



W.P.(MD)No.9460 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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**Dated: 29.09.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

**W.P.(MD)No.9460 of 2019**

R.Shanthi

... Petitioner

Vs

1.The Deputy General Manager & CDO,  
HR Department,  
State Bank of India, Local Head Office,  
Circletop House, 5<sup>th</sup> floor, 16, College Lane,  
Nungambakkam, Chennai 600 006.

2.The Chief Manager,  
State Bank of India,  
Kuzhithurai, Marthandam Post 629 165,  
Kanyakumari District.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in HR:LAW:331 dated 26.04.2018 passed by the first respondent and quash the same and consequently direct the respondents to grant ex-gratia payment as per the scheme of “SBI Scheme for payment of Ex-gratia Lumpsum Amount” dated 18.08.2005.

For Petitioner : Mr.S.Anwar Sameem  
For Respondents : Mr.V.P.Rajan  
Standing Counsel



W.P.(MD)No.9460 of 2019

## **ORDER**

**WEB COPY** Heard the learned counsel on either side.

2.The writ petitioner's husband Thiru.Joseph was employed in State Bank of India, Kuzhithurai Branch. He suffered stroke in the year 2009. He became incapacitated and retired on medical grounds. He passed away in the year 2014. The petitioner came to know that the employer had introduced a scheme for payment of ex-gratia lumpsum amount for employees seeking pre-mature retirement due to incapacitation before reaching the age of 55 years. The said scheme issued vide Cir.DO.PER.No.45, dated 18.08.2005 was not within the knowledge of the employee and therefore, no application was submitted earlier. Only after the demise of her husband, the petitioner was informed about the same and she made an application. That was negated. Thereafter, the petitioner applied to the Corporate Office. Since it was also not considered, the petitioner filed W.P(MD).No.6006 of 2018. Vide order dated 21.03.2018, this Court had directed the employer to consider the petitioner's representation dated 22.11.2017. Pursuant to the aforesaid direction, the impugned order dated 26.04.2018 rejecting the petitioner's request came to be issued. Challenging the same, the present writ petition has been filed.



W.P.(MD)No.9460 of 2019

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to quash the order impugned in this writ petition and direct the respondents to pay ex-gratia amount as set out in the scheme.

4.The respondents have filed a detailed counter affidavit and the learned Standing Counsel took me through its contents. According to the learned Standing Counsel, the scheme in question contemplated payment of ex-gratia lumpsum amount to the legal heirs of the employees, who died in harness and to the employees seeking pre-mature retirement due to incapacitation before reaching the age of 55 years. The petitioner obviously will not come under the first category. The case of the petitioner can at best come only under the second category. Even then, it is not possible to grant the relief for two reasons. The application will have to be submitted only by the employee concerned and not by his legal heir or dependent. Secondly, the application should have been submitted within a period of two months after the retirement date. In this case, the retirement of Thiru.Joseph took place in 2009 and he passed away in the year 2014. The petitioner submitted an application thereafter and the same was also rejected. Eventhough challenging the rejection



W.P.(MD)No.9460 of 2019

order, the petitioner filed one more representation before the Corporate Office, which was also rejected. According to the learned Standing Counsel, the petitioner's husband did not submit an application, since he knew that he was not eligible to get any ex-gratia lumpsum payment.

5.The learned counsel also relied on a host of decisions. In particular, he relied on the decision made in W.P.No.15470 of 2017 by the Hon'ble High Court of Madhyapradesh on 24.01.2018. The said case pertains to payment of ex-gratia in lieu of the compassionate appointment. Since the application was not submitted within the prescribed time, the Hon'ble High Court held that the employer was justified in rejecting the applicant's request. The learned counsel also relied on decisions of the Hon'ble Supreme Court to emphasise his point that the date of retirement cannot be ignored. In this case, the time period had been prescribed in the scheme itself. Therefore, the application cannot be entertained beyond the time limit set out in the scheme. He wanted this Court to sustain the order impugned in the writ petition and dismiss the writ petition.



W.P.(MD)No.9460 of 2019

6.I carefully considered the rival contentions and went through the materials on records.

