BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P(MD)No.4802 of 2018

& WMP(MD) No.4816 of 2018

Ayyammal ... Petitioner

Vs.

1. The General Manager
Canara Bank, PM Section,
Personnel Management Wing,
112, J.C.Road, Head office,
Bangalore – 2.

2. The Deputy General Manager,
Canara Bank, H.R.M Section,
Circle Office,
166, T.V.Samy Road,
R.S.Puram,
Coimbatore.

3. The Deputy General Manager,
Canara Bank, H.R.M Section,
Circle Office,
Annasalai, Teynampet,
Chennai.

4. The Manager,
Canara Bank,
Palani Branch,
Dindigul District ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of Writ of Writ of certiorarified Mandamus calling for the entire records relating to the impugned order of the 2nd respondent pertaining to vide letter No. CBECO HRM 271/2015 RKC dated 05.02.2015 regarding payment of Exgratia and set aside the same as arbitrary, unlawful, illegal, improper and unconstitutional and consequently direct the 1st respondent to provide employment on compassionate grounds to my elder daughter M. Santhiya (aged about 21 years) and also to pay the lump sum amount of Exgratia.

For Petitioner : M/S.R.Murugan.
For Respondents : Mr.N.Dilipkumar

ORDER

The Writ Petition has been filed, praying for issuance of a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of Writ of Writ of certiorarified Mandamus calling for the entire records relating to the impugned order of the 2nd respondent pertaining to vide letter No. CBECO HRM 271/2015 RKC dated 05.02.2015 regarding payment of Exgratia and set aside the same as arbitrary, unlawful, illegal, improper and unconstitutional and consequently direct the 1st respondent to provide employment on compassionate grounds to my elder daughter M. Santhiya (aged about 21 years) and also to pay the lump sum amount of Exgratia.

2. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

3. According to the petitioner, her husband Late P.Murugan was appointed as a Peon in Canara Bank and while working at Thungavi Branch under the control of the 2nd respondent, he expired on 12.01.2012, leaving behind the petitioner and his two minor daughters. The petitioner made an application on 06.02.2012 seeking to provide appointment on compassionate grounds. She also made application for grant of exgratia also on 09.12.2014, which was rejected by vide impugned letter, dated 05.02.2015. According to the petitioner, scheme for providing employment on compassionate grounds was in force prior to the scheme for payment of exgratia lumpsum in lieu of employment on compassionate ground. Since no action is forthcoming despite her representations and reminders, the petitioner has come forward with the present Writ Petition.

4. A counter affidavit has been filed on behalf of the respondents, wherein, it is stated that by the impugned letter, the respondent bank has clarified that the dependents of the deceased employee Late P.Murugan did not fall within the eligibility criteria of the scheme governing lump sum ex-gratia payment and also for appointment to the dependents of the deceased employee on compassionate grounds. The application is not maintainable either in law or on facts. The respondent bank has settled the terminal benefits and no ground is made out for grant of ex-gratia. The Writ Petition has been filed with undue delay of nearly three years after rejection of the petitioner's application for lump sum ex-gratia.

5. It is further stated that the respondent bank formulated the Scheme for payment of ex-gratia lump sum amount vide Circular No.35/2005 in lieu of appointment on compassionate grounds to the dependents of the deceased employees, subject to their fulfilling certain conditions to become eligible under the Scheme, like the

monthly income of the family from all sources, after the death of the employee, has to be less than 60% of the last drawn salary of the dependent's deceased employee and the application has to be made within six months from the date of death of the employee. In the year 2015, a new scheme for employment under compassionate grounds was formulated and circulated vide HO Circular No.142/2015/, dated 20.03.2015 and it came into operation only with effect from 05.08.2014 and since the death of the petitioner's husband was on 12.01.2012, the case of the petitioner was not covered under the said scheme. The respondent bank has duly examined the request of the petitioner in terms of the scheme and it is found that the last drawn gross salary of the employee at the time of his death was Rs.17,554 and after his death, the income of the dependents of the deceased employee calculated from all sources per month worked out to Rs.12,014 and since the said income was more than 60% of the last drawn salary of the deceased employee, the dependents were not eligible to draw the lumpsum ex-gratia. This was duly informed to the petitioner vide letter dated 05.02.2015.

