director of the bank." सत्यमेव जयते

17. By relying upon the said scheme, the learned counsel would further argue that, even for a missing employee, the benefit of compassionate appointment can very well be given and in this case, since the petitioner's husband admittedly a missing employee, the benefit of compassionate appointment can very well be given to the legal heir of the employee i.e., either to the petitioner or her children and therefore, in this regard, the prayer sought for by the petitioner can very well be appreciated and be considered to be granted.

18. Per contra, learned standing counsel appearing for the respondent Bank would submit that, it is an admitted case on the part of the petitioner that,

her husband had been unauthorisedly absent from 26.10.1996. His unauthorised absence, in the service of the employer has not been for few days or few months, but it turned around to years. Since no clue had come to the Bank about the whereabouts of the employee and he had been continuously absent for years together, the respondent Bank cannot wait endlessly without taking any action. Therefore, the Bank initiated disciplinary proceedings against the employee and all the formalities for a fair hearing in conducting the disciplinary proceedings had been followed scrupulously by the Bank.

19. Learned counsel appearing for the respondent Bank would further argue that, when notice had been sent to the employee's address, it had not been served because of his non availability or disappearance. However, the enquiry officer was appointed for conducting domestic enquiry, he fixed the date for domestic enquiry, for which, notice also had been sent, since the employee did not respond, ex-parte enquiry was conducted. The enquiry officer had given the report stating that the charges framed against the employee was proved.

20. Thereafter, the second show cause notice was also issued and since there was no response, as the same was not served on the employee because of his unauthorised absence, the bank had no other option except to go for a public notice, accordingly, they decided to issue public notice on 16.07.2003 and therefore, the said notice, which is impugned in the writ petition had been issued by the Bank.

21. Learned counsel would further argue that, challenging the said public notice, the wife of the employee had filed another writ petition. It is the stand of the respondent bank with regard to the averment made by the petitioner side that, during the admission or pendency of the first writ petition, there had been an assurance on the side of the Bank counsel to explore the possibility to consider the case of the petitioner to give compassionate appointment before this court, is concerned, the same has been denied by the Bank and in this regard, the learned Standing counsel would rely upon the averments made in the paragraph 17 of the counter affidavit filed by the petitioner which reads thus:

17) With regard to the averments contained in Para 16 of the affidavit is concerned, it is a fact that this respondent took notice when W.P.No.21303 of 2003 was moved for admission. At no point of time did this Hon'ble Court ask our counsel to ensure that the Bank to provide a job to

the petitioner on compassionate grounds. This Hon'ble Court directed us to get instructions and to file a counter affidavit in W.P.No.21303 of 2003. Therefore, the averments to the contrary are emphatically denied and the petitioner is strict proof of the same.

22. Learned Standing Counsel would also argue that, since no stay had been granted, as this Court did not find any fault with the procedure adopted by the respondent Bank in concluding the disciplinary proceedings initiated against the employee, the Bank had issued the final order of punishment, as already proposed through the second show cause notice and such punishment was awarded against the employee by order dated 03.10.2003. Learned Standing Counsel would further submit that, the bank took a very lenient view that is the reason why, even though the bank could have inflicted major punishment of removal of service, taking into account the family situation of the employee, had inflicted only the punishment of compulsory retirement, ofcourse, with all other attendant benefits i.e., pension, provident fund and gratuity as would be payable otherwise under the Service Rules and Regulations.

23. Therefore, the learned counsel for the respondent Bank would submit that, as far as the said Bank is concerned, it has acted in a fair manner and has concluded the disciplinary proceedings by adopting procedural formalities under law. The compulsory retirement of punishment even though has been challenged in the second writ petition, the petitioner has received all the attendant benefits like Provident Fund, Gratuity of the employee including the pension and she is continuously getting the same. When that being so, the petitioner cannot turn around and say that the orders passed by the Bank in awarding the punishment of compulsory retirement on her husband was not proper. Therefore, the petitioner is not entitled to get any relief as has been prayed for in this writ petition.

24. I have considered the said rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

25. It is an admitted fact that the husband of the petitioner, who was the employee of the respondent Bank, was unauthorisedly absent from 26.06.1996, as admitted, he left home or disappeared from 26.06.1996.

For continuous unauthorised absence, the Bank had initiated disciplinary proceedings, where all the formalities had been complied with, as due notices had been given to the employee, exparte disciplinary enquiry was conducted and it was concluded that the charges framed against the employee was proved and thereafter, the second show cause notice was also given proposing to impose punishment and thereafter, the punishment was imposed for which, further notice was also given to the petitioner. On perusal of these documents and after considering the procedures followed by the Bank, this Court does not find any fault in the procedure adopted by the Bank in initiating, conducting and concluding the disciplinary proceedings against the employee.

26. When that being the position, the petitioner being the wife of the employee cannot make any successful attempt to challenge either the public notice dated 16.05.2003 or on the order of punishment of compulsory retirement inflicted on her husband, by order dated 03.10.2003.

27. Therefore, this Court is of the view that in so far as the sustainability point made against the impugned notice as well as the impugned order of punishment is concerned, both the orders do not suffer with any procedural infirmity and therefore, they are sustained.

28. In so far as the other plea made by the petitioner's side is concerned, that the petitioner is entitled to get the benefits of compassionate appointment by treating the employment of her husband either as a death person or as a medically invalidated person is concerned, since the disciplinary proceedings initiated against the employee ended in punishment and the said punishment also to be sustained, the said plea raised by the petitioner seeking for compassionate appointment, on the ground of death of an employee or medically invalidated, also could not be sustained hence the said plea cannot be accepted by this Court.

29. However, the learned counsel appearing for the petitioner has brought to the notice of this Court about the compassionate appointment Scheme in Public Sector Banks, dated 21.11.2014 wherein, where under the clause 11, in the heading "Missing employee", some benefits have been conferred on the legal heir of the missing employee in the name of compassionate appointment of course, with certain conditions. Since, the learned counsel appearing for the petitioner has very much relied upon the said clause of the Scheme, and seek for

compassionate appointment, this Court is of the view that, invoking the said provision i.e., clause 11 of the scheme, it is open to the petitioner or her children, after they become major and eligible, to seek for compassionate appointment on the ground the employee being a missing person.

30. If such an application is made, it is for the respondent bank to decide it on merits and in accordance with law by taking into account the overall situation of the family of the petitioner like the indigent circumstance and penurious situation of the family and if they still in need of the compassionate appointment and based on which, the appropriate authority, i.e., the Chairman and Managing Director of the respondent bank can take a pragmatic decision.

31. In such view of the matter, this Court is not inclined to accept the plea of the petitioner in both the writ petitions challenging the impugned orders respectively. Accordingly, these writ petitions are failed and hence, they are deserved to be dismissed. Accordingly, they are dismissed. However, liberty is given to the petitioner to make an application for seeking compassionate appointment under clause 11 of the Scheme for Public Sector Banks, dated 21.11.2014, to the respondent bank, and if such an application is made, the same shall not be rejected, on the only ground of delayed application. In all other aspects, it is open to the respondent bank to decide the said application on merits and pass orders thereon in accordance with law.

With these observations these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

smi/mbi

To

1.The Chairman & Managing Director, Indian Bank
Rajaji Salai, Chennai 600 001.

2.General Manager & Disciplinary Authority,
Circle Office, Chennai South,
No.55, Ethiraj Salai, Chennai 600 008.

+1cc to Mr.M.Rangarajalu, Advocate SR.No. 60231

W.P.Nos.21303 & 31402 of 2003