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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 15.02.2021

\+ **LPA 68/2021**

NIRMALA MEHER ..... Appellant

Through: Ms. Monica Kapoor, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC with Mr. Kushagra Kumar, Advocate for R-1/UOI.
Mr. Rajeev Kapoor and Mr. Akshit Kapur, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral)

Brief Background

1. The Appellant, widow of a deceased employee, is aggrieved by the order dated 20th January, 2020 [*hereinafter referred to as the* "***Impugned Order***"] whereby the learned Single Judge has rejected her writ petition [being W.P.(C.) No. 2807/2017] impugning the letter dated 2nd April, 2015 issued by the employer, State Bank of India [*hereinafter referred to as the* "***Respondent No. 3***"] declining her appointment on compassionate grounds.

2. Briefly stated, the case of the Appellant is that her husband expired on 17th July, 2014, whilst he was in the service of Respondent No. 3. As on the date of death, the deceased had rendered services for a period of 15 years and 6 months and was aged 34 years, 1 month and 27 days. He is survived by the Appellant herein, mother and two minor daughters aged 8 years and 2 years. The financial condition of the deceased's family was distressing, and the same deteriorated further after his passing, as the deceased was the sole bread-earner for the family. The destitution and penury compelled the Appellant to seek compassionate appointment with Respondent No. 3. An application dated 3rd November, 2014 was filed in this regard, followed by several representations and reminders, but to no avail. Ultimately, the Competent Authority informed the Appellant *vide* communication dated 25th March, 2015, that her request for compassionate appointment had been declined, and that she could apply for ex-gratia lump sum amount in lieu of the appointment on compassionate grounds, within nine months from the date of death of the employee as per the extant instructions of Respondent No. 3.

3. Thereafter, *vide* letter dated 2nd April, 2015, in reply to the Appellant's letter dated 30th March, 2015, Respondent No. 3 informed the Appellant that her case was examined as per the prevalent scheme for appointment on compassionate grounds, and it was observed that as the total length of service of the deceased was 15 years and 6 months and he was of the age of 34 years 1 month and 27 days, her case did not fall under any of the eligibility criteria for appointment on compassionate grounds, which envisaged two exceptional circumstances. The exceptional circumstances are highlighted in the said communication dated 2nd April, 2015, and read as under-

"(i) Employee dying while performing his official duty, as a result of violence, terrorism, robbery or dacoity.

OR

(ii) Employee dying within 05 years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a dependent spouse and/ or minor children."

It was further reiterated that the Appellant may avail the scheme of ex-gratia lump sum amount in lieu of appointment on compassionate grounds.

4. Aggrieved with the rejection, the Appellant also made a representation to the State Commission for Scheduled Castes and Scheduled Tribes. However, the same was turned down. In this background, the Appellant approached this Court by filing W.P. (C) 2807/2017 and sought the following reliefs-

"(A) issue a writ/order/direction in the nature of certiorari thereby quashing the policy adopted by the Respondent no. 3 in the matter of appointment on compassionate grounds;

(B) issue a writ/order/direction in the nature of certiorari thereby quashing/setting aside the order dated 02.04.2015 of the respondent no. 3 whereby the application of the petitioner for appointment on compassionate grounds has been rejected;

(C) issue a writ of mandamus thereby restoring the application of the petitioner for appointment on compassionate grounds in accordance with the law;

(D) award the cost of proceedings in favour of the petitioner and against the respondents.

(E) pass any further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

5. The learned Single Judge, did not find merit in the petition and dismissed the same *vide* the Impugned Order dated 20th January, 2020.

