

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.07.2019

Delivered on : 20.08.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.3271 of 2018

Mrs.Poongodi

...Petitioner

vs.

- 1.The Chief General Manager,
State Bank of India,
Chennai Local Head Office,
"Circletop House", 16,
College Lane, Nungambakkam,
Chennai - 600 006.
- 2.The Assistant General Manager (HR),
HR Department, State Bank of India,
Chennai Local Head Office,
"Circletop House", Post Box No.737,
16, College Lane, Nungambakkam,
Chennai - 600 006.
- 3.The Deputy General Manager,
(Personal and HR),
State Bank of India, Zonal Office,
No.86, Rajaji Salai, Chennai - 600 001.

...Respondents

Petition 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 culminating in his impugned communication bearing HR/LAW/2926, dated 27.12.2013, rejecting the petitioner's claim for compassionate appointment upon the demise of her father Late Mr.M.Poongavanam, who was serving as a Messenger in the Respondent Bank, quash the same and direct the respondents to provide compassionate appointment to the petitioner in the respondent Bank within a time frame to be fixed by this Hon'ble Court taking into account the order

dated 22.12.2016 passed by this Court in a similar case in W.P.No.24499 of 2014.

For Petitioner .. Mr.Arun Anbumani for
Mr.K.Manikanan

For Respondents .. Mr.S.Ravindran,SC, for
Mr.K.Chandrasekaran

ORDER

The petitioner's father was employed as a Messenger in the respondent bank, at Tiruvannamalai Branch. After serving for a period of 17 years, the petitioner's father died while in service, on 28.09.2000. At the time of the petitioner's father's demise, the petitioner's mother was 50 years old, the petitioner was 20 years and her younger sister was aged about 16 years. Since the family was robbed off the only bread winner due to sudden death of the petitioner's father, the family was placed in an indigent circumstance and was not able to make both ends meet.

2.In these circumstances, an application was made on 14.02.2001, seeking for appointment on compassionate ground. The appointment was sought against a Clerical Assistant in the respondent Bank under the then prevalent Scheme. At that time, when the application was submitted on 14.02.2001, all necessary documents like legal heir certificate, death certificate and other relevant particulars were enclosed for consideration of the bank. Thereafter, the petitioner was directed to wait till a final decision was taken by the bank.

3.According to the petitioner, in pursuance of her application made in 2001, she has been repeatedly visiting the office of the respondent bank at Thiruvannamalai Branch and every time when the family members approached the bank, they were informed that correspondences were going on between the officials of the bank and as soon as a decision is taken, the same will be communicated to them. In the said circumstances, the petitioner was awaiting a favourable decision from the bank, as according to the petitioner, the family fulfilled the criteria for consideration for compassionate appointment.

4.While so, the petitioner was informed, vide proceedings of the bank dated 17.10.2005 that her application for compassionate appointment would be considered under the new Scheme introduced by the bank on 04.08.2005 for payment of ex-gratia, provided the

petitioner fulfilled all the terms and conditions of the new Scheme. In the said circumstances, the petitioner was informed that fresh application needed to be submitted for consideration for payment of ex-gratia amount in lieu of compassionate appointment, in the formate, as provided in the new Scheme.

5. At this, the petitioner appears to have sent a representation on 01.12.2005, requesting to consider her application for compassionate appointment instead of cash compensation. Like the petitioner's father, one T. Munusamy, who also served as an Armed Guard in the Chengam Branch of the respondent bank, died while in service and his family had also submitted an application seeking appointment for his son, on compassionate ground. The said application was also simultaneously under consideration by the bank. After having given a representation seeking for compassionate appointment, instead of monetary compensation, the petitioner has been approaching the authorities repeatedly to pass a favourable order, since the family was struggling to survive modestly. Finally, on 27.12.2013, the petitioner's claim for compassionate appointment came to be rejected, stating that the scheme providing for compassionate appointment was discontinued in 2005 and therefore, her request could not be acceded to. The petitioner was further informed that no correspondence from her side would be entertained any further. However, the petitioner, despite the rejection order, with fervent hope of obtaining some favourable orders from the bank, had been pursuing her claim for compassionate appointment with the bank officials through the Employee's Union. In the meanwhile, she came to understand that the original Scheme, which provided for compassionate appointment and which was discontinued in 2005, had been revived in 2014. Therefore, with the renewed hope, the petitioner started contacting the officials of the bank in 2015 and 2016. The petitioner simultaneously approached the employees' Union Office bearers in order to obtain more details to strengthen her claim. The petitioner also learnt in the process that the higher officials of the bank, viz., the Chief Manager and Assistant General Manager have recommended the claim of the petitioner for favourable consideration in view of the unblemished record of the petitioner's father during his period of service.

