

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.50 of 2018

In
Civil Writ Jurisdiction Case No.19033 of 2016

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Abha Sinha, wife of Late Amritesh Chandra Singh, residing at B-6, Patrakar Nagar, Near Heart Hospital, P.S.- Patrakar Nagar, District- Patna.

... .. Writ Petitioner/Appellant

Versus

1. The State Bank of Hyderabad now merged with State Bank of India, D.G.M. Zonal Office, New Delhi-11002.
2. The Assistant General Manager (Personnel) State Bank of Hyderabad Region- II- Vijay (Vijaywada), 64-9.2 K.S. Complex, NTR Circle M.G. Road, Patamatalanka Vijaywada 520010.
3. The Chief Manager (S.B.H.) PPG Department, Hyderabad- 500001.
4. The Chief Manager (S.B.H.), H.R.M.S. Cell Hyderabad- 500001.
5. The Branch Manager, State Bank of Hyderabad, Patna Branch Budh Marg, Patna.

... .. Respondents/Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Birmani Kumar, Advocate
For the State Bank of India	:	Mr. Anjani Kumar Mishra, Advocate
	:	Mr. Ambarish Bhardwaj, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-03-2019

Heard Sri Birmani Kumar, learned counsel for the appellant and Sri Anjani Kumar Mishra, learned counsel for the State Bank of Hyderabad which has now merged with State Bank of India.

The appellant is aggrieved as her claim for compassionate appointment has been rejected by the Bank on 30th July, 2015 and a challenge raised to the same before the



learned Single Judge has met the same fate. The impugned judgment dated 27.11.2017 of the learned Single Judge records that since the appellant has received an ex-gratia amount of Rs.12,00,000/-, then a claim of compassionate appointment is an after thought, and the same cannot be availed of through the extra-ordinary jurisdiction under Article 226 of the Constitution of India.

Learned counsel for the appellant contends that the appellant had a right to be considered for compassionate appointment keeping in view the scheme which was applicable as on the date of the death of the appellant's husband. The appellant's husband died on 13th of December, 2014 while working in the Bank. The Scheme which was applicable prior to 2014 is reflected in the Circular dated 30th August, 2011 which is extracted hereinunder:-

“STATE BANK OF HYDERABAD
(ASSOCIATE OF THE STATE BANK OF INDIA)
HEAD OFFICE, GUNFOUNDRY,
HYDERABAD 500001

Serial No.585
Circular No. PER/2011-12/53
DEPT: PERSONNEL DEPT

Date: 30.08.2011

ALL BRANCHES AND
ADMINISTRATIVE OFFICES.

Subject: SCHEME FOR APPOINTMENT ON
COMPASSIONATE GROUNDS IN
EXCEPTIONAL CASES IN STATE BANK
OF HYDERABAD



The Executive Committee has accorded approval at its meeting held on 26.08.2011 a scheme for appointment on compassionate grounds in exceptional cases. The “SBH Scheme for Appointment on Compassionate Grounds in Exceptional Cases” shall be effective from 12.12.2005 the date on which Scheme of payment of ex-gratia lumpsum amount replaced the earlier scheme of compassionate appointment.

The details of the scheme are annexed for your information and necessary action. The scheme will be applicable in the following cases:

i) Employees dying while performing his official duty, as a result of violence, terrorism, robbery or dacoity

ii) Employees dying within five years of his first appointment or before reaching the age of 30 years, which ever is later, leaving a dependent spouse and/or minor children.

The cases of death related to the period prior to 12.12.2005 will not be considered for compassionate appointment under the scheme.

The cases where the dependents have already been paid ex-gratia lumpsum amount will not be considered for compassionate appointment under the scheme.

Application for employment under the scheme in respect of past eligible cases of death on and after 12.12.2005 and upto 31.08.2011 shall be obtained by the branch/office where the deceased employee had last worked. The branch/office shall immediately contact the family of the deceased employee and provide them prescribed applications and complete all necessary formalities in this regard. Any laxity/delay in communicating this scheme to family of the deceased employee will be viewed seriously.



The time limit for last date of submission of applications by the dependents/ family in respect of past cases is 31st Dec 2011.

The time limit for submission of applications by the dependents/ family in respect of death cases on and after the date of circular will be 6 months from the date of death of the employee.

Please bring the contents of the circular to the notice of all the members of staff working at your Branch/Office.