Contentions

6. The Appellant assails the Impugned Order on a limited aspect i.e., the non-consideration of the prayer at paragraph (A) in the writ petition, as quoted above, which seeks quashing of the policy of compassionate appointment. The Appellant contends that the learned Single Judge has neither examined nor dealt with the said prayer. The policy of appointment is framed in such a manner as to escape the ethical responsibility of providing relief to the family of a deceased employee in its time of need. The eligibility criteria of length of service of the deceased, is irrational. It cannot be expected that the family of the deceased employee will be in financial distress only if the employee dies before completing age of 30 years or before he completes 5 years of service. This criterion is contrary to the objective behind the scheme of compassionate appointment. The husband of the Appellant died at the age of 34 years, was survived by non-earning members of the family, and the family was living in penury. Thus, the approach of the Respondents in rejecting the application is inhumane and illogical. The criteria of a cut-off age of the deceased or length of service are arbitrary, and the only eligibility criterion should be the indigence of the family of the deceased and whether or not they deserve immediate assistance. However, the learned Single Judge did not take that into consideration. The learned Single Judge also did not take into account the letter dated 7th August, 2014, written by Respondent No. 1 (Ministry of Finance) to Respondent No. 2 (Indian Banks Association), approving the opening up of compassionate appointment in Public *Sector* Banks [*hereinafter referred to as* "***PSBs***"] on the lines of the Central Government. The Central Government scheme for compassionate appointment does not stipulate a cut-off age of deceased or the length of his/her service to make his/her dependent eligible for applying for compassionate appointment. The only eligibility criterion in case of a dependant of the deceased Central

Government employee is that the family is indigent and deserves immediate assistance for relief from financial destitution.

7. Respondent No. 3, who was the primary contesting party in the writ petition, defends the Impugned Order and strongly disputes the claim of the Appellant. It is contended that compassionate appointment cannot be a matter of right, and is an exception to the general rule of recruitment which is based on the merit of the aspirants. The scheme for compassionate appointment is binding on both the employer and the employee and the terms thereof must be construed strictly. As stated in the letter dated 2nd April, 2015, the Appellant's case does not fall under any of the exceptional circumstances delineated in the scheme dated 4th August, 2011. The circular dated 13th July, 2012, whereby an amendment was made to the existing scheme of payment of ex-gratia lump sum amount, came into effect on 1st April, 2012 and would apply to the Appellant, as her husband passed away on 17th July, 2014. Respondent No. 3 further relies upon the letter of 5th December, 2014 which leaves the discretion with the banks to either provide compassionate appointment or provide an ex-gratia lump sum amount. Pursuant to the letter dated 5th December, 2014, Respondent No. 3 implemented a policy on 24th April, 2015 which came into effect only on 5th August, 2014 and thus, would not be of any assistance to the Appellant.

Analysis

8. Certain essential and undisputed facts emerge from a perusal of the record. Two schemes appear to be operating simultaneously. The first one was introduced on 4th August, 2011 by Respondent No. 3 titled "*Scheme for appointment on compassionate grounds in exceptional cases*" which was effective from 6th October, 2005. On the same date, i.e., 6th October, 2005 the second scheme, the ex-gratia lump sum amount scheme titled "*SBI*

Scheme for payment of ex-gratia lumpsum amount" was also implemented, replacing the earlier compassionate appointment scheme in place. This second scheme was amended *vide* circular dated 13th July, 2012 and this amended scheme was made applicable to all cases where death occurred on or after 1st April, 2012.

9. Bearing the afore-noted factual position in mind, we shall now proceed to analyse the contentions raised by the Appellant. The Appellant's husband deceased on 7th July, 2014 and she filed an application for compassionate appointment on 3rd November, 2014. Her application was rejected *vide* communications dated 25th March, 2015 and 2nd April, 2015, and she was requested to apply for ex-gratia lump sum amount in lieu of compassionate appointment. But the Appellant insisted on appointment, relying upon two letters dated 7th August, 2014 and 5th December, 2014 addressed by the Respondent No. 1 to Respondent No. 2. In the former communication, the Ministry of Finance granted approval to have compassionate appointment in PSBs on the lines of the Central Government and further, approval was granted to discontinue payment of ex-gratia lump sum amount in lieu of compassionate appointment. In the latter communication, the Ministry of Finance reconsidered the stand taken by it in the earlier letter and stated that PSBs can have both options i.e., either compassionate appointment in exceptional circumstances, or, payment of ex-gratia lump sum amount in lieu of compassionate appointment.