6.While matters stood thus, the petitioner came to know that the colleague of the petitioner's father, who also died in harness, viz., Shri.Late.Munisamy's son, who was claiming for compassionate appointment, has approached this Court in W.P.No.24499 of 2014, challenging the communication of the second respondent dated 06.08.2014, rejecting the claim for compassionate appointment on similar grounds. This Court, by order dated 22.12.2016 set aside the impugned communication of the second respondent dated 06.08.2014 and directed the respondent to provide compassionate appointment to the son of late Munisamy, viz.,M.Santhosh under the old 1997 Scheme. The said direction passed by this Court was also implemented promptly by the bank and the beneficiary Mr.Santhosh has joined the bank and is working.

7.In view of the above development, the petitioner once again, with the fond hope, addressed a letter on 10.11.2017 and handed over the same to the Branch Manager, Thiruvannamalai Branch, on the basis of order passed by this Court, dated 22.12.2016 in the aforementioned writ petition. Since there has been no response from the respondent's side, the petitioner is before this Court seeking the relief as prayed for in the writ petition.

8.Shri.Arun Anbumani, the learned counsel appearing for the petitioner would submit that since the date of application originally made by the petitioner on 14.02.2001, she has been diligently pursuing the same with the officials of the bank at various levels and every time when she approached the officials, she was informed to wait for a decision in the matter. Therefore, the petitioner was waiting favourable response from the bank officials all along. After she came to know that identically placed claim has been accepted, in pursuance of the directions of this Court, dated 22.12.2016, passed in W.P.No.24499 of 2014, the hope of the petitioner got renewed and therefore, further representation was made by the petitioner on 10.11.2017. Unfortunately, despite the petitioner identically circumstanced, her application, for reasons unknown, has not been considered favourably and in fact, no orders have been passed. Therefore, the petitioner is constrained to approach this Court seeking for similar relief.

9.The learned counsel appearing for the petitioner

would submit that when an application was made in 2001, the old Scheme was very much in force and therefore, the respondent bank ought to have considered the application within the frame work of old Scheme and ought to have disposed of the application seeking compassionate appointment. However, the bank, in the guise of exchanging correspondence between the Branch and the other offices, has delayed in taking a decision and in view of the delay, a new Scheme was introduced with effect from August 2005 and as per the new Scheme, the provision for grant of compassionate appointment was dispensed with and in lieu of compassionate appointment, only monetary compensation was provided for. According to the learned counsel that by the time a final decision was taken in 2013, in the very next year, the respondent bank revived the original Scheme providing for compassionate appointment. In the said circumstances, the bank ought to have considered the pending application under the reintroduced Scheme. Even otheriwise, the learned counsel would submit that when the cause of action had arisen under the Old Scheme, and the application having been submitted in 2001 itself, the claim of the petitioner ought to have been considered under the old Scheme. He would therefore submit that in the said circumstances, the rejection of the petitioner's claim for compassionate appointment under the new Scheme is per se arbitrary, illegal and cannot be countenanced both on facts and in law.

10. According to the learned counsel, the Scheme introduced in August 2005 could have only prospective application and the same cannot be retrospectively applied to the claims which arose before the introduction of the new Scheme. Even otherwise, the learned counsel would submit that there has to be a parity in treatment of similarly placed persons claiming employment and when this Court has directed to provide for compassionate appointment in its order dated 22.12.2016, which order has been implemented promptly by the bank, in all fairness such gesture by the bank ought to have been extended to this petitioner as well.

11. The learned counsel would draw support from the order passed by the learned single Judge of this Court in W.P.No.24499 of 2014 (M.Santhosh vs. 1.The Chief General Manager, State Bank of India, Chennai and two others, dated 22.12.2016), wherein, the learned Judge has considered in extenso the legal principle laid down by the Hon'ble Supreme Court of India in such matters. He would draw the attention of this Court to paragraph Nos.9 to 19 of the

order passed by the learned single Judge, which is an comprehensive answer to the objections to be raised by the respondents in this writ petition. Paragraph Nos. 9 to 19 are extracted hereunder.

