IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12352 OF 2018

Mr.Nitin s/o Yohan Arawade,
Age : 35 years, Occupation : Unemployed,
F/5 Rauish Row Housing Society,
Kinetic Chowk, Nagar Pune Road,
Ahmednagar-414005.
Email ID : nitin.arawade@yahoo.com
...PETITIONER

-VERSUS-

Central Bank of India.
Central Office,
Chandramukhi Nariman Point,
Mumbai-400021.
Through its General Manager (HRD),
Website : www.centralbankofindia.co.in
Email ID : rmauraro@centralbank.co.in
agmpunezo@centralbank.co.in
...RESPONDENT

...
Advocate for the Petitioner : Shri Upadhye Vinayak Narayan
Advocate for the Respondent : Shri Warad Sunil V.
...

CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 04th August, 2021

Oral Judgment (*Per Ravindra V. Ghuge, J.*):-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clauses A and B as under :-

> *"A) That a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 & 227 of the Constitution of India be issued calling for the records and proceedings from the Respondent being an order dated 25.01.2018 and communicated through a letter dated 31.03.2018 marked at Annexure F and examine the legality, validity and propriety thereof and be pleased to quash and/or set aside the same;*
>
> *B) Issue direction/ order to reconsider the claim of the petitioner for compassionate appointment in accordance with law and as per the scheme in existence."*

3. The father of the petitioner, namely, Yohan Paulas Arawade was in employment with the respondent/ Central Bank of India as the Special Assistant at the Kolegaon Branch, District Ahmednagar. He put in 34 years and 02 months in employment when he opted for Voluntary Retirement (VRS) on medical grounds since the Permanent Medical Board of the respondent/ Bank examined him and certified that he was "completely and permanently incapacitated" to perform any type of services in the respondent/ Bank. He was suffering from Impaired Cognitive Profile. The certificate issued by the Dean of Sasoon General Hospital, Pune dated 07.04.2015 indicated that his incapacity

cannot be attributed to or said to be accelerated or aggravated by irregular or intemperate habits.

4. The respondent/ Bank floated a scheme titled as “Sir Sorabji Pochkhanawala Memorial Death Relief Scheme for Employees of Central Bank of India”, on 05.08.2014. This scheme is prepared and implemented by the respondent through various circulars issued by the Human Resources Development Department and this aspect is undisputed.

5. The petitioner states that his father had met with a severe accident in 2014 and on account of the same, he had to undergo extensive medical treatment, which cost him an amount of Rs.10 lac towards medical expenses. The respondent/ Bank assisted him by providing Rs.1.5 lac. Along with the petitioner, there were in all six dependents on the employment of his father including one sister of the petitioner, who got married and subsequently, was divorced by her husband thereby, returning to the father’s home.

6. The petitioner submits that on 25.06.2015, the father of the petitioner was granted the benefit of VRS on medical ground and relieved from employment. The petitioner preferred an application on 20.07.2015 in a printed format supplied to him,

setting out the dependents on his father's income and the financial condition of the family. Since the petitioner was in employment with the ICICI Bank in clerical category, he was informed by the respondent/ Bank that if he resigns from the said employment, he would be entitled for seeking compassionate appointment with the respondent. His application was, therefore, kept pending. Since the petitioner found that his career prospects with the respondent were better than the job that he had with the ICICI Bank, he tendered his resignation on 02.03.2016 and intimated the respondent about the said fact and prayed that his application for compassionate appointment may be considered.

7. The petitioner further submits that by the impugned communication dated 31.03.2018, the petitioner was informed by the Branch Manager of the respondent that his application for seeking appointment on compassionate ground has been rejected only for the reason that the family of the ex-employee was not indigent. It is, therefore, submitted that the right of the petitioner to be inducted in employment of the respondent on compassionate ground, cannot be defeated merely because the family is not indigent. Reliance is placed on the following judgments :-

(a) Canara Bank and another vs. M. Mahesh Kumar, AIR 2015 SC 2411.

(b) Balbir Kaur and another vs. Steel Authority of India Ltd. And others, AIR 2000 SC 1596.

(c) Yogesh Nagraoji Ugale vs. State of Maharashtra, 2019 STPL 9892 SC.