10. At this juncture, it is apposite to note the views of the learned Single Judge. The relevant portion of the Impugned Order reads as under-

> "*… It is the case of the petitioner that within the time available to her, she had made an application in pursuance of the Ministry of Finance's communication D.O.F.No.l8/2/2013-IR dated 07.08.2014, whereby, an approval on the proposal of Indian*

Banks' Association-respondent no.2 was given to open the compassionate appointment in PSBs on the lines of Central Government and discontinue the provision of ex-gratia in lieu of compassionate appointment in PNB was made. This communication is the foundation of the claim of the petitioner in the present petition. It reads as under:

> *"D.O.F.No.18/2/2013-IR dated: 7th August, 2014.*
>
> *Dear Kamath Sahab,*
>
> *Kindly refer to IBA's letters No. HR&IR/KC/Govt/532/9274 dated 22.4.2014 and 13.6.2014 regarding IBA 's proposal for revising the Compassionate Appointment Scheme in Public Sector Banks (PSBs). The proposal has been examined in this Department and it is decided to convey the approval of the Government on the proposal of IBA as follows:*
>
> *i) To open the Compassionate Appointment in PSBs on the lines of Central Government;*
>
> *ii)Discontinuing the provision of ex-gratia in lieu of Compassionate Appointment in PSBs.*
>
> *2. Accordingly, IBA is also requested to take appropriate action to circulate the revised Scheme to all PSBs for adoption with the approval of their respective Boards. The scheme shall be applicable from 5.8.2014.*
>
> *3. This issues with the approval of Hon'ble Finance Minister.*
>
> *With warm regards,*
>
> *Yours Sincerely*
> *Sd/-*
> *(Pravin Rawal)*

The foregoing communication, it would be seen, is in the nature of a proposal rather than formulation of any scheme by any of the banks forming part of IBA. This proposal required adoption by the respective Boards of the Banks, who form part of the IBA.

Ms.Kapoor, ld. counsel for the petitioner on her part is unable to point out for any scheme having been adopted by the bank in pursuance of the said letter dated 07.08.2014 but for the scheme of 04.08.2011 in vogue, a copy whereof forms part of the counter-affidavit, as Annexure R-5. But for the amendment to the scheme of 04.08.2011 as regards the quantum of ex-gratia payment nothing else emerges on record. As per the

compassionate appointment scheme dated 04.08.2011, the scheme was applicable only to the following cases:
"i. Employee dying while performing his official duty, as a result of violence, terrorism, robbery or dacoity.
ii. Employee dying within five years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a dependent spouse and/or minor children."

Undisputedly, the case of the petitioner is not covered under any of the foregoing cases. Thus, in the absence of any scheme in vogue as on the date the petitioner made an application for compassionate appointment, the Court does not find any right vesting in the petitioner to assert compassionate appointment. At the relevant time, the petitioner was entitled only to the ex-gratia lump sum payment as per the applicable and/or amended scheme in vogue.

Though, Ms. Kapoor adverting to para 15 of the counter-affidavit seeks to contend that the bank had a revised policy dated 24.04.2015 w.e.f. 05.08.2014, Mr. Kapur, ld. counsel for respondent no.3, on his part submits that revised policy dated 24.04.2015 was only an amendment as regards the quantum of ex-gratia payable against the compassionate appointment and that the assertion in para 15 of the counter-affidavit has to be read in the said context rather than any new scheme of compassionate appointment. In support of his such submissions, Mr. Kapur explains that the revised/amended policy dated 24.04.2015 was only as regards the ex-gratia payment w.e.f. 05.08.2014 rather than for granting compassionate appointment and nothing else. The Court does not see any reason to find fault with such submissions made by Mr. Kapur.

