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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM:

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P. NO.31459 OF 2005

1.Indian Bank Employees Union
(Regn. No.1018)
Rep. by its President,
No.25, II Line Beach, Chennai - 01.

2.Shoba Muralidharan

...Petitioners

Vs.

1.Indian Bank
Represented by its Managing Director,
66, Rajaji Salai, Chennai - 600 001.

2.The General Manager (HRM)
Indian Bank, Head Office,
66, Rajaji Salai, Chennai - 600 001.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records relating to the Order No.PRNL/72/2005-06 dt. 30.8.2005 issued by the 2nd respondent and quash the same as being illegal, arbitrary and unconstitutional and consequently direct the respondents to restore the benefit of compassionate appointment to the eligible dependants of the deceased employees in accordance with the Scheme that was prevalent when the employee died in harness.

For Petitioner : Mr.Govardhan
for M/s.Row and Reddy

For Respondents : Mrs.Rita Chandrasekar

O R D E R

There are two petitioners in this writ petition, the first being the Indian Bank Employees' Union ('Union'), and the second, Mrs.Shoba Muralidharan widow of Late Mr.K.Muralidharan, an employee of the Indian Bank who had passed away on 18.11.2003. The second petitioner is stated to have submitted an application dated 24.07.2004 for compassionate appointment as per the scheme



in force at the relevant point of time, and awaited an order of appointment from the management of the Indian Bank, arrayed as Respondents 1 and 2/R1 and R2 (Bank).

2.The challenge in the writ petition is to scheme dated 30.08.2005 as per which the Board of the Indian Bank, at its meeting dated 10.08.2005 had approved a revised scheme based on the model scheme formulated as per Government guidelines providing for the payment of ex-gratia to the family of employees passing away in harness/or those employees who had prematurely retired on medical grounds in place of compassionate appointment.

3.Though learned counsel for the petitioner would state that there were several applications that had been pending under the scheme that was earlier prevalent, and that provided for compassionate appointment, there had been no response from the Indian Bank in regard to any of the requests, including the request of the second petitioner.

4.The bank is seen to have responded to the application of the second petitioner on 08.09.2005, conveying to her that the scheme in force as on the date when her application had been taken up for consideration was the scheme dated 30.08.2005 and, in line with the same, she was required to submit a fresh application seeking ex-gratia with all required details within 15 days from the date of that communication i.e. on or before 23.09.2005. That the second petitioner has received this communication cannot be disputed since the same is placed as part of the compilation accompanying the affidavit filed in support of the writ petition.

5.The question that arises is as to whether an application filed seeking a benefit upon demise of an employee of the bank who was in harness at the time of demise/resignation on account of health reason would have to be considered in line with the scheme prevalent as on the date (i) of the triggering event, in this case, the demise of the bank employee, (ii) of submission of application by the legal heir, or (iii) when the application had been taken up for consideration by the bank.

6.Learned counsel for the petitioner brings to my notice judgments of the Hon'ble Supreme Court that have considered this very issue. In the case of Canara Bank and another Vs. N.Mahesh Kumar ((2015 7 SCC 412) the very scheme under challenge before me now, came to be considered by the Hon'ble Supreme Court, which confirmed the order of the High Court directing the appellant bank to reconsider the claim of the respondents for compassionate appointment in accordance with law and as per the 1993 Scheme which was then in existence.



7. Since the view taken in the case of Canara Bank was thought to be contrary to the views taken by two earlier Benches on this issue, MCB Gramin Bank vs. Chakrawarti Singh (2014 13 SCC 583) and State Bank of India Vs. Rajkumar (2010 11 SCC 661), the issue to be referred to a larger Bench for resolution.

8. Accordingly, three Judges of the Hon'ble Supreme Court, in the case of N.C.Santhosh Vs. State Bank of Karnataka and others (AIR 2020 SC 1401), took note of the relevant case law in this regard from paragraph-15 onwards, extracted below:

15. This Court in SBI vs. Raj Kumar (2010) 11 SCC 661) while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer's right to modify the scheme depending on its policies was recognized in this judgment. Similarly in MCB Gramin Bank vs. Chakrawarti Singh (2014 13 SCC 583) this Court reiterated that compassionate appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per the scheme existing on the date of death of the Government employee.

