



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
W.P (MD) No.533 of 2019

R.Mala

... Petitioner

Vs.

1.The chief Manager (HRM)
Indian Bank,
Corporate Office, HRM Department,
254-260, Avvai Shanmugham Salai,
Chennai - 600 014.

2.The Branch Manager,
Indian Bank,
Rajagopalapuram,
Plot No.268, Housing Road,
Pudukkottai - 622 003.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 1st respondent in HR/WELFARE/COMP/57036/2018-19 dated 16.07.2018 quash the same and consequently direct the respondents herein to consider the petitioner's daughter Ishwarya for compassionate appointment in any post.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.Pala Ramasamy,
Standing Counsel for R1

ORDER

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the order dated 16.07.2018, passed by the first respondent and to direct the respondents to consider the petitioner's daughter Ishwarya for appointment on compassionate grounds.

2. The case of the petitioner is that her husband viz., R.R.Raju was working as Clerk in the second respondent bank and he died on 04.07.2010, while he was in service, leaving behind the petitioner and his two female children. Thereafter, the petitioner



made an application seeking compassionate appointment to her daughter Ishwarya. However, the request of the petitioner was rejected by the impugned order dated 16.07.2018 on the ground that at the time of death of her husband, the scheme was not in force. Challenging the same, the present writ petition has been filed.

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3. The learned counsel appearing for the petitioner submitted that since the petitioner's family is in indigent circumstances after the death of the sole breadwinner, the petitioner's daughter viz., Ishwarya may be considered for compassionate appointment.

4. The learned counsel appearing for the first respondent vehemently objected to the contentions of the petitioner and submitted that the respondent Bank introduced a new Scheme with effect from 04.08.2005 and as per the new Scheme, the aggrieved person is entitled to get *ex gratia* amount. According to the learned counsel, a similar issue came up before the Honourable Supreme Court in ***State Bank of India and another vs. Raj Kumar [(2010) 11 SCC 661]***, wherein it was observed that pending application will be considered only in terms of the new Scheme and the new Scheme alone will apply even in respect of pending applications. Therefore, in the light of the aforesaid decision rendered by the Honourable Supreme Court, the grounds raised by the petitioner have been settled by the Apex Court and therefore, the impugned order does not warrant any interference of this Court.

5. I have anxiously considered the rival submissions and perused the materials placed on record.

6. On a perusal of the records, it is seen that the petitioner's husband died on 04.07.2021 and at the time of his death, there is no scheme available for compassionate appointment. As per the Scheme, which came into force from 04.08.2005, the aggrieved person is entitled to get *ex gratia* amount. The similar issue came up before the Honourable Supreme Court in the case of ***Raj Kumar*** (supra), wherein it was observed as follows:

"12. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, upto the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable.

13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications



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will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

14. In this context we may usefully refer to the decision of this Court in *Union of India v. R.Padmanabhan* (2003) 7 SCC 270, wherein this Court observed :

"That apart, being *ex gratia*, no right accrues to any sum as such till it is determined and awarded and, in such cases, normally it should not only be in terms of the Guidelines and Policy, in force, as on the date of consideration and actual grant but has to be necessarily with reference to any indications contained in this regard in the Scheme itself. The line of decisions relation to vested rights accrued being protected from any subsequent amendments may not be relevant for such a situation and it would be apposite to advert to *State of T.N. v. Hind Stone* (1981) 2 SCC 205. That was a case wherein this Court had to consider the claims of lessees for renewal of their leases or for grant of fresh leases under the Tamil Nadu Minor Mineral Concession Rules, 1959. The High Court was of the view that it was not open to the State Government to keep the applications filed for lease or renewal for a long time and then dispose them of on the basis of a rule which had come into force later. This Court, while reversing such view taken by the High Court, held that in the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application, despite the delay, if any, involved although it is desirable to dispose of the applications, expeditiously."

15. We may also refer to the decision of this Court in *Kuldeep Singh v. Govt. of NCT of Delhi* (2006) 5 SCC 702, which considered the question of grant of liquor vend licences. This Court held that where applications required processing and



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verification the policy which should be applicable is the one which is prevalent on the date of grant and not the one which was prevalent when the application was filed. This Court clarified that the exception to the said rule is where a right had already accrued or vested in the applicant, before the change of policy.

16. In this case the employee died in October, 2004, the application was made only in June, 2005. The application was not even by the respondent, but by his mother. Therefore, it was necessary to ascertain whether respondent really wanted the appointment, whether he possessed the eligibility, and whether any post was available. Within two months of the application, the new scheme came into force and the old scheme was abolished. The new scheme specifically provided that all pending applications will be considered under the new scheme. Therefore it has to be held that the new scheme which came into force on 4-8-2005 alone will apply even in respect of pending applications."

7. In view of the above above facts and circumstances of the case on hand and the settled legal position, the first respondent has rightly considered the petitioner's application for compassionate appointment under the new Scheme which came into force from 04.08.2005, and therefore, the impugned order dated 16.07.2018 passed by the first respondent does not warrant any interference of this Court.

8. In fine, the writ petition fails and it is dismissed. No costs.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chief Manager (HRM)
Indian Bank,
Corporate Office, HRM Department,
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Chennai - 600 014.

2.The Branch Manager,
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Rajagopalapuram,
Plot No.268, Housing Road,
Pudukkottai - 622 003.

+1 CC to M/s.K.APPADURAI, Advocate (SR-25835[F] dated 10/08/2021)

**W.P (MD) No.533 of 2019
10.08.2021**

GS (18.08.2021) 5P 4C