For the foregoing reasons, the Court does not find that the case of the petitioner is covered within the compassionate appointment scheme of the bank either at the time she made the application or later. There is therefore, no merit in the case of the petitioner seeking compassionate appointment."

(Emphasis supplied)

11. The learned Single Judge has observed that the case of the Appellant is not entitled to compassionate appointment. The Appellant is under an impression that there has been a substantial change in the existing scheme *vide* letters of 7th August, 2014 and 5th December, 2014, noted above. This

does not appear to be the case as the only changes that have been brought into the scheme for compassionate appointment and ex-gratia lump sum amount payments are the dates of applicability of the revised compensation payable under the scheme and the quantum of ex-gratia payment. The statement made by the counsel for Respondent No. 3 before the learned Single Judge, as recorded, seems to lay down the correct position with regard to the scheme for compassionate appointment. Thus, the Respondent No. 3's decision was taken in terms of the policy that was in force at the time. The scheme for appointment on compassionate grounds in exceptional cases, which came into force by virtue of the communication dated 4th August, 2011, was clearly not applicable to the Appellant, and accordingly, she was advised to apply for payment of ex-gratia amount. The learned Single Judge has examined the extant policy of the Respondent No. 3 and accordingly returned a finding that as per the applicable scheme, the Appellant has no case for seeking appointment on compassionate grounds. Since the learned Single Judge has already dealt with Appellant's contention at length and since we do not find any ground to interfere with the same, we need not wade into this controversy any further.

12. Before us, Appellant has primarily urged that the prayer for quashing of the policy has not been dealt by the learned Single Judge. We do not find any merit in this contention. The policy has been examined, but, since the learned Single Judge did not find any arbitrariness or irrationality in the same, it has declined to interfere. However, since the Appellant resolutely insists that the policy itself is liable to be struck down, we have nonetheless examined the contentions urged by the Petitioner in this regard. The Appellant's contentions are devoid of merit for several reasons, the foremost being the non-existent right to appointment, which is in fact a concession given under the scheme. The objective behind the scheme for compassionate

appointment is to provide financial assistance to the dependants of a deceased employee, who dies in harness and leaves behind a family which needs financial assistance, in the event there is no other earning member in the family. Moreover, the Appellant does not have any vested right. The right to compassionate appointment cannot be understood to be a conferment of inherent right to seek compassionate appointment. It is a prerogative of the State, which can only be granted as per the concerned policy formulated and enforced at the relevant time. The Appellant does not have any special claim or right to employment, except by way of the concession that has been extended by the employer, under the scheme. Besides, the laying down of criteria or norms for eligibility under the scheme is an administrative function. The scope of judicial review in such matters is limited. The bank provides for a lump sum ex-gratia payment. Only for exceptional case is a compassionate appointment made. The criteria laid down in the impugned scheme is, evidently, the sudden death of a deceased employee or the deceased dying at a very young age. We cannot see any arbitrariness in the same. The claim for compassionate appointment is an exception to the general rule and therefore has to be strictly examined within the four corners of the scheme framed by the employer, and there is no right outside such a scheme. Dependent of a deceased employee is made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy. As per the applicable scheme, the Petitioner was only entitled to ex-gratia lump sum amount. The Supreme Court in ***SBI vs. Raj Kumar,*** (2010) 11 SCC 661, while dealing with a similar issue has held as under:

> "8. *It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the*

selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It. follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant"

This view has been further reiterated in ***MGB Gramin Bank vs. Chakrawarti Singh***, reported in 2014 (13) SCC 583.

13. In light of the above discussion, we do not find any infirmity in the Impugned Order. Accordingly, the present appeal is dismissed.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

FEBRUARY 15, 2021

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(***corrected and released on 19th March, 2021***)