16. However in Canara Bank & Anr. Vs. M.Mahesh Kumar in the context of major shift in policy, whereunder, instead of compassionate appointment (envisaged by the scheme dated 8.5.1993), ex gratia payment was proposed (under the circular dated 14.02.2005), the Court adopted a different approach. Noticing the extinguishment of, the right to claim appointment, this Court held the "dying in harness scheme" which was prevalent on the death of the employee, be the basis for consideration.

17. A two judges bench headed by Justice Uday U. Lalit noticed the Supreme Court's view in SBI vs. Raj Kumar (supra) and MCB Gramin Bank vs. Chakrawarti Singh (supra) on one side and the contrary view in Canara Bank & Anr. Vs. M.Mahesh Kumar (supra) and felt the necessity of resolution of the conflicting question on whether the norms applicable on the date of death or on the date of consideration of application should apply. Accordingly, in State Bank of India & Ors. Vs. Sheo Shankar Tewari the Court referred the matter for consideration by a larger Bench so that the conflicting views could be reconciled.

18. The above discussion suggest that the view taken in Canara Bank & Anr. Vs. M.Mahesh Kumar (supra) is to be reconciled with the contrary view of the coordinate bench, in the two earlier judgments.



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Therefore, notwithstanding the strong reliance placed by the appellants counsel on Canara Bank & Anr. Vs. M.Mahesh Kumar (supra) as also the opinion of the learned Single Judge of the Karnataka High Court in Uday Krishna Naik vs. State of Karnataka & Ors., it can not be said that the appellants claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the Government employee.

19. In the most recent judgment in State of Himachal Pradesh & Anr. Vs. Shashi Kumar the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the bench, Dr. Justice D.Y. Chandrachud reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The Dependent of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy.

9. After the discussion as aforesaid, the issue came to be answered at paragraph-20 to the effect that the norms that prevailed as on the date of consideration of the application should govern a decision upon the same. Paragraph-20 is extracted below:

20. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.

10. The Bench thus reiterates the proposition that no applicant has a vested right to claim compassionate appointment and that the norms/rules that are in force when the application is actually taken up for consideration by the bank would prevail and be applicable to that case.

11. In light of the aforesaid, this writ petition has to be dismissed and I do so. My order of dismissal will also be supported by the fact that pending writ petition from 2005, the Bank has come out with a subsequent set of norms in 2014,



bringing back the earlier norms for compassionate appointment. Thus the impugned norms dated 30.08.2005 have worked themselves out.

12. One aspect is however, clear. There is, in general, undue and unjustifiable delay on the part of Banks in considering applications of legal heirs of those deceased for either compassionate appointment/ex-gratia. In Canara Bank (supra) the Hon'ble Supreme Court has stated that the purpose of appointment on compassionate grounds is to mitigate hardship caused by reason of the demise of the breadwinner in the family. Such an appointment should, therefore, be provided immediately to redeem the family in distress. The Hon'ble Supreme Court has opined that it is improper to keep such cases pending for years and if there were no suitable posts for appointment, supernumerary posts should be created to accommodate the applicants.

13.A direction is thus issued to Banks, that in cases where applications for relief under the Schemes are made by the legal heirs of deceased employees or those who have resigned on account of debilitating health, such applications be considered and disposed expeditiously, and in any event, within a period of three months from date of receipt of the applications.

14. Had the application in the present case been filed in a timely manner by the second petitioner, she might have been entitled to the benefit of compassionate appointment. However, though Mr.Muralidharan passed away on 18.11.2003, the application was filed belatedly, only on 24.07.2004, taken up for consideration on 08.09.2005 by the bank.

15.Mrs.Rita Chandrasekar, learned counsel appearing for the Bank will assure the Court that the application of the second petitioner will be considered in light of the ex-gratia scheme that was in force at the relevant point in time and upon condition that she satisfied all eligibility requirements thereunder, ex-gratia will be paid over to the second petitioner expeditiously. Let the second petitioner submit proof of compliance with eligibility criteria within a period of two weeks from today in which case the Bank will, if the documents are found to be in order and the second petitioner so eligible, pay over the amount of ex-gratia within a period of four weeks from date of receipt of the required particulars by her. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

Vs/sl



To

1.The Managing Director,
Indian Bank
66, Rajaji Salai, Chennai - 600 001.

2.The General Manager (HRM)
Indian Bank, Head Office,
66, Rajaji Salai, Chennai - 600 001.

+1cc to M/s.Row and Reddy, Advocate SR.No.46054

+1cc to M/s.Aiyar & Dolia, Advocate SR.No.46245

W.P. No.31459 of 2005

GPL(CO)
RVM(17/09/2021)