7.The scheme introduced by the employer contemplated payment of ex-gratia lumpsum amount for two cases:

- (i)Employees dying in harness;
- (ii)Employees seeking premature retirement due to incapacitation before reaching the age of 55 years.

8.The petitioner obviously will not fall under the first category. The question is whether relief can be granted under the second category. No doubt, as rightly pointed out by the learned Standing Counsel, the application must be submitted by the employee himself, but Thiru.Joseph, husband of writ petitioner, had suffered a stroke and he was totally bedridden. He was not even in a position to speak. The Medical Board came to the conclusion that Thiru.Joseph was unfit to continue in the Bank's service. The copy of the assessment made by the Medical Board is extracted hereunder:-

“To  
The Regional Manager,  
Regional Business Office,  
State Bank of India,  
Tirunelveli.



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W.P.(MD)No.9460 of 2019

Sir,

Sub: Medial Examination of Mr.Joseph-Reg.

As per your communication dated 31.12.2007 a Medical Board has been constituted with the following Doctors.

- 1.Dr.A.S.Rajasekar -Senior Civil Surgeon,  
Government Medical College, Hospital Nagercoil.
- 2.Dr.S.Arumugavelan \_Asst.Surgeon,  
Government Medical College, Hospital, Nagercoil.
- 3.Dr.N.C.Thanu -General Surgeon,  
AMO-State Bank of India.

Date of Examination :31.01.2008 at 2PM.,

Results of Medical Examination:

Patient is conscious, oriented, unable to talk.  
Pulse 82'min regular.BP 126/88 mm of Hg  
Blood Glucose-140mgs%, Urea 27mgs%,  
Haemoglobin 12.5mgs%  
ECG-Normal  
CVS-S1, S2 heard, No Murmurs. RS-Respiratory  
Sounds normal  
CNS-Patient is affected by 'Spastic Hemiplegia' with  
the involvement of all the limbs.

Conclusion

We certify that Mr.Joseph, an employee of State Bank of India is suffering from Spastic Hemiplegia' and is bedridden and unable to do any physicia work. So we have come to the conclusion that Mr.Joseph is Unfit to continue in the Bank's service.”

9.A reading of the said report would indicate that Thiru.Joseph could not have submitted an application on its own. It is true that Thiru.Joseph survived for five more years in a vegetative state and died in the year 2014 and only after his demise, the writ petitioner submitted an application.



W.P.(MD)No.9460 of 2019

10.In matters such as this, the employer ought not to raise any technical plea such as limitation. The only consideration that the employer must bear in mind is whether there was an entitlement for receiving ex-gratia lumpsum amount. If there was no entitlement and if the eligibility parameters set out in the scheme are not fulfilled, then there is no question of considering the applicant's request. If otherwise the employee fulfilled the eligibility criteria and was entitled to some payment, the employer ought not to deny the same on the ground of limitation. The writ petitioner is not a stranger or any alien, she is the wife of the deceased employee. The employee concerned had to retire from bank's service as he had suffered stroke. Therefore, the authority must approach the issue from a broad and liberal perspective.

11.In this view of the matter, the order impugned in this writ petition is set aside. I however refrain from rendering a finding if the petitioner is eligible or not. It is for the authority to apply the parameters set out in the scheme with reference to the position that obtained in the year 2009, when the petitioner's husband Thiru.Joseph retired from service.



W.P.(MD)No.9460 of 2019

12.I would also look at the issue from another perspective. The Bank Manager concerned, who was aware of the scheme, had duty to appraise the applicant about the scheme particulars. In fact, in such cases even without an application from the parties concerned, the Management ought to have conferred the benefit. The respondents are directed to find out if Thiru.Joseph would have been eligible to receive ex-gratia lumpsum payment on the date of his retirement in terms of scheme. If he was eligible, the said amount shall be paid to the writ petitioner herein. Of course, the question of paying interest will not arise. The Writ Petition is allowed on these terms. No costs.

**29.09.2022**

Index : Yes/No

Internet : Yes/No

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W.P.(MD)No.9460 of 2019

**G.R.SWAMINATHAN, J.,**

*Rmk*

**W.P.(MD)No.9460 of 2019**

**29.09.2022**