"9. Keeping the above submissions made on either side, I have carefully gone through the material available on record. Admittedly, the petitioner's father died while in service on 08.09.2000 and the petitioner submitted his application for compassionate appointment on 16.02.2001 and it was within the time limit prescribed under the old scheme. A perusal of the inter-bank communications would go to show that the application submitted by the petitioner was under the active consideration of the respondent Bank. In fact, the Chief Manager, Tiruvannamalai Branch of the respondent Bank, vide his letter dated 30.09.2004, made a recommendation to the Assistant General Manager at Zonal Office, Chennai, to consider the case of the petitioner sympathetically at the earliest.

10. Though the learned counsel appearing for the respondent Bank submitted that the application of the petitioner could not be processed for want of particulars, the application submitted by the petitioner was not rejected for want of particulars. In fact, the perusal of the inter-bank communications would go to show that the Zonal Office had frequently sought for certain clarifications and the same was subsequently clarified by the Branch Office and the last such letter sent by the Branch Office was on 30.09.2004. Thereafter, the said application was kept pending for almost four years without any reasonable cause. While so, on 17.10.2005, the respondent Bank, without rejecting the petitioner's application for compassionate appointment, informed the petitioner that since the new scheme has been introduced, his claim for compassionate appointment cannot be considered and for ex gratia compensation under new scheme, he has to apply afresh. A

perusal of the said communication would go to show that the petitioner's application for compassionate appointment was not rejected and in fact, he was called upon to apply for ex gratia lumpsum amount. Since the application for compassionate appointment was not rejected by the respondent Bank, on 01.12.2005 the petitioner has sent a representation to the respondent Bank clarifying his stand that he wants only compassionate appointment and not cash compensation. Even thereafter, the respondent Bank did not reject the petitioner's application nor considered the same.

11. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress and it is improper to keep such a case pending for years. In this case, the respondent Bank, even after four years from the date of application of the petitioner, has not chosen to provide compassionate appointment. The inter-bank communications would go to show that the respondent Bank has been protracting the case of the petitioner in an insensitive manner and kept the same pending for years together, due to which now the petitioner has been suffering. The informations obtained by the petitioner under the Right to Information Act reveal that between 2000 to 2005, the respondent Bank had implemented the compassionate appointment scheme in the case of several others, but the petitioner was discriminated.

12. In an identical circumstances, a Division Bench of the Bombay High Court in an unreported decision in W.P.No.1603 of 2012, dated 29.09.2016, in Mahesh Singh Bisht Vs. Canara Bank case, has held in paragraph No.15 as follows;

"15. We are deeply pained to read the nature of the letters as addressed by the respondent to the petitioner. In our opinion the approach of the Officers of the respondent is absolutely insensitive to the peculiar requirements of dealing with the case on compassionate appointment. The human consideration as the situation requires in attending to such application is completely forgotten. There is non application of mind on any degree, to the petitioner's application for compassionate appointment and it appears that deliberately no decision on the petitioner's application for compassionate appointment was taken."

13. The main contention of the learned counsel for the respondent Bank is that since new scheme has been introduced, pending consideration of the application of the petitioner, his claim for compassionate appointment cannot be considered under the old scheme. In support of this contention, the learned counsel appearing for the respondent Bank has relied upon the decision of the Hon'ble Supreme Court in (2010) 11 Supreme Court Cases 661 (State Bank of India Vs. Raj Kumar), whereby and whereunder the Hon'ble Supreme Court has set aside the judgments of the learned Single Judge and the Division Bench directing the appellant Bank to reconsider the case of the respondent therein for compassionate appointment and directed the Bank to process the application to be submitted by the respondent therein for lumpsum ex gratia compensation. But, in the said case, the employee died in the year 2004 and the application was submitted only in June, 2005 and hardly within two months, the old scheme was abolished and the new scheme came into force on 04.08.2005. The Bank had not started to process the application. Under such circumstances, the Hon'ble Supreme Court has held that the new Scheme which came into force on 04.08.2005 alone will apply and accordingly, set aside the order of the Courts below and directed the Bank to consider the application to be submitted by

the respondent therein for granting lump sum ex gratia amount.

