

15.03.2021.
Item no. 81.
Court No.13
ap

**W.P.A. No. 3116 of 2021
(Through Video Conference)**

**Subhajit Bayen
Versus
Union of India & Ors.**

Mr. Rudranil De,
Mr. Ziaul Haque,
Mr. Manish Kumar Das.

...For the petitioner.

Ms. Aparajita Rao,
Ms. Pallavi Gandhi.

..For the respondent Bank.

The petitioner's father died on 28th June, 2017 while he was engaged as "Messenger" in the Group-"D" Category with the Bangiya Gramin Vikash Bank. The petitioner applied on 8th April, 2019 for being considered for compassionate employment in place and stead of his deceased father.

The Board of Directors of the Bank implemented a model scheme for compassionate employment on the line of all other Regional Rural Banks under the "National Bank for Agricultural and Rural Development" (NABARD) on 9th January, 2019. A communication to that effect was issued to all Branches, Departments and Head Office on 8th March, 2019.

The petitioner's application was rejected by a communication dated 16th November, 2019, inter alia, on the ground that the petitioner's father had died

before the Scheme for Compassionate Employment Regulations of 2019 came into force. In lieu thereof, however, the Bank offered to the petitioner ex-gratia. The propriety and legality of the rejection order dated 16th November, 2019 has been questioned before this Court.

Ms. Rao, learned Counsel for the Bank has argued that since the Scheme came into force on 6th March, 2019 and the petitioner's father died in the year 2017, his application is outside the scheme. The date of the petitioner's application for compassionate employment and the consideration thereof are irrelevant.

The other argument advanced by the Counsel for the Bank that the petitioner's application if allowed would throw open flood gates of claims on account of all those persons, who died from the year 2015, cannot be sustained since such other persons are not before this court.

Ms. Rao has relied upon an unreported decision of the Single Bench of the Allahabad High Court in the case of **Sarvesh Pandey –Vs. – Union of India & Ors.** dated 25th September, 2019 being Case No. **WRIT-A No. 14578 of 2019.**

The arguments advanced by Learned Counsel Ms. Rao for the Bank cannot be accepted.

This Court finds that the Scheme for Compassionate Employment was adopted sometime on 9th January, 2019 and was sent for implementation to all Branches by a communication dated 6th March, 2019.

“Coverage” in the Scheme is defined in Clause (1).

“1.1. To a dependent family member of permanent employee of Bangiya Gramin Vikash Bank who –

a) dies while in service (including death by suicide)
b) is retired on medical grounds due to incapacitation before reaching the age of 55 years, (incapacitation is to be certified by a duly appointed Medical Board in a Government Medical College/Government District Head Quarters Hospitals/Panel of Doctors nominated by the Bank for the purpose).

1.2. For the purpose of the Scheme, “employee” would mean and include only a confirmed regular employee who was serving full time or part-time on scale wages, at the time of death/retirement on medical grounds, before reaching age of 55 years and does not include any one engaged on contract/ temporary/casual or any person who is paid on commission basis.”

The time limit for consideration of application is set out in Clause 8 under 8(1). Clause 8(2) of the said Scheme may also, however, be noted.

“8. Time Limit for considering applications

8.1 Application for employment under the Scheme from eligible dependent should normally be considered upto five years from the date of death or retirement on medical grounds and decision to be taken on merit in each case.

8.2 However, Bank can consider request for compassionate appointment even when the death or retirement on medical grounds of the employee took place long back, even five years ago. While considering such belated requests, it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to

*the family of the employee in order to relieve it from economic distress. The very **fact that the family has been able** to manage somehow, all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the Board level.”*

A conjoint reading of Clause 1.2 and Clause 8.2 would indicate that the petitioner is indeed covered under the aforesaid Scheme for the following reasons:

(a) Clause 8(2) clearly stipulates that the Bank could consider the request of compassionate employment in case of death or retirement on medical grounds even the employee had died ‘five years ago’. The petitioner’s father died in the year 2017, i.e. within 5 years prior to the coming into force of the Scheme.

(b) The petitioner had applied on 8th April, 2019 after the date of implementation of the Scheme on 6th March, 2019. As on the date of the impugned order, i.e. 16th November, 2019, the aforesaid Scheme for compassionate employment was in force.

It is now well settled that the Rules in force at the time when a prayer is made and at the time of consideration of such prayer, are the only ones that have to be applied.

It is true that the compassionate employment is an exception to the General Rule of Employment. However, following the principle of *Generalia*

Specialibus Non Derogant, if a Scheme and/or Rules specially prescribe for such appointment, in an organization, the said rules would become the basis of appointment for claims for such employment irrespective of the General Principles of application thereof.

The facts of the **Sarvesh Pandey (supra)** case are substantially different from that of the instant case. In the said decision the challenge was to the 5 year cut-off date after death of the employee, to seek compassionate employment. The mother of the applicant had already received ex-gratia and wanted compassionate appointment by refunding the said amount to the bank. The petitioner's father in the said case died before 5 years of the Scheme coming into force.

The said decision is distinguishable in the facts of the case. While accepting retrospective operation conceived of under the said Scheme the Allahabad High Court held that the cut-off date of 5 year stipulated cannot be further stretched beyond. Hence the claim of the petitioner was rejected therein.

For the reasons stated hereinabove, this Court is of the view that the impugned order dated 16th November, 2019 cannot be sustained and is hereby set aside.

The respondent Bank shall consider the petitioner's claim for compassionate employment and process the same in accordance with the Scheme and the applicable Rules within a period of two months from the date of communication of a copy of this order.

The instant writ petition is allowed and disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(*Rajasekhar Mantha, J.*)