

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Krishna Rao

FMA 1226 of 2021

with

IA No. CAN 1 of 2021

The Chief Manager (HR) Bangiya Gramin Vikash Bank & Ors.

Versus

The Union of India & Anr.

For the Appellants	: Mr. Baidurya Ghoshal Ms. Avipsha Dutta RoyAdvocates
For the Union of India	: Mr. Tapan BhanjaAdvocate
For the Respondent No. 2	: Mr. Manish Kumar DasAdvocate

Heard on : 28.03.2022

Judgment on : 13.04.2022

Subrata Talukdar, J.:- The short question which arises in this appeal is as follows:

Whether the appellant is entitled to claim compassionate appointment with the Bangiya Gramin Vikash Bank (for short *the Bank*) in terms of the Bank's Scheme for compassionate employment (for short the Scheme or the said Scheme).

The appellant, who was the writ petitioner before the Hon'ble Single Bench in WPA 3116 of 2021, applied for compassionate appointment with the Bank on 8th of April 2019. The father of the appellant had died in service on 28th of June 2017 while engaged as a Messenger in the Group-D category.

The Bank rejected the claim of the appellant by a communication dated 16th November 2019 citing the ground that the father of the appellant had died before the said Scheme came into force on the 6th of March 2019.

Mr. Ghoshal, Learned Counsel for the Bank, submits that the said Scheme could not be applied retrospectively. It is submitted that the said Scheme was adopted for application in respect of Regional Rural Banks (RRBs) by the parent National Bank for Agricultural and Rural Development (for short NABARD) on 9th January 2019. The Bangiya Gramin Vikash Bank (*supra*) received a communication for implementation of the Scheme dated the 6th of March 2019.

It is submitted that although the appellant applied on 8th April 2019, i.e. after the implementation of the Scheme on the 6th of March 2019, his father had died on 28th June 2017, i.e. much prior to the date of both

adoption of the Scheme by NABARD and its implementation by the Bangiya Gramin Vikash Bank on the 6th of March 2019.

In respect of his aforesaid submissions, Mr. Ghoshal relies upon the authorities of *Civil Appeal No. 5815 of 2019, In Re: Assistant Excise Commissioner, Kottayam & Ors. Vs. Esthappan Cherian & Anr. at Paragraph 14* ; *Civil Appeal No. 8564 of 2015, In Re: State of Madhya Pradesh & Ors. Vs. Amit Shrivastava at Paragraph 22*; and *Civil Appeal No. 2798 of 2010, In Re: Indian Bank & Ors. Vs. Promila & Anr. at Paragraph 17*.

Relying on *CA 5815 of 2019 (supra)*, Learned Counsel for the Bank submits that the proposition is now well-established that a Rule or a law cannot be construed as retrospective unless it expresses a clear or manifest intention to be read as such.

Relying on *CA 8564 of 2015 (supra)*, Mr. Ghoshal submits that the ratio of the decision in *CA 5815 of 2019 (supra)* was applied to a claim for compassionate appointment. It was, *inter alia*, held necessary that a claim for compassionate appointment under a Scheme of a particular year could not be normally decided based on a subsequent Scheme. In *CA 8564 of 2015* it was reiterated that it is now judicially settled that compassionate appointment is not an alternative to normal appointment and there is no inherent right to seek compassionate appointment.

Finally relying on *CA 2798 of 2010 (supra)*, Learned Counsel for the appellant points out that when settled judicial principles applicable to compassionate appointment are read in terms of the law settled on such

point, a claim to compassionate appointment can be placed before the concerned authority only in terms of the Scheme applicable as prevailing on the date of death of the employee.

It is therefore submitted by the appellant that since the father of the appellant died in 2017, i.e. prior to coming into force of the said Scheme in March 2019, the Hon'ble Single Bench was not correct in directing the Bank to process the claim of the appellant.

Per Contra, arguing for the respondent No.2/ the writ petitioner, Mr. Manish Kumar Das, Learned Advocate, submits that although the father of the writ petitioner died in 2017, the writ petitioner had applied in 2019. At the time of application the said Scheme was subsisting. Therefore, the Bank was duty bound to consider the claim of the writ petitioner in terms of the subsisting Scheme. Furthermore, Mr. Das submits that the Scheme itself provides for consideration of the claim of the writ petitioner and such has been correctly noticed by the Hon'ble Single Bench.