14. The dictum laid down in the said case is not applicable to the facts of the present case, as in this case, the petitioner submitted his application for compassionate appointment as early as on 16.02.2001 and after keeping the same pending for more than four years, the respondent Bank has stated that the claim of the petitioner for compassionate appointment cannot be considered in view of the introduction of the new scheme with effect from 04.08.2005. Further correspondence exchanged between the Zonal Office and Thiruvannamalai Branch Office of the Bank would show that the application of the petitioner for providing compassionate appointment was under active consideration.

15. According to the learned counsel for the petitioner, since the petitioner submitted his application much before the introduction of the new scheme, his claim ought to have been considered under the old scheme. In support of his contention, the learned counsel for the petitioner relied upon the latest decision of the Hon'ble Supreme Court in Canara Bank Vs. M.Mahesh Kumar reported in 2015 (2) LLN 545 (SC), wherein, in the identical circumstances, the Hon'ble Supreme Court has held in paragraph Nos.11 & 14 as follows;

11.The main question falling for consideration is whether the Scheme passed in 2005 providing for ex gratia payment or the Scheme then in vogue in 1993 providing for Compassionate Appointment is applicable to the respondent. Appellant-Bank has placed reliance upon the judgment of this Court in Jaspal Kaur's case (supra) to contend that the respondent's case cannot be considered on the basis of "Dying in Harness Scheme - 1993' when the new scheme of 2005 providing

for ex gratia payment had been put in place. In Jaspal Kaur's case (supra), Sukhbir Inder Singh - Employee of State Bank of India, Record Assistant (Cash & Accounts) passed away on 01.08.1999. Widow of the employee applied for Compassionate Appointment in State Bank of India on 05.02.2000. On 07.01.2002, the Competent Authority of the Bank rejected the Application of Jaspal Kaur in view of the Scheme vis-a-vis the financial position of the family. Against that decision of the Competent Authority, the respondent filed Writ Petition before the Punjab and Harayana High Court, which has directed to consider the case of Jaspal Kaur by applying the Scheme formulated on 4.8.2005 when her Application was made in the year 2000. In that factual matrix, this Court has directed that dispute arising in the year 2000 cannot be decided on the basis of a Scheme that was put in place much after the dispute. By perusal of the judgment in Jaspal Kaur's case, it is apparent that the judgment specifically states that claim of Compassionate Appointment under a Scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

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14. It is also pertinent to note that 2005 scheme providing only for exgratia payment in lieu of Compassionate Appointment stands superseded by the Scheme of 2014 which has revived the Scheme providing for Compassionate Appointment. As on date, now the Scheme in force is to provide Compassionate Appointment. Under these circumstances, the appellant-Bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.

16. In the case cited supra, the Hon'ble Supreme Court, after analysing various decisions of the Hon'ble Supreme Court, including the decision relied on by the

learned counsel for the respondent Bank i.e., the State Bank of India Vs. Raj Kumar case [(2010) 11 SCC 661], has held that the claim of compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim and accordingly, directed the Bank to consider the case of the respondent therein for compassionate appointment as per the old scheme. The dictum laid down in the said case is squarely applicable to the facts of the present case.

17. The Division Bench of the Bombay High Court in Mahesh Singh Bisht case, cited supra, in an identical circumstances, after analysing various decisions of the Hon'ble Supreme Court, has finally held in paragraph No.18 as follows;

"18. In the light of the above discussion, we may unhesitatingly conclude that the facts and circumstances of the present case clearly demonstrate an arbitrary action on the part of the respondent in depriving the petitioner benefit of the compassionate appointment. There is no material to indicate that the respondent had held the petitioner ineligible for compassionate appointment and in fact kept dilly dallying the petitioner's application for a period of more than four years, significantly, during the same period respondent granted compassionate appointment in more than hundred cases, however foisted on the petitioner, closure of the scheme for compassionate by the respondent's letter dated 21 March 2005. This decision of the respondent, as contained in the letter dated 21 March 2005, in our opinion, is patently illegal and deserves to be quashed and set aside. The facts which we have noted in detail thus justify a direction to the respondent grant of compassionate appointment to the petitioner. We accordingly direct the respondent to grant to the petitioner, employment on compassionate ground as per his application dated 28 December 2001 within a period of four weeks from today." (Emphasis

supplied)

The dictum laid down by the Division Bench of the Bombay High Court is squarely applicable to the facts of the present case. Here, in this case also, the application of the petitioner has not been rejected and insensitively kept pending for more than four years by the respondent Bank and further, he has been discriminated, when, during the same period, the respondent Bank granted compassionate appointment to several other applicants.