Sd/
GENERAL MANGER
(OPERATIONS)”

The aforesaid Scheme came to be revised in the year 2014 itself and before the death of the employee. The said revised Scheme of the year 2014 is extracted hereinunder for ready reference:-

“SCHEME OF COMPASSIONATE APPOINTMENT ON COMPASSIONATE GROUNDS IN EXCEPTIONAL CASES IN STATE BANK OF HYDERABAD

1. NAME: “SBH Scheme for Compassionate Appointment on Compassionate Grounds in Exceptional Cases- 2014”.

2. BACKGROUND:

In compliance with the directions received from Government of India, Bank introduced “Scheme for Payment of Ex-gratia lumpsum amount” w.e.f. 12.12.2005 in lieu of Compassionate Appointments. Subsequently, Indian Banks’ Association came out with another scheme for providing compassionate appointment in the following exceptional cases and



our Bank also adopted the same w.e.f. 12.12.2005 as a parallel scheme for payment of Ex-gratia lumpsum amount.

a) Where an employee died while performing official duty, as a result of violence, terrorism, robbery or dacoity; or

b) Where an employee died within five years of first appointment or before reaching the age of 30 years, whichever is later, leaving a dependent spouse and/or minor children.

3. OBJECTIVE OF THE NEW SCHEME-2014

In subsequent developments, GOI has advised that all Public Sector Banks can have both the options i.e. compassionate appointment or payment of ex-gratia lumpsum amount. Accordingly, the Bank has decided to continue the scheme for compassionate appointment in exceptional circumstances with certain modifications in terms and conditions. The whole object of offering compassionate employment in such exceptional cases is to enable the family to tide over the sudden crisis due to death of bread winner. The mere death of an employee in harness does not entitle his family to such a source of livelihood. The object is to offer compassionate appointment only when the Bank is satisfied that the financial condition of the family is such that but for the provision of employment the family will not be able to meet the crisis.

4. DEFINITIONS:

Unless the context otherwise requires in the Scheme.

- i. "Bank" mean- State Bank of Hyderabad
- ii. "Board" means- Board of Directors or the Executive Committee of the Board of Directors of State Bank of Hyderabad.
- iii. "Managing Director" of the Bank means- the



Managing Director of the State Bank of Hyderabad.”

A perusal of Clause 3 of the revised Scheme would indicate that apart from payment of ex-gratia lump sum amount a claim of compassionate appointment can also be considered. The learned Single Judge has nowhere referred to the existence of such Scheme and its applicability nor has the Bank while passing the order dated 30th July, 2015 taken into consideration the exceptional circumstances in which the appellant, who is a young widow, had claimed compassionate appointment.

The right to claim compassionate appointment arises out of the Scheme of the respondent-Bank itself. As to what is a right has been described by the Apex Court in the case of **Mr. ‘X’ Versus Hospital ‘Z’, reported in (1998) 8 SCC 296**, paragraph 15, which is extracted hereinunder:-

15. “Right” is an interest recognised and protected by moral or legal rules. It is an interest the violation of which would be a legal wrong. Respect for such interest would be a legal duty. That is how Salmond has defined “right”. In order, therefore, that an interest becomes the subject of a legal right, it has to have not merely legal protection but also legal recognition. The elements of a “legal right” are that the “right” is vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act or forbear from acting in a manner so as to prevent



the violation of the right. If, therefore, there is a legal right vested in a person, the latter can seek its protection against a person who is bound by a corresponding duty not to violate that right.”

The right to be considered for compassionate appointment, therefore, is available to the appellant and hence the corresponding obligation does exist on the Bank to consider the said request of the appellant in accordance with the Scheme which is applicable. We do not find the Bank to have applied its mind to the circumstances which the appellant claims to be exceptional for extension of such benefit apart from the payment of ex-gratia which she has received. The learned Single Judge has treated the receipt of ex-gratia payment in a lump sum manner to be a final settlement by the appellant and has proceeded to dismiss the writ petition.

We are unable to agree with the aforesaid conclusion drawn for the reasons already stated above.

Consequently, the impugned judgement dated 27.11.2017 and the order of the Bank dated 30th July, 2015 are set aside with a direction to the concerned competent authority to proceed to consider the claim of the appellant in the light of the observations made hereinabove and the Scheme which may be applicable for grant of compassionate appointment or



otherwise within a period of three months from the date of receipt of a certified copy of the order before the said authority.

The appeal is, accordingly, allowed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06.03.2019
Transmission Date	