(d) Shattuppa L. Patil vs. Central Bank of India, Writ Petition No.1549/2006, judgment dated 23.10.2007 (High Court of Karnataka).

(e) Smt.Meena Dhaigude vs. Maha Pravandhak, State Bank of India, W.P. No.7249/2012, judgment dated 26.07.2021 (Madhya Pradesh High Court, Bench at Indore).

8. The learned advocate representing the respondent Bank draws our attention to the affidavit in reply dated 29.01.2021 filed by the Chief Manager of the respondent Bank. He submits that though the impugned order does not even refer to the earlier employment of the petitioner, this aspect cannot be lost sight of since one member of the family was already employed elsewhere. He then submits that the compassionate

appointment cannot be granted to a person since he does not have special right or claim in view of the judicial pronouncement in the ***State Bank of India vs. Raj Kumar, 2010 (11) SCC 661***. It is conceded that the father of the petitioner had met with an accident in March, 2014. Since he was eligible for VRS due to medical incapacitation, he was relieved from service on 25.06.2015. It is further stated that the compassionate appointment scheme which applies even to an employee, who has obtained VRS due to medical incapacitation, was introduced w.e.f. 05.08.2014. The concerned employee was relieved from employment on 25.06.2015. However, since it was noted that the family of the petitioner had received retiral benefits and was not indigent, the application of the petitioner was rejected.

9. We have considered the extensive submissions advanced. The respondent has relied upon the particulars of the scheme enabling compassionate appointment or payment of lump-sum ex-gratia amount. We, therefore, refer to page 23 of the petition paper book which indicates the following clause rendering the petitioner eligible for appointment on compassionate grounds:-

"*1. Scheme for compassionate appointment for dependent* *family member of an employee, (a) …………., (b) retires on medical grounds due to incapacitation before reaching the age of 55 years.”*

It is undisputed that as the father of the petitioner was granted VRS on medical grounds before reaching the age of 55 years, the petitioner was eligible for such appointment.

10. Clause 4 on page 23 further indicates as under :-

“*The family has the options i.e. compassionate appointment and payment of lump-sum ex-gratia amount. However, any of these two options can be used only when the other conditions of compassionate appointment are met.*”

We, therefore, find that the petitioner has two options of either seeking compassionate appointment or receiving the payment of lump-sum ex-gratia amount. He opted for the first.

11. The learned advocate for the respondent has then pointed out clause 5 below Annexure-I, “Frequently Asked Questions on compassionate appointment, as regards the eligibility of the family”. Clause 5 (Eligibility) has two sub-clauses as under :-

“5. Eligibility.

5.1 The family is indigent and deserves immediate assistance for relief from financial destitution; and

5.2 Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

Similarly, payment of lumpsum ex-gratia amount can be used only when other conditions of compassionate appointment are met."

12. Based on the above, the learned advocate for the respondent has canvassed that as the family of the petitioner was not found to be indigent, his application for compassionate appointment was rejected.

13. Having perused the above reproduced provisions, it is obvious that the respondent offers two options to the family/ eligible member of such family, of either seeking lump-sum ex-gratia payment or compassionate appointment. Both the benefits are not made available to the family or an eligible member of the family. It, therefore, makes things more clear that either the family opts for payment of lump-sum ex-gratia amount or projects a member of the family, who is eligible, as a candidate for compassionate appointment. We are reading clause 5 reproduced above and it's sub-clauses in the light of this backdrop. Clause 5.1 indicates that the family has to be indigent

and deserves immediate assistance for relief from financial destitution. This can be reasonably and logically co-related with the grant of payment of lump-sum ex-gratia amount. Clause 5.2 deals with the compassionate appointment to an eligible candidate, who is suitable for the post as per the Recruitment Rules.

14. There is no dispute that the petitioner's application has not been rejected on the ground that he was earlier in employment with ICICI or was found ineligible for appointment under the relevant Recruitment Rules. The petitioner has made a categoric statement that he resigned from the employment in the clerical cadre with the ICICI Bank only because he was apprised by the authorities of the respondent Bank that his application cannot be considered unless he resigns from the ICICI Bank. Since he desired to opt for compassionate appointment for job security, he promptly resigned from the ICICI Bank and approached the respondent requesting for considering his claim. The impugned order has been delivered like a bolt from the blue. Never before had the respondent ever indicated to the petitioner that his application for compassionate appointment would not be entertained if his family was not living in abject poverty and was

indigent.