18. Considering the facts of this case in the light of the legal dictum enunciated in the above two cases, this Court is of the view that the petitioner cannot be deprived of the benefit of the compassionate appointment.

19. Under such circumstances, this Writ Petition is allowed and the impugned order, dated 06.08.2014, is hereby set aside. The respondents are directed to consider the application of the petitioner dated 16.02.2001 for compassionate appointment under 1997 scheme i.e., Scheme for Appointment on Compassionate Grounds for Dependants of the Deceased Employees / Employees Retired on Medical Grounds and provide compassionate appointment to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed. "

12. The learned counsel also would draw the attention of this Court to the recent decision of the Hon'ble Supreme Court of India in Subhadra vs. Ministry of Coal and Another [(2018) 11 Supreme Court Case 201], wherein, the Hon'ble Supreme Court of India has held that the employee therein would be entitled to be considered for compassionate appointment under Bipartite Agreement and not monetary compensation. He would therefore submit that the Hon'ble Supreme Court of India in Canara Bank vs. M. Mahesh Kumar and Others [AIR 2015 SC 2411], which was referred to by the learned single Judge in his order dated 22.12.2016, has clearly held that the application for compassionate

appointment under the Scheme of the particular year cannot be decided in the light of the subsequent Scheme. In fact, the Hon'ble Supreme Court of India has referred to the earlier decisions and finally held as above. Therefore, the learned counsel would submit that the learned Judge of this Court has passed a well considered order and rightly the respondent bank has implemented it, without resorting to any further legal option open to them. He would therefore submit that the petitioner herein may also be given the benefit of such direction passed by this Court.

13. Per contra, on behalf of the bank, Mr. Ravindran, learned Senior counsel appeared and he would stoutly oppose grant of any relief to the petitioner. The learned Senior counsel would submit that the earlier direction of this Court was implemented by the bank in view of the facts and circumstances of that case, which cannot be cited as a precedent to bind down the bank to grant the same relief to this petitioner as well.

14. The learned Senior counsel for the respondent bank would submit that in fact, the decision of the Hon'ble Supreme Court of India, which is heavily relied on by the single Judge, viz., Canara Bank and Others vs. M. Mahesh Kumar and Others, was on the basis of the factual matrix of that case, which did not lay down any law. On the other hand, the Hon'ble Supreme Court of India has laid down the law in respect of consideration of compassionate appointment in the decision in the State Bank of India and others vs. Rajkumar [(2010) 11 SCC 661]. In the said decision, the Hon'ble Supreme Court of India set aside the orders passed by the High Court and directed the claimant therein to file an application for grant of ex-gratia payment under the new Scheme. Likewise, the learned Senior counsel would rely on number of decisions of the Hon'ble Supreme Court of India and the decisions relied on by the learned Senior counsel are enumerated hereunder:

(i) State Bank of India and Others vs. Jaspal Kaul - 2007 (9) SCC 571;

(ii) Local Administration Department and Others vs. M. Selvanayagam - 2011 (13) SCC 42;

(iii) MGB Gramin Bank vs. Chakrawarti Singh - 2014 (13) SCC 583;

(iv) State Bank of India and Others vs.

Sheo Shankar Tewari - 2019 (5) SCC 600;

(v) Union of India (UOI) and Others vs. V.R.Tripathi - 2019 (1) LLN 20 SC;

(vi) State of Himachal Pradesh and Others vs. Parkash Chand - 2019(4) SCC 285;

(vii) Mahesh Singh Bisht vs. Canara Bank -2017(1) MLJ 132;

viii) Interim order of Hon'ble Supreme Court of India in S.L.P.(C) No.34502 of 2016, dated 02.12.2016;

ix) Daily order of Hon'ble Supreme Court of India in S.L.P.(C) N.34502 of 2016."

15. According to the learned Senior counsel that the Hon'ble Supreme Court of India in fact has consistently held that compassionate appointment is not a right and it is a matter of concession and therefore, no claimant could have a vested interest to be appointed on compassionate ground.

