

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4131 OF 2017

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| 1. Ravindra S/o. Gorakhrao Shinde,
Age-56 years, Occu-Retired,
R/o. Pimpalner, Tq. Sakri,
Dist. Dhule | ...PETITIONERS |
| 2. Jagdish S/o. Ravindra Shinde,
Age-Major, Occu-Nil,
R/o. Pimpalner, Tq. Sakri,
Dist. Dhule | |

VERSUS

- | | |
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| 1. The Union Bank of India,
[Govt. Of India undertaking]
Through: Assistant General Manager [HR],
M.P.R.D. Central Office, Mumbai | ...RESPONDENTS |
| 2. The Branch Manager,
Union Bank of India,
Branch Pimpalner, Tq. Sakri,
Dist. Dhule | |

Mr. Mahesh S. Deshmukh, Advocate for the petitioners
Mr. Sharad V. Natu, Advocate for respondent No.2

**CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.**

DATE : 21-08-2019

ORAL JUDGMENT: [PER: SUNIL P. DESHMUKH, J.]

. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally by consent at length.

2. A few indisputed facts are that petitioner No.1 had been employed by respondent bank as Class-IV servant working as *Daftari*. He was employed in 1983. He continued to work till 2015. There is also no dispute on that the petitioner No.1's health condition suffered. Under the circumstances, he tendered an application pursuant to policy of the bank under staff circular bearing No. 6164 dated 19-01-2015 providing for appointment of dependent family member, if an employee appointed on regular basis against a permanent vacancy dies or retires on medical grounds due to incapacitation before reaching age of 55 years.

3. The petitioner No. 1 under application dated 14-03-2015 had referred to that he had not been keeping good health due to heart disease, diabetes and hyper tension and had referred to checkup by hospitals. He had, thus, requested for voluntary retirement in terms of the Union Bank of India (Employees') Pension Regulations, 1995 with a further request to appoint his son Jagdish-petitioner No. 2 herein on compassionate ground in terms of aforesaid staff circular No. 6164.

4. Aforesaid application had been forwarded by the Manager of respondent No. 2 to the Regional Office, Nashik. The bank it appears to have accepted voluntary retirement of petitioner No. 1 with effect from 16-06-2015, referring to that it was after completion of necessary formalities and verification of record. Petitioner No. 1 had been purportedly relieved under a

communication dated 16-06-2015 effective from even date.

5. It appears that there had been internal correspondence among authorities from branch, regional and main offices. Thereunder, it appears that in a communication dated 29-10-2015 of Asst. General Manager (HR), he had referred to that staff circular bearing No. 6164 dated 19-01-2015 is to the effect that staff member who retires on medical ground due to incapacitation before reaching age of 55 years is required to forward a certificate from duly appointed medical board in a government medical college or government district head quarter hospitals/ panel of doctors nominated by the bank with specific recommendation of the concerned branch Manager and the certificates so produced would have to be vetted by bank's medical officer.

6. It appears that in furtherance of communication dated 29-10-2015 bank had referred the case of petitioner No. 1 for medical check up since compassionate appointment of his dependent had been sought due to total incapacitation. Certificate had been issued about invalidation on medical grounds on 02-03-2016.

7. Thereafter, however, communication dated 16-04-2016 had been issued by respondent No.1 rejecting request of petitioner No. 1 for appointment of his son on compassionate ground referring to that scheme of compassionate appointment under staff circular No. 6164 dated 19-01-2015 applies to staff member who retires on

medical grounds due to incapacitation before reaching age of 55 years and while petitioner No. 1 had completed 55 years of age on 16-06-2015, hence his request for compassionate appointment in terms of staff circular would not be considered. Thus, the petitioner is before this court challenging propriety, legality and validity of the same.

8. In the response to the writ petition, the bank had referred to that bank had accepted application of petitioner No. 1 for voluntary retirement with effect from 16-06-2015 after completion of necessary formalities and verification of record. Rejection of claim of petitioner No. 1 for appointment of his son Jagdish-petitioner No. 2 was justified stating that the application would not be satisfying requirements mentioned in staff circular No. 6164. It was referred to that request of petitioner No. 1 for voluntary retirement was accepted effective from 16-06-2015 on completion of 55 years of age. It has further been referred to that an application for compassionate appointment under staff circular could be considered only if the employee retires on medical ground due to incapacitation before reaching age of 55 years as referred to in the impugned communication.