Having heard the parties and considering the materials placed, this Court finds as follows:

- A)** That the writ petitioner applied on the 8th of April 2019 by which time the Scheme had come into force on the 6th of March 2019. With reference to *CA 8564 of 2015 (supra)*, which is an authority relied upon by the appellant, it is noticed that reference therein has been made to *CA 2798 of 2010*, reported in *2020) 2 SCC 729*,

wherein *Paragraph 23*, as pointed out by Learned Counsel for the appellant, reads as follows:

“23. We had the occasion of examining the issue of compassionate appointment in a recent judgment in Indian Bank & Ors. v. Promila & Anr. 4 We may usefully refer to paras 3, 4, & 5 as under: “3. There has been some confusion as to the scheme applicable and, thus, this Court directed the scheme prevalent, on the date of the death, to be placed before this Court for consideration, as the High Court appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in Canara Bank & Anr. v. M. Mahesh Kumar, (2015) 7 SCC 412, qua what would be the cut-off date for application of such scheme. 4. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that 4 (2020) 2 SCC 729 13 there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away. 5. An aspect examined by this judgment is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The crucial aspect is to turn to the scheme itself to consider as to what are the provisions made in the scheme for such compassionate appointment.”

B) From a reading of the authorities as cited above, it is clear that normally a claim to compassionate appointment is to be decided on the basis of the Scheme applicable and, not on a subsequent Scheme. However, the Hon’ble Apex Court was pleased to clarify

that it would be crucial to examine the Scheme itself to find out whether the Scheme itself has made provisions for compassionate appointment in cases where the employee concerned had died prior to the Scheme coming into force.

C) This Court must turn for an answer to **B)** above to the impugned Order of the Hon'ble Single Bench. It is noticed that the Hon'ble Single Bench has taken pains to record the terms of the said Scheme in the following manner:

"The petitioner's father died on 28th June, 2017 while he was engaged as "Messenger" in the Group-"D" Category with the Bangiya Gramin Vikash Bank. The petitioner applied on 8th April, 2019 for being considered for compassionate employment in place and stead of his deceased father.

The Board of Directors of the Bank implemented a model scheme for compassionate employment on the line of all other Regional Rural Banks under the "National Bank for Agricultural and Rural Development" (NABARD) on 9th January, 2019. A communication to that effect was issued to all Branches, Departments and Head Office on 8th March, 2019.

The petitioner's application was rejected by a communication dated 16th November, 2019, inter alia, on the ground that the petitioner's father had died before the Scheme for Compassionate Employment Regulations of 2019 came into force. In lieu thereof, however, the Bank offered to the petitioner ex-gratia. The propriety and legality of the rejection order dated 16th November, 2019 has been questioned before this Court.

Ms. Rao, learned Counsel for the Bank has argued that since the Scheme came into force on 6th March, 2019 and the petitioner's father died in the year 2017, his application is outside the scheme. The date of the petitioner's application for compassionate employment and the consideration thereof are irrelevant.

The other argument advanced by the Counsel for the Bank that the petitioner's application if allowed would throw open flood gates of claims on account of all those persons, who died from the year 2015, cannot be sustained since such other persons are not before this court.

Ms. Rao has relied upon an unreported decision of the Single Bench of the Allahabad High Court in the case of Sarvesh Pandey –Vs. – Union of India & Ors. dated 25th September, 2019 being Case No. WRIT-A No. 14578 of 2019.

The arguments advanced by Learned Counsel Ms. Rao for the Bank cannot be accepted.

This Court finds that the Scheme for Compassionate Employment was adopted sometime on 9th January, 2019 and was sent for implementation to all Branches by a communication dated 6th March, 2019.

“Coverage” in the Scheme is defined in Clause (1). “1.1. To a dependent family member of permanent employee of Bangiya Gramin Vikash Bank who – a) dies while in service (including death by suicide) b) is retired on medical grounds due to incapacitation before reaching the age of 55 years, (incapacitation is to be certified by a duly appointed Medical Board in a Government Medical College/Government District Head Quarters Hospitals/Panel of Doctors nominated by the Bank for the purpose). 1.2. For the purpose of the Scheme, “employee” would mean and include only a confirmed regular employee who was serving full time or part-time on scale wages, at the time of death/retirement on medical grounds, before reaching age of 55 years and does not include any one engaged on contract/ temporary/casual or any person who is paid on commission basis.”

The time limit for consideration of application is set out in Clause 8 under 8(1). Clause 8(2) of the said Scheme may also, however, be noted. “8. Time Limit for considering applications 8.1 Application for employment under the Scheme from eligible dependent should normally be considered upto five years from the date of death or retirement on medical grounds and decision to be taken on merit in each case. 8.2 However, Bank can consider request for compassionate appointment even when the death

or retirement on medical grounds of the employee took place long back, even five years ago. While considering such belated requests, it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the employee in order to relieve it from economic distress. The very fact that the family has been able to manage somehow, all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the Board level.”

