

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3920 of 2019

=====

Sushma Kumari, Wife of Late Manoj Kumar Rajak, Resident of Village-
Bhagwat Nagar, P.S. Agamkuan Town and District- Patna.

... .. Petitioner

Versus

1. The Bank of India through its Chairman cum Managing Director BKC, Bandra (E) Mumbai- 400051.
2. The Chairman cum Managing Director, BKC, Bandra (E) Mumbai.
3. The Deputy General Manager (HR) (Transfer and Placement Division) Bank of India Star house, C-5'G' Block Bandra Kurla Complex, Bandra (East), Mumbai- 400051.
4. The Zonal Manager Bank of India, Birchand Patel Marg, Patna.
5. The Branch Manger Bank of India S.K. Nagar Branch, Patna.

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar Tiwary

For the Respondent/s : Mr.Braj Nandan Kumar Tiwary

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 22-06-2020

The petitioner is widow of one Manoj Kumar Rajak, who was an employee of the Bank of India. When he was working at Fraser Road, Main Branch, Patna, of the Bank, he suffered a massive heart attack and consequently died on 21.02.2014, leaving behind his widow, a six-year-old son and a seven-year-old daughter. It is the case of the petitioner that the family was fully dependent on the deceased employee. She had applied for appointment in the Bank to any suitable post on compassionate ground, which was rejected on 01.04.2014 by the Deputy Zonal Manager, Zonal Office, Patna, of the Bank (Annexure-2). It was



intimated to the petitioner that her case did not qualify for compassionate appointment in the Bank service, rather she should submit a claim for payment of *ex-gratia* lump sum amount in lieu of appointment on compassionate ground, in prescribed format.

2. It may be noted, at this juncture, that the Bank had scheme for payment of *ex-gratia* lump sum amount in lieu of appointments on compassionate ground which also contemplated appointment of dependents of deceased employees on compassionate grounds but in exceptional cases, as contained in a Circular, issued in 2007, a copy of which has been brought on record by way of Annexure-A to the counter affidavit filed on behalf of the Bank.

3. On plain reading of the said scheme, it appears that the Bank had decided to pay *ex-gratia* lump sum amount in lieu of compassionate appointment in case, *inter alia*, in case of an employee of the bank dying in harness. The scheme stipulated compassionate appointment in exceptional cases, namely, the employee dying while performing official duty or an employee dying within five years of his appointment or before reaching the age of 30 years. Clause 5 of the Circular contemplated that *ex-gratia* amount would be paid to the family of the deceased employee, if eligible, provided a request to this effect is made



within six months from the date of death of the employee. There is no gainsaying that the *ex-gratia* amount was payable to the family of the deceased employee in indigent or penurious circumstances only.

4. The petitioner was, however, pursuing her case for appointment on compassionate grounds instead of payment of *ex-gratia* lump sum amount in lieu thereof. Within less than six months from the date of death of the petitioner's husband, Government of India issued a Notification on 07.08.2014, addressed to the Chairman, Indian Banks' Association, Mumbai, to open compassionate appointment in Public Sector Banks on the lines of Central Government and discontinue the provision of *ex-gratia* in lieu thereof. The Banks were asked to take appropriate action for approval of scheme of compassionate appointment accordingly.

5. In tune with the said letter dated 07.08.2014, the Bank of India came out with a scheme for compassionate appointment with effect from 05.08.2014. A copy of the said scheme is part of Annexure-A to the counter affidavit, Clause 8.1 of which provides that employment under the scheme should be considered up to five years from the date of death of an employee.



6. The petitioner had earlier approached this Court by filing a writ application, giving rise to C.W.J.C. No. 7605 of 2015 seeking direction for her appointment on compassionate ground. The Bank filed a counter affidavit in the writ application making following statement in paragraph 9 : -

“9. That so far the statements made in paragraph 9 of the writ petition is concerned, it would not be out of place to state here that the scheme for appointment on compassionate ground was not operative from 06.11.2007 to 04.08.2014 and its place the provision for Ex-Gratia Lump Sum payment was provided in the said Circular dated 06.11.2007. Therefore the writ petitioner is entitled for Ex-gratia Lump sum payment.”

7. This Court, after having considered the scheme for payment of *ex-gratia* lump sum amount, rejected the petitioner's claim mainly on the grounds that her case did not fall within the ambit of 'exceptional circumstance' for her to be entitled to compassionate appointment under 2007 scheme.