16. The learned Senior counsel would also submit that there has been a considerable passage of time since the death of the petitioner's father in 2000 and therefore, the question of consideration of the petitioner's claim now would not be in furtherance of the Scheme. The learned Senior counsel would also draw the attention of this Court to various averments contained in the counter affidavit, particularly, paragraph No.5, which is extracted hereunder:

"5. During the operation of the above scheme, the banking scenario in India underwent tremendous transformation, with introduction of modern and state of Art Technology, online banking to cater to new and technology based products and services. The respondent bank faced stiff competition from other players in the market and consequently its market share of business was adversely affected. The respondent bank introduced State of Art Technology in its branches to adopt new business model thrown open in the competitive environment. The

above said changes resulted in number of manual intervention becoming redundant, leading to need for less work force. Therefore, the respondent bank envisaged a new scheme which would provide distressed family members of the deceased employee, immediate succour and financial assistance to recover from the unexpected deprivation of income of the sole breadwinner of the family. Therefore, to bring about a balance between business objectives of the bank and its concern towards family of the employees dying in harness, the respondent bank devised a scheme called "SCHEME FOR PAYMENT OF EX-GRATIA LUMP SUM AMOUNT IN LIEU OF APPOINTMENT ON COMPASSIONATE GROUNDS IN STATE BANK OF INDIA". The above scheme, which was introduced with effect from 04.08.2005 replaced the compassionate appointment Scheme and no request for compassionate appointment, including pending applications were considered thereafter."

17. According to the learned Senior counsel, it is not only the case of the petitioner herein was rejected, but there were other 67 cases, where the bank had passed order rejecting their claims between 2000 and 2005. According to him, once the old Scheme was abolished, all pending applications were considered under the new Scheme and in this case, the delay was due to insufficient particulars furnished by the petitioner and therefore, she cannot claim that her application ought to have been considered under the old Scheme.

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18. The learned Senior counsel would also submit that the decision of the Bombay High Court, which is relied on by the learned single Judge of this Court, in the decision referred to supra, was stayed by the Hon'ble Supreme Court of India. Therefore, today one of the facts which weighed with the learned single Judge, viz., the Bombay High Court judgment is no more available for this Court to follow, in view of the stay granted by the Hon'ble Supreme Court of India and hence, the claim of the petitioner is legally not tenable. In any case, the

learned Senior counsel would submit that the petitioner is not entitled to be considered for compassionate appointment, as the decision of the bank would depend on case to case basis. He would therefore request this Court to dismiss the writ petition.

19. Considered the submissions of Shri. Arun Anbumani, learned counsel appearing for the petitioner and Mr. S. Ravindran, learned Senior counsel for the respondent Bank.

20. Although on behalf of the bank, a stiff resistance was displayed before this Court, this Court, however, is unable to appreciate as to how a public sector undertaking like the respondent bank can seek to differentiate between two identically placed claims. Although several decisions have been relied on, on behalf of the respondent bank, as aforementioned, yet ultimately the point for consideration for this Court is as to whether the petitioner, in the teeth of the bank's own action in appointing another employee's son on compassionate appointment in identical circumstances, can be treated differently in the matter of compassionate appointment.

21. In fact, as held by the Hon'ble Supreme Court of India, in *Canara Bank and Others vs. Mahesh Kumar* [2015 (7) SCC 412], when an application was made in 2001, the old Scheme was very much in force and it was discontinued only in August 2005 and therefore, the bank ought to have considered the claim of the petitioner under the old Scheme providing for 'compassionate appointment'. This Court is unable to accept the plea of the respondent bank that the petitioner was responsible for the delay. This is because of the fact that the records are with the bank about the employment details of the deceased father of the petitioner and the application was made along with the relevant particulars and what more is required for the bank to take a prompt decision in the matter, this Court is unable to understand. The averments regarding the delay from the petitioner's side are probably made only for the purpose of the case.

22. In any event when the colleague of the petitioner's father, viz., Munusamy died during the same period in the neighbouring branch of the respondent bank and his claim was considered by this Court and a positive direction was issued, which was rightly accepted by the bank and implemented it promptly, this Court feels that the same treatment ought to have been meted out to this

petitioner as well. Unfortunately, the bank is trying to create a distinction between the claim of the petitioner herein and the claim of the other petitioner in the writ petition without any intelligible criteria. The learned Judge of this Court, in fact, has passed a well considered order on the basis of the dictum laid down by the Hon'ble Supreme Court of India on the subject matter and that is why this Court felt that the order of the learned Judge must be extracted in extenso in order to appreciate the claim of the petitioner herein.

