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W.P.(MD) No.13501 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.13501 of 2018

and

W.M.P. (MD) No.12303 of 2018

P.Balamurugan

... Petitioner

-vs-

1.State Bank of India

Rep.by its Chief General Manager
Corporate Centre
State Bank Bhavan
Madame Cama Road
Mumbai-400 021

2.The Chief General Manager

State Bank of India
H.R.Department
Local Head Office
"Circle Top House"
P.B.No.737, 16 College Lane
Chennai-600 006

3.The Deputy General Manager (B & O)

State Bank of India
HR Section, Network-2
Administrative Office
Madurai Cluster
No.2, Dr.Ambedkar Road
Madurai-625 002

4.The Assistant General Manager

Main Branch
State Bank of India
No.1, Salai Road
Dindigul-624 001

5.The Branch Manager

Nagal Nagar Branch
State Bank of India
Mengles Road, Dindigul-625 005

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating to the order of the third respondent dated 29.12.2014, passed in HR:MVS:LAW:840, quash the same and consequently direct the respondents to provide compassionate



appointment to the petitioner within a time frame.

For Petitioner : Mr.S.Arunachalam

For Respondents : No appearance for R1 & R2
Mr.V.P.Rajan for R3

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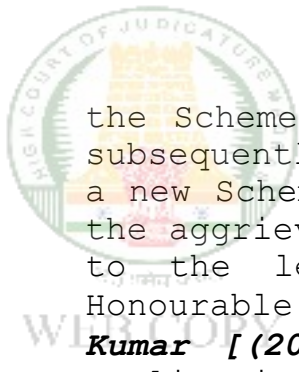
O R D E R

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the order, dated 29.12.2014, passed by the third respondent and to direct the respondents to provide compassionate appointment to the petitioner within a time frame.

2. The case of the petitioner is that his father joined the service of the respondent Bank as Messenger on 02.01.1978 and after having rendered more than 26 years, he was promoted as Senior Head Messenger and was working in the fourth respondent Branch. On 30.09.2004, he died, while he was in service, leaving behind his mother, wife, one son (petitioner herein) and three daughters as legal heirs. According to the petitioner, since he has completed 12th Standard and ITI Course, he is eligible to get appointment on compassionate grounds. Therefore, he made an application on 10.03.2005 to the respondent Bank seeking appointment on compassionate grounds. Pending consideration of the application, the respondent Bank engaged the petitioner as Office Assistant on daily wage basis. But, subsequently, the petitioner's application for compassionate appointment was rejected by the third respondent by order dated 29.12.2014 on the ground that since the petitioner having been engaged as a daily wager is not eligible to claim for permanent employment. Challenging the same, the petitioner has filed this writ petition. It is seen that challenging the termination from service, the petitioner has raised an industrial dispute before the Industrial Tribunal, Chennai, under the Industrial Disputes Act, 1974 and the same is pending disposal.

3. According to the learned counsel appearing for the petitioner, the petitioner applied for compassionate appointment as early as on 10.03.2005 prior to the new Scheme came into force. Therefore, the respondents ought to have considered his application under the old Scheme, however rejected the application based on the new Scheme which came into effect much after the submission of the application, and hence, the impugned order passed by the third respondent is liable to be set aside.

4. The learned counsel appearing for the third respondent vehemently objected to the contentions of the petitioner and submitted that the petitioner's mother submitted application on 10.03.2005 for compassionate appointment and at that time, as per



the Scheme, which was in vogue, the application was processed, but subsequently, the respondent Bank revised the policy and 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. According to the petitioner, he submitted application on 10.03.2005 seeking compassionate appointment for the death of his father on 30.09.2004. To be noted, at that time when the petitioner submitted his application for compassionate appointment, the old Scheme was in vogue. But, subsequently, the respondent Bank has changed the policy for compassionate appointment and introduced a new Scheme with effect from 04.08.2005 and based on the new Scheme, the respondent rejected the petitioner's request for compassionate appointment.

7. According to the learned counsel appearing for the third respondent, the petitioner's mother has submitted an application in the year 2006 and based on same, the Bank sanctioned *ex gratia* amount to her, as per the new Scheme.

8. 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



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 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."

9. In **Government of India and another v. P.Venkatesh [(2019) 15 SCC 613]**, the Honourable Supreme Court has held as follows:

"8. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9-8-2016, nearly twenty one years had elapsed since the date of the death of the employee.

9. ...

10. Bearing in mind the above principles, this Court held: (*Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138) SCC pp.141-42, para 6)

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be



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specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

10. In view of the above above facts and circumstances of the case on hand and the settled legal position, the third 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 passed by the third respondent does not warrant any interference of this Court.

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

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Krk

Note :

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