8. Be it noted that the said writ application, namely, C.W.J.C. No. 7605 of 2015, was filed against communication dated 12.12.2014, issued by the Deputy General Manager (HR), whereby the petitioner's claim for compassionate appointment under subsequent scheme was rejected on the ground that the



scheme of 2014 was applicable with effect from 05.08.2014 and since the petitioner's husband died on 21.02.2014, she was not eligible for compassionate appointment.

9. The facts, noted above, go to show that soon after the death of her husband, the petitioner had been pursuing her case for appointment on compassionate ground, firstly, under 2007 scheme and, secondly, under 2014 scheme, till she lost before this Court by order dated 19.02.2018 passed in C.W.J.C. No. 7605 of 2015. After having lost, she made an application for payment of *ex-gratia* lump sum amount, which has been rejected and the rejection has been communicated to the petitioner through letter dated 10.01.2019 by the Deputy Zonal Manager, Zonal Office, Patna, of the Bank. The said order dated 10.01.2019 is under challenge in the present writ application. The petitioner is now seeking a direction for payment of *ex-gratia* lump sum amount.

10. It may be easily culled out from the facts, noted above, that the petitioner's claim for appointment on compassionate ground was earlier rejected because she was not found to be eligible under the scheme of payment of *ex-gratia* in lieu of compassionate appointment as her case was not found to be exceptional to make her eligible. Before expiration of six months from the date of death of petitioner's husband, Central



Government had taken a decision and communicated to the Indian Banks' Association to open compassionate appointment in Public Sector Banks and discontinue the provision of *ex-gratia* in lieu of compassionate appointment.

11. Under the scheme for *ex-gratia* payment, she could have made her application within six months from the date of death of her husband. It is likely that because of decision of the Government of India, dated 07.08.2014, the petitioner, instead of applying for payment of *ex-gratia* lump sum amount, reiterated her plea for appointment on compassionate ground, which, too, was rejected on 12.12.2014.

12. As has been quoted above, in the counter affidavit filed before this Court, the respondent Bank stated "therefore, the writ petitioner is entitled for *ex-gratia* lump sum payment".

13. The question before this Court is as to whether it is just and proper, in the background of the facts, noted above, to deny the petitioner even the *ex-gratia* amount on the ground that she made her application four years and nine months after the death of her husband, six months' time having been prescribed under the 2007 scheme.



14. I have heard learned counsel appearing on behalf of the petitioner and learned counsel representing the respondent Bank.

15. Learned counsel appearing on behalf of the petitioner has submitted that the Bank itself had taken a stand before this Court in the earlier proceeding that the petitioner “is” entitled for *ex-gratia* lump sum amount. He has submitted that since the petitioner was pursuing her case for grant of compassionate appointment, she could not apply simultaneously for payment of *ex-gratia* amount. According to him, denial of payment of *ex-gratia* amount is wholly arbitrary and unreasonable.

16. Learned counsel appearing on behalf of the Bank, on the other hand, has submitted that the Bank’s decision are governed by the schemes of 2007 and 2014. Since the petitioner did not submit her application for *ex-gratia* payment within the time prescribed under the scheme, she has been held to be not eligible to the said amount.

17. In my opinion, it was well within the right of the petitioner to have pursued her case for compassionate appointment instead of applying for payment of *ex-gratia*. Her claim for appointment on compassionate ground would not have survived anymore had she applied for payment of *ex-gratia* amount. Before



completion of period of six months, as prescribed in 2007 scheme, the Central Government had taken a decision and had directed the Banks to resume the scheme of appointment on compassionate ground and discontinue the scheme of payment of *ex-gratia* in lieu thereof. The date with effect from which such scheme shall come into force was not clear in the communication dated 07.08.2014. The Circular of the Bank, which has been brought on record, is of 29.09.2014, containing the scheme for compassionate appointment. It was mentioned in the said Circular that the scheme would come into force with effect from 05.08.2014. Period, prescribed in the scheme of 2007 of six month for claiming *ex-gratia* had expired by that time.

18. Taking a holistic view of the matter and considering the developments noted above, in my opinion, it would be unjust and inequitable to deny the petitioner payment of *ex-gratia* on the ground of delayed making of application for the same, moreso, since the Bank had not come out with a plea in the earlier proceeding before this Court that the petitioner would not be entitled to even *ex-gratia* payment.

19. This writ application is accordingly allowed. The impugned communication dated 10.01.2019 is quashed. The respondents are directed to consider payment of *ex-gratia* amount



to the petitioner without taking any objection of delay in making the application. Final decision must be taken within one month from the date of receipt/production of a copy of this order. The admissible payments must be made within one month thereafter.

20. No order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.06.2020
Transmission Date	N/A