15. We find that the respondent authorities have mixed up two issues. It is unheard of that the compassionate appointment could be refused to an eligible member of the family which has lost a sole bread-earner, if the family was not indigent. We have not come across any such example when the compassionate appointment is refused to an eligible member only on the ground that the family has funds to survive and therefore, would not need a source of income. In our view, considering the crystallized position of law, compassionate appointment has multiple effects. Firstly, it takes care of the sudden financial loss to the family. Secondly, as the sole earning source has stopped, compassionate appointment leads to continuation of the source of earning so that the family can depend upon a definite income through such employment.

16. The learned advocate for the respondent has canvassed that the petitioner's family has received gratuity amount, provident fund accumulations and pension. We are unable to accede to the submission by the respondent that because of such payments, an eligible person can be refused compassionate appointment. Gratuity amounts, provident fund

accumulations and monthly pension (if eligible) are the legal rights of the employee/family, if the sole earner has either died in harness or has been medically incapacitated leading to his retirement. Provident fund accumulations cannot be taken away. Gratuity amount cannot be attached, save and except by following the due process of law. The pension cannot be stopped. Payment of these amounts cannot be considered as an impediment or an embargo on the appointment of an eligible member of the family on compassionate basis.

17. Considering the scheme placed before us, we find it logical and reasonable to conclude that the respondent Bank would be justified in assessing the financial status of the family of the employee, who has lost source of income, only for granting financial aid in the nature of lump-sum ex-gratia amount. If the family has other source of income and has sufficient funds available, the respondent may take a stand that the payment of lump-sum ex-gratia amount is not necessary. However, whether, the family is indigent or not, cannot be the basis for refusing compassionate appointment to a candidate, who is otherwise eligible for such appointment under the scheme.

18. The view taken by the Honourable Supreme Court in ***Raj Kumar (supra)*** does not lay down such law, as is canvassed by the respondent. In ***Raj Kumar (supra)***, the Honourable Supreme Court has held that compassionate appointment is not a source of recruitment and it is an exception to the general rule that the recruitment should be on the basis of merit.

19. While entertaining this Writ Petition, we are, therefore, considering the following factors :-

(a) Ex-employee of the respondent (father of the petitioner) was less than 55 years of age when the Permanent Medical Board attached to the respondent Bank approved that he was medically incapacitated and could not be continued in service.

(b) The compassionate appointment scheme was introduced by the respondent Bank on 05.08.2014.

(c) The father of the petitioner was relieved on 25.06.2015.

(d) The petitioner quit his temporary job with the ICICI Bank in the clerical cadre so as to opt for the benefit of compassionate appointment to which he was eligible.

(e) The petitioner had sought compassionate appointment and had not opted for payment of lump-sum ex-gratia amount.

(f) The ground that the family should be indigent so as to grant the compassionate appointment, is unacceptable to us since the comprehensive reading of the scheme convinces us that the clause of granting lump-sum ex-gratia payment can be co-related with the family being indigent.

(g) Appointment on compassionate ground to an eligible candidate cannot be refused only because the financial background of the family may be good.

(h) The claim of the petitioner is not rejected because he was in ICICI Bank earlier.

20. In view of the above, this Writ Petition is partly allowed. The communication dated 31.03.2018 and the office order dated 20.05.2018 stand quashed and set aside. We, therefore, issue the following directions :-

(a) The petitioner is eligible for compassionate appointment.

(b) Since we are informed that in all 164 employees of the respondent have died after introduction of the compassionate appointment scheme and only 38 applications for compassionate appointment have been received, the claim of the petitioner shall be considered as per the seniority of the filing of the application for compassionate appointment, but from the date of the petitioner having quit his clerical job with the ICICI Bank.

(c) The respondent/ Bank, if is unable to appoint the petitioner on compassionate ground on or before 31.12.2021, shall apprise the petitioner on quarterly basis as regards the status of his claim for compassionate appointment till such appointment is made and his claim shall not be overlooked or by-passed.

21. Rule is made absolute in the above terms.

kps **(S.G. MEHARE, J.)** **(RAVINDRA V. GHUGE, J.)**