6. It is further stated that as on the date of death of the petitioner's husband, only the Scheme for payment of lump sum ex-gratia was in vogue and since as per the scheme, the petitioner was found not eligible for the lump sum ex-gratia and the respondent Bank has rightly rejected her case. As regards providing compassionate employment is concerned, there was no scheme in existence for providing employment on compassionate grounds to the dependents of the deceased employee on the date of the deceased employee and hence, the request of the petitioner for providing compassionate appointment could not be considered by the bank. With these averments, the respondent bank sought for dismissal of the writ petition.

7. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents.

8. The learned counsel appearing for the respondents bank at the outset would fairly conceded that based on the applications made by the petitioner, the respondent bank has given only clarification vide letter dated 05.02.2015 which is challenged by the petitioner and no final order has been passed.

9. The learned counsel for the respondents bank, while reiterating the counter affidavit, would submit that the application made by the petitioner for grant of lump sum ex-gratia was considered by the respondent bank and since it is found that the income of the dependents of the deceased employee from all sources per month worked out to Rs.12,014/- while the last drawn gross salary of the deceased employee at the time of his death was Rs.17.554/-, which is more than 60% of the last drawn salary of the deceased, hence, the respondent bank has not considered the application of the petitioner for grant of ex gratia lump sum and

the same was informed by impuned letter dated 05.02.2012. He also pointed out that as there was no scheme existing for providing compassionate appointment at the time of death of the deceased employee, the application made by the petitioner was also not considered.

10. On a perusal of the impugned letter dated 05.12.2015, this Court finds that it is only a clarification of the respondent bank made in pursuant to the applications made by the petitioner for grant of ex-gratia in lieu of providing compassionate appointment as well as for providing compassionate appointment to the dependents of the deceased employee. As on date, no final orders have been passed by the respondent bank by providing an opportunity to the petitioner to satisfy the norms of the scheme for grant of lump sum ex gratia as well as her eligibility for getting appointment on compassionate appointment. It appears that the petitioner has made application within a month, i.e. on 06.02.2012 from the date of the death of her husband on 12.01.2012 and perhaps she might have been under bona fide impression that her application would be considered and she was not aware of the fact that whether any scheme for providing compassionate appointment was in vogue or not and since there was no response, later, she made application for grant of lump sum ex gratia. Even for claiming ex gratia also, she was not aware of the time limit or the terms of the scheme of granting ex gratia. Therefore, considering the fact that admittedly, as on date no final order has been passed by the respondent bank, this Court feels it appropriate to direct the respondent bank to consider the applications made by the petitioner and pass final orders therein after affording an opportunity to the petitioner. Since admittedly, the impugned letter dated 05.02.2015 is only in the form of clarificatory letter and not a final order, there is no need to quash the same, however, the respondent bank is directed not to act upon it.

11. Accordingly, the respondent bank is directed to consider the applications made by the petitioner dated 06.02.2012 and 09.12.2014 for providing compassionate appointment and for grant of ex gratia respectively without insisting upon limitation aspect and afford an opportunity to the petitioner. The petitioner shall submit her explanation to satisfy the norms for grant of ex gratia that the income of the dependents would be less than 60% of the last drawn salary of her husband (net of taxes). On receipt of the explanation from the petitioner, the respondent bank shall pass final orders in accordance with law and on merits within a period of 12 weeks from the date of receipt of a copy of this order.

12. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected WMP is closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-27827[F] dated 01/09/2021)

+1 CC to M/s.R.MURUGAN, Advocate (SR-28028[F] dated 03/09/2021)

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PS(CO)
KB(06.10.2021) 5P 3C