

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

WRIT PETITION NO. 4011 OF 2017

1. Siddharth s/o Dushyant Sandanshive
Age - 25 years, Occup : Education,
R/o At post Pilode, Tq. Amalner,
District : Jalgaon .. Petitioner

versus

1. The Union of India,
Ministry and Finance,
Through Secretary,
Room no. 46, North Block,
New Delhi - 110 001
2. The General Manager,
Union Bank of India, Central Office,
Human Resources Management
Department, Manpower Planning
& Recruitment Division, 8th Floor,
Union Bank of Bhavan, 239,
Vdhan Bhavan Marg, Nariman Point,
Mumbai - 400 021
3. The Branch Manager,
Union Bank of India,
Branch Kandari, Tq. Bhusaval,
District : Jalgaon .. Respondents

Mr Suresh P. Salgar, Advocate for petitioner
Mr A. B. Dhongde, Advocate for respondent no.1
Mr S. V. Natu, Advocate for respondents no. 2 and 3

CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ.

DATE : 13th June, 2019

Oral Judgment : (Per : Sunil P. Deshmukh, J.)

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties by consent finally.
2. Petitioner is before this court being aggrieved by a communication dated 14-10-2016 issued to him by respondents no. 2 and 3 reading thus ;

" Your Application for Ex-gratia in Lieu of Compassionate Ground.

With reference to your application dated 21/06/2012 on the captioned subject, we have to inform you that the matter was placed before the Competent Authority and in terms of the Government of India guidelines and as per the Scheme, the eligibility for ex-gratia in lieu of compassionate appointment, among other things is the satisfactory service record of the deceased employee. Hence, taking into account the unsatisfactory record of Late Shri Dushyant D. Sandanshiv, your request for compassionate appointment has not been considered favourably by the Bank. "

which, according to respondents no. 2 and 3, carries an inadvertent error since what was sought to be communicated is that request for ex-gratia lieu of compassionate appointment is refused and not the request for compassionate appointment. Thus, communication misses out on " ex-gratia in lieu of compassionate appointment ".

3. Learned counsel for respondents no. 2 and 3 pointed out corrected communication dated 21-10-2016 (Annexure R-2) to affidavit in reply (writ petition paper book running page 57). Learned counsel for petitioner, however, complains that said communication had not been sent to petitioner.

4. Be that as it may. Factual position about refusal to pay ex-gratia in lieu of compassionate appointment is not disputed.

5. The background on which the matter will have to be viewed appears to be, petitioner's father Dushyant Sandanshiv had been appointed as class IV employee in respondent bank in 1988. During the period of employment, Dushyant died on 03-02-2012. Upon his death, son - the petitioner submitted a request in June, 2012 for appointment on compassionate ground. His said request had been declined in 2012 itself by the bank albeit, learned counsel for petitioner contends that refusal had not been communicated to the petitioner at all and what has been received by him is straight-away impugned communication dated 14-10-2016. In substance, contention of the petitioner appears to be that he had been pressing for compassionate appointment.

6. Revised scheme for payment of ex-gratia amount in lieu of appointment on compassionate ground and appointment of dependents of deceased employees on compassionate ground appears to have been issued by respondents no. 2 and 3 on 08-09-2007. Relevant clauses thereunder read as under : -

" 2. Objective.

It is the principles laid down by the Supreme Court, in its judgment in Shri U. K. Nagpal vs. State of Haryana and others, that the object of any scheme for appointment on compassionate grounds is not to give a member of the deceased employee's family a post, much less a post for a post held by the deceased, but to provide relief to the family of a deceased employee to tide over the sudden crisis brought about by his/her premature death. The relief envisaged could be of a nature which would provide the distressed family immediate succour and financial assistance to recover from the unexpected deprivation of the income of the sole bread-winner of the family.

Keeping this in perspective and with a view to bring about a balance between the business objectives of banks and their social obligations towards the families of employees dying in harness, a Scheme is being proposed for grant of ex-gratia amount to the family of the deceased employee in lieu of appointment on compassionate grounds with certain exceptions as provided under para 4 (B).

4(B). the Scheme of Compassionate Appointment will be applicable in following cases : -

(i) *Employee dying while performing his official duty, as a result of violence, terrorism, robbery or dacoity;*

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

(e) While dealing with proposals for grant of ex-gratia as above, in cases where disciplinary action had been taken / was pending against the employee dying in harness or the deceased employee was involved in financial irregularities, embezzlement of funds, committing frauds etc., the Bank will continue to abide by the guidelines issued by the Government of India requiring consideration and decision in each case by the Board of the Bank.