23. In fact, whatever the objections which are now sought to be raised on behalf of the bank, by the learned Senior counsel, are all considered by the learned Judge and ultimately a positive direction was issued to the bank for appointment of the petitioner therein on compassionate ground. From the facts and circumstances of the present case, as compared to the other one, this Court is of the view that the petitioner being a woman and has been struggling all these years to get favourable orders from the bank, has much stronger claim than the other case. The family of the deceased consisted of the petitioner's mother, herself and her sister with no male member to support. In the circumstances, this Court is unable to understand as to how the bank could treat the claim of the petitioner differently from that of Mr. Santhosh. Therefore this Court is of the view that the non-consideration of the petitioner's claim in the light of the order passed by the learned single Judge of this Court in W.P.No.24499 of 2014, dated 22.12.2016 is per se discriminatory, unreasonable, arbitrary and violative of Article 14 of the Constitution of India.

24. The objection regarding the passage of time from the date of original application made in 2001 is concerned, such passage of time cannot by itself wipe out the right to be considered for compassionate appointment fairly and equitably when an identical claim has been accepted and implemented. Being a state undertaking, a model employer, the respondent bank cannot embark on resisting just claims like the present one and defeat the very Scheme of the compassionate appointment. When the learned Judge of this Court, has granted positive direction as late as 22.12.2016 in W.P.No.24499 of 2014 and on the basis of the direction an identical claim has been allowed by the respondent bank, the petitioner's case is also to be placed on par with such claim and in the circumstances, the passage of time cannot be held against the petitioner. In

fact, such passage of time holds good for the other claimant as well. Therefore, looking at it from any angle, this Court cannot escape from the conclusion that the petitioner herein is entitled to the relief of compassionate appointment.

25. Although the learned Senior counsel for the respondent Bank relied on several decisions of the Hon'ble Supreme Court of India, however, this Court, after going through the decisions of the Hon'ble Supreme Court, though finds that in those decisions the Hon'ble Supreme Court of India emphasized that no one has fundamental right to be considered for compassionate appointment, yet, those decisions cannot be blindly applied without taking into consideration the circumstances under which the claim has been premised and being projected. The Hon'ble Supreme Court of India in all those decisions has come to the conclusion only on the basis of factual matrix of respective claims, but it never held that the claim for compassionate appointment need not be considered even if Article 14 of the Constitution of India is violated.

26. In this case, when the claim of the petitioner squarely falls within the order passed by the learned single Judge of this Court on 22.12.2016 in W.P.No.24499 of 2014, the entire claim has to be judged from the purview of the directions passed by this Court. The decisions relied on by the learned Senior counsel are general statements of law, which may not have any bearing on the factual matrix of the present claim. In fact, the learned single Judge's order dated 22.12.2016 is squarely based on the order of the Hon'ble supreme Court of India, which is referred to extensively in the order. Therefore, in all fours, this Court is of the view that the petitioner had made out a case for grant of relief. In fact subsequently in 2014, the Scheme for compassionate appointment has been revived and probably that is why the other person, viz., Mr.Santhosh was granted appointment on compassionate appointment in pursuance of the directions of this Court, dated 22.12.2016. Therefore, this fact would in fact further strengthen the claim of the petitioner for compassionate appointment.

27. For all the above said reasons, this Court allows the writ petition and the impugned order passed by the 2nd in his proceedings in HR/LAW/2926, dated 27.12.2013, is hereby set aside. The respondents are directed to provide compassionate appointment to the petitioner in the

respondent bank in any suitable posts in terms of qualification of the petitioner in line with the implementation order issued by the respondent bank in pursuance of the direction of this Court dated 22.12.2016 in W.P.No.24499 of 2014. The respondents are directed to pass appropriate orders granting the relief within a period of four weeks from the date of receipt of copy of this order. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Chief General Manager,
State Bank of India,
Chennai Local Head Office,
"Circletop House", 16,
College Lane, Nungambakkam,
Chennai - 600 006.
- 2.The Assistant General Manager(HR),
HR Department, State Bank of India,
Chennai Local Head Office,
"Circletop House", Post Box No.737,
16, College Lane, Nungambakkam,
Chennai - 600 006.
- 3.The Deputy General Manager,
(Personal and HR),
State Bank of India, Zonal Office,
No.86, Rajaji Salai, Chennai - 600 001.

+4ccs to Mr.Chandrasekaran , Advocate SR.No. 71646,70443

+1cc to Mr.K.Manikandan , Advocate SR.No. 70626 (26/08/2019)

W.P.No.3271 of 2018

A.SK(22/08/2019)