

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.08.2019

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.22968 of 2019

J.Saritha

... Petitioner

Vs.

1. The Chief Manager (HRM Department),
Indian Bank,
Corporate Office,
254-260, Avvai Shanmugam Road,
Royapettah, Chennai - 600 104.

2. The Branch Manager,
Indian Bank,
Sholinghur Branch,
Sholinghur.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to appoint the petitioner in a suitable post on compassionate scheme based on the representations dated 13.01.2017 and 28.02.2018.

For Petitioner : Mr.M.R.Thangavel

For Respondents : Mr.Jayesh B.Dolia
for M/s. Aiyar & Dolia

ORDER

This Writ Petition has been filed seeking for a direction to the respondents to appoint the petitioner in a suitable post on compassionate scheme based on the representations dated 13.01.2017 and 28.02.2018.

2. The case of the petitioner is that she is a legally wedded wife of one Jothi Ramalingam and her marriage was held on 29.07.2010. After the marriage, she was blessed with two children. Earlier to her marriage, her husband Jothi Ramalingam got married to one Govindhammal and due to her ill health, she died on 06.01.2007 leaving behind one child, namely, Gokulan. Thereafter, the petitioner was taking care of all the children without any discrimination. The petitioner's husband Jothi Ramalingam was working in Indian Bank, Sholinghur Branch, as

Cashier for nearly past 25 years. Due to an accident, he died on 17.06.2015 leaving behind the petitioner, his three children and aged mother.

3. It is the further case of the petitioner is that after the death of the Jothi Ramalingam, the petitioner was not able to maintain her family and therefore, she submitted a representation dated 25.05.2016 before the second respondent, seeking for compassionate appointment to appoint her in any suitable post. Since there was no reply from the second respondent, she made a detailed representation on 13.01.2017 to the first respondent as well as the second respondent with relevant documents. Since there was no response even thereafter, she made another detailed representation on 28.02.2018. Thereafter, she received a communication letter dated 12.03.2018 from the first respondent, seeking for "No objection affidavit" from the other legal heirs. The petitioner submitted the same through proper channel on 18.04.2018. However, she has not been offered any employment till now. Therefore, she has filed this Writ Petition before this Court.

4. The learned counsel appearing for the respondents would submit that the compassionate appointment scheme has been replaced by a new scheme, and the husband of the petitioner had died when the old scheme was in existence, and therefore the petitioner cannot make a claim for appointment on compassionate ground as a matter of right and she is not entitled for the same.

5. I also had an occasion to deal with the issue of compassionate appointment in the case of [R.Kanagasanthi V. Tamil Nadu Civil Supplies Corporation, Chennai and another] reported in 2014 (1) LLN 515 (Mad.), wherein, the employee died when the old scheme was in existence and the application for compassionate appointment was also made in time during prevalence of old scheme and therefore, based on the judgment of the Apex Court, respondents therein were directed to consider the case for appointment. For the sake of brevity, the relevant portion of the Judgment (cited supra), more particularly Paragraph No.12, is extracted below :

"12. At this juncture, it is relevant to point out Paragraph No.20 of a decision reported in (2011) 4 SCC 209, Bhawani Prasad Sonkar vs. Union of India and others, wherein, the Hon'ble Apex Court has held as follows:-

"20. Thus while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made

in the absence of Rules of Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment dehors the Scheme.

(ii) An Application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An Appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III & IV posts."

In that case, the Hon'ble Apex Court has allowed the case of the appellant by holding that testing on the touchstone of these broad guidelines governing appointment on compassionate ground, it was of the opinion that the appellant has made out a case for such appointment. As far as the case in hand is concerned, the application for compassionate ground appointment was made within the time limit. It has also been held in a catena of decisions of the Hon'ble Apex Court that to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner, compassionate appointment has got to be made. This has been established by the petitioner. The spirit of the compassionate appointment was to provide relief to the family members of the deceased persons and that on yardstick of social justice, such relief cannot be withdrawn retrospectively as the Government stopped appointments for certain periods and when there was a modification, after lifting the ban, the new scheme or modification has to take effect only prospectively. The writ petitioner has rightly contended that when there is a change in policy on 05.04.2007, while lifting the bank, it could not result in denial of compassionate

appointment to the petitioner, as any change would only be prospective in nature."

6. The aforesaid decision of this Court, which referred to the Judgment of Hon'ble Apex Court would be applicable to the facts of this case, as in the present case on hand, the scheme for compassionate appointment was made available with effect from 05.08.2014. Further, the scheme categorically states that the compassionate appointment has to be considered only for Class III & Class IV posts, as per which, the petitioner is entitled to be considered for compassionate appointment.

7. In view of the above, the respondents are directed to consider the case of the petitioner within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to submit all the relevant documents to the respondents, if not, already submitted. Accordingly, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Raja

To

1. The Chief Manager (HRM Department),
Indian Bank, Corporate Office,
254-260, Avvai Shanmugam Road,
Royapettah, Chennai - 600 104.

2. The Branch Manager,
Indian Bank, Sholinghur Branch,
Sholinghur.

+1cc to Mr.Aiyar & Dolia, Advocate, S.R.No. 67019
+1cc to Mr.C.Anbu, Advocate, S.R.No. 66857

W.P.No.22968 of 2019

NM(CO)
GN(30/09/2019)