(8) The ex-gratia relief / compassionate appointment under the above Scheme is not an entitlement but may be granted at the sole discretion of the Bank looking into the financial conditions of the family and in deserving and eligible cases only. "

7. Learned counsel for petitioner submits that having regard to relevant clauses of the scheme reproduced above, it would not be disputed that petitioner is qualified and eligible for appointment on compassionate ground in respondent – bank, however, under an erroneous and perfunctory approach his legitimate request has been turned down and trampled upon. He goes on to submit that even otherwise impugned communication depicts a very terse and cryptic

expression has been used while turning down the request i. e. " unsatisfactory service. " He submits that nothing can be made out from the same and petitioner's efforts to have details about the same have not been responded to. In the circumstances, learned counsel for petitioner submits that the object and purpose underlying the scheme of compassionate appointments is obfuscated and even the guidelines by Government of India which have been referred to under the scheme as would be seen have not been properly followed nor those have been supplied to the petitioner. He submits that this is an indication that vital aspects involved in the matter are being kept back not only from the petitioner but from the proceedings in present writ petition since the Government of India guidelines have not been made available.

8. About aforesaid, learned counsel submits that having regard to relevant clauses of the scheme reproduced hereinabove particularly sub-clause (e) of clause 5, it reveals that grant of ex-gratia would be subject to considerations of any disciplinary action being taken against the employee dying in harness or had been involved in financial irregularities, embezzlement of funds, committing frauds etc. He submits that said clause is inapplicable in present case

since petitioner's father was working as a peon and would not have any access to commission of any irregularities or embezzlement or fraud. In the circumstances, on the basis of sub clause (e) of clause (5) of the scheme, refusal to appointment on compassionate ground or grant of ex-gratia evinces a casual and perfunctory approach while a compassionate and sympathetic approach is a must. He, therefore, urges to allow writ petition.

9. On the other hand Mr S. V. Natu, learned counsel appearing on behalf of respondents no. 2 and 3 submits that petitioner had been communicated refusal to have appointment on compassionate ground long back in 2012 since dependents of deceased employee Dushyant Sandanshiv were not eligible for such an appointment having regard to criteria prescribed under the scheme dated 08-09-2007. He submits that communications were issued on 08-06-2012 and 17-06-2012 and refers to the copies of the same annexed to the affidavit in reply. According to Mr Natu, one of the two communications had definitely reached the destination as can be seen from the receipt of the same from postal department, containing petitioner's grand mother's signature. He submits that the communication impugned in present petition is about

ex-gratia payment containing an inadvertent error and inadvertent mistake and on realization of the same, further communication had been issued to petitioner on 21-10-2016 (annexure R-2).

10. He submits that in terms of clause 5(e) of the scheme since service record of petitioner father had not been satisfactory, impugned communication is difficult to be faulted with.

11. He further passingly refers to earlier communication about refusal to have appointment on compassionate ground would tantamount to suppression since petitioner keeps away said vital information from this court.

12. Thus, indisputable position appears to be that petitioner's father had been working in bank since 1988 to 2012 as a peon or for that matter as a class IV category employee. After his death, pursuant to the scheme, a claim had been lodged by petitioner for appointment on compassion which is stated to have been refused twice in 2012 referring to pages 54, 55 and 56 of the paper-book of writ petition. While page 56 is a acknowledgement receipt of postal department, it may be worthwhile to refer to that, for a long

time thereafter, petitioner had not moved nor any communication from respondents had been issued to him. However, the bank had purportedly issued impugned communication in 2016 purportedly referring the same to be in response to application of petitioner dated 21-06-2012. Perusal of said communication would evince that the matter is stated to have been considered in terms of Government of India guidelines as per the scheme and reason for declining ex-gratia in lieu of appointment on compassionate ground. Said communication read with clause 5(e) of the scheme would show that said clause does not refer to requirement of satisfactory service record for the instances which have been referred to in the affidavit in reply. It refers to financial irregularities, embezzlement, fraud and other events on those basis. Affidavit in reply does not disclose allegation of any of such type had been made against petitioner's father nor it appears to be case of respondents no. 2 and 3 that any disciplinary action had been contemplated or taken against deceased father of petitioner with reference to any such allegations.

13. In the circumstances, scenario is that there is an application for appointment on compassionate ground in

2012, it is being claimed that the same has been declined in 2012 and thereafter impugned communication dated 14-10-2016 had been issued. Affidavit-in-reply and the communication impugned apparently do not seem to be congruous with clause 5(e) of the scheme and while the Government of India guidelines are not made available, it is difficult to approve impugned communication of refusal entailing reconsideration of petitioner's claim afresh at the end of the bank.

14. We, therefore, set aside impugned communication dated 14-10-2016 and direct respondents no. 2 and 3 to reconsider application of the petitioner for ex-gratia in lieu of compassionate appointment in accordance with the scheme and the Government of India guidelines.

15. Rule made absolute in aforesaid terms.

16. Writ petition stands accordingly disposed of.

S. M. GAVHANE,
JUDGE

SUNIL P. DESHMUKH
JUDGE