A conjoint reading of Clause 1.2 and Clause 8.2 would indicate that the petitioner is indeed covered under the aforesaid Scheme for the following reasons: (a) Clause 8(2) clearly stipulates that the Bank could consider the request of compassionate employment in case of death or retirement on medical grounds even the employee had died ‘five years ago’. The petitioner’s father died in the year 2017, i.e. within 5 years prior to the coming into force of the Scheme. (b) The petitioner had applied on 8th April, 2019 after the date of implementation of the Scheme on 6th March, 2019. As on the date of the impugned order, i.e. 16th November, 2019, the aforesaid Scheme for compassionate employment was in force.

It is now well settled that the Rules in force at the time when a prayer is made and at the time of consideration of such prayer, are the only ones that have to be applied.

It is true that the compassionate employment is an exception to the General Rule of Employment. However, following the principle of Generalia Specialibus Non Derogant, if a Scheme and/or Rules specially prescribe for such appointment, in an organization, the said rules would become the basis of appointment for claims for such employment irrespective of the General Principles of application thereof.

The facts of the Sarvesh Pandey (supra) case are substantially different from that of the

instant case. In the said decision the challenge was to the 5 year cutoff date after death of the employee, to seek compassionate employment. The mother of the applicant had already received ex-gratia and wanted compassionate appointment by refunding the said amount to the bank. The petitioner's father in the said case died before years of the Scheme coming into force.

The said decision is distinguishable in the facts of the case. While accepting retrospective operation conceived of under the said Scheme the Allahabad High Court held that the cut-off date of 5 year stipulated cannot be further stretched beyond. Hence the claim of the petitioner was rejected therein.

For the reasons stated hereinabove, this Court is of the view that the impugned order dated 16th November, 2019 cannot be sustained and is hereby set aside.

The respondent Bank shall consider the petitioner's claim for compassionate employment and process the same in accordance with the Scheme and the applicable Rules within a period of two months from the date of communication of a copy of this order.

The instant writ petition is allowed and disposed of. There will be no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities."

D) Having considered the above facts and the law, this Court must also turn to *Clause 17* containing the General Provisions of the said Scheme. *Clause 17* reads as follows:

"17 General

- i) Appointment made on grounds of compassion should be done in such a way that persons appointed to the post do have the essential educational and technical qualifications and experience required for the post consistent with the requirement of maintenance of efficiency of administration.*

- ii) *It is not the intention to restrict employment of a family member of the deceased or medically retired subv staff employee to an erstwhile sub-staff post only. As such, a family member of such erstwhile sub-staff employee can be appointed to a clerical post for which he/she is educationally qualified. Provided a vacancy in clerical post exists for this purpose.*
- iii) *An application for compassionate appointment should, however not be rejected merely on the ground that the family of the employee has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member size of the family etc.*
- iv) *Compassionate appointment should be made available to the person concerned if there is a vacancy meant for compassionate appointment and he or she is found eligible and suitable under the scheme.*
- v) *Requests for compassionate appointment consequent on death or retirement on medical grounds of erstwhile sub-staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.*
- vi) *Compassionate appointment will have precedence over absorption of surplus employees and regularization of temporary employees.”*

In the light of the above findings, this Court therefore holds that the said Scheme for compassionate appointment was applicable to the claim of the writ petitioner as on the date of the application of the writ petitioner. This Court further holds that the Hon'ble Single Bench has correctly noticed that the provisions of the said Scheme extend their coverage in the facts of this case to the death of the employee, i.e. the father of the writ petitioner,

which took place within a period of five years of the implementation of the said Scheme as stated in *Clause 8.2* of the same.

Accordingly, the claim of the writ petitioner falls within the zone of consideration as laid down *In Re: CA 2798 of 2010 (supra)* and noticed in *CA 8564 of 2015 (supra)*, to the effect that if the said Scheme itself makes provisions for retrospective application extendable to five years from the death of the employee, the same shall be held to be applicable.

This Court thus affirms the order of the Hon'ble Single Bench.

However, the directions passed by the Hon'ble Single Bench as affirmed by this Court, stand restricted to the facts of this case and cannot be treated to be in the nature of a general precedent.

Before parting with this discussion, it requires to be mentioned that Learned Counsel for the appellant Bank has produced a Fact Sheet disclosing release of Pension in favour of the family of the deceased, including payment of *ex gratia*, Gratuity and Leave Encashment. This Court finds that the Hon'ble Single Bench has already permitted the appellant Bank to consider the eligibility of the writ petitioner on merits in terms of *Paragraph 8.2* of the said Scheme.

This Court has not interfered with the order of the Hon'ble Single Bench directing the writ petitioner's application to be considered on merits in terms of *Paragraph 8.2 (supra)* and only observes that *Paragraph 8.2 (supra)* can be read in conjunction with *Paragraph 17 (iii) (supra)*, also of the said Scheme.

FMA 1226 of 2021 with **IA No. CAN 1 of 2021** stand accordingly **disposed of.**

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Krishna Rao, J.)

(Subrata Talukdar, J.)