9. Petitioner No. 1 sought retirement under an application dated 14-03-2015. Petitioner No. 1 had specifically referred to that he is seeking retirement on medical grounds and further that in view of the same his son be appointed referring to the staff circular No. 6164. Relevant term under the same reads thus:

"A. (i) The Scheme is applicable to a 'dependent family member' of an employee appointed on regular basis against permanent vacancy who dies while in service or retires on medical grounds due to incapacitation before reaching the age of 55 years."

10. In present matter, it emerges that application for retirement on medical grounds had been made well before reaching the age of 55 years, having regard to undisputed date of birth of the petitioner being 08-06-1960. The bank purports to contend that the application dated 14-03-2015 of petitioner No.1 had been accepted with effect from 16-06-2015.

11. Aforesaid apart it is undeniable position that request of the petitioner to have his son appointed on compassionate ground with reference to staff circular No. 6164 (supra) had been forwarded for consideration on 29-10-2015 well after 16-06-2015.

12. It appears that after petitioner No. 1's case had been referred to medical board and medical board had certified incapacitation on medical grounds. In the circumstances, taking into account that petitioner No. 1 had been working as Class-IV servant and while he had made an application in English as guided had specifically indeed referred to that his application is invoking staff circular bearing No. 6164 dated 19-01-2015. It may also be considered that the application for appointment of his son had been

made having regard to the said circular soon after the said circular had been issued.

13. It emerges that petitioner No. 1 indeed has suffered health problem and has been certified so by medical board as required under the circular dated 19-01-2015.

14. Process had been undertaken after application had been forwarded on 29-10-2015 and the result emerges that petitioner No. 1 had been certified to be incapacitated due to medical problems.

15. Perusal of impugned communication dated 16-04-2016 would reveal that pedantic approach is being adopted in respect of the application disregarding the past facts and circumstances. It is not the case that petitioner No. 1 had not sought retirement on medical grounds before reaching 55 years of age. Petitioners' application was being processed even after 16-06-2015, as acceptance of voluntary retirement had been subsequent to age of 55 years is an indication of that bank was considering application of petitioner dated 14-03-2015 to be an application pursuant to circular bearing No. 6164 seeking retirement on medical grounds which contains request for appointment of his son. The application appears to have been treated accordingly and thus further process had been undertaken retiring the petitioner to medical ground.

16. Genuineness of the reason for voluntary retirement had

not been doubted and it stands fortified with the further developments beyond the date of contended acceptance of retirement of petitioner no.1. The authenticity and genuineness of request had not been questioned. Besides, the matters of compassionate appointment are required to be considered with greater sympathy by applying relaxed standards. Pedantic approach shall not be let to work against the request under undoubtful circumstances.

17. Apart from that, the circular though does not appear obligate a decision on application for voluntary retirement for the same to be effective nor any time limit has been set out therefor under concerned circular. In the circumstances while in this case, the voluntary retirement application has been purportedly accepted a few days beyond attaining of 55 years age, petitioner can seldom be fastened on with liability incurred on a belated decision. Moreover, the events which have occurred post purported acceptance of retirement of petitioner no. 1, are suggestive and indicative of that the petitioners' request to have appointment on compassionate ground was being considered, however, the impugned communication has truncated the same abruptly. The cumulative effect of the circumstances, situation and position renders the approach by authorities to be too technical on the reasons for which the petitioners are not at all responsible. In the circumstances, the impugned communication is rendered arbitrary, capricious and untenable.

18. In the circumstances, the petition succeeds and impugned communication dated 16-04-2016 stands quashed and respondents are directed to consider petitioner No.1's application for appointment of petitioner No. 2 on compassionate ground.

19. Rule made absolute accordingly. Writ petition is disposed of. No costs.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]