

	WPA 4010 of 2020	
	Pradip Das	
	v.	
	Bank of Baroda & Ors.	
29.08.2	Mr. Soumen Kumar Dutta	
3	Mr. Partha Sarathi Basu	
Sl-20	Mr. Sabyasachi Bhattacharjee	... for the petitioner.
Ct.11		
(S.R.)		
	Mr. Suchayan Banerjee	
	Mr. S.K. Banerjee	... for the Bank.

The writ petition has been preferred primarily praying for the following relief: -

“a) A Writ of and/or in the nature of Mandamus commanding and/or directing the respondent authorities concerned and/or their men, agents, servants and/or assigns to forthwith give appointment to the petitioner on compassionate ground.”

Mr. Dutta, learned advocate appearing for the petitioner submits that the petitioner’s father, namely, Parimal Das, since deceased, happened to be an employee of Bank of Baroda. While working as a Sahayak at Kanchrapara Branch, his father died-in-harness on 26th December, 2017 leaving behind the petitioner, his mother and his sister. The deceased employee was the sole bread-earner of the family and hence, the family plunged into penury due to sudden demise of the deceased employee. The petitioner’s mother made an application praying for appointment of the petitioner on compassionate ground. The respondent no.3 *vide.* a letter dated 6th June 2018

made certain queries which were duly replied to by a letter dated 8th June, 2018 and all the requisite documents were submitted to the concerned respondents and even the petitioner also made a representation dated 10th April, 2019 praying for his appointment on compassionate ground but the authority concerned maintained a deceptive silence. Consequently, the petitioner was constrained to prefer a writ petition *vide* W.P. No.10217 (W) of 2009 which was disposed of By Amrita Sinha, J. by an order dated 20th June, 2019 directing the respondent/bank to communicate the fate of the application for compassionate appointment, if not communicated in the meantime, within a period of three weeks from the date of communication of a copy of that order.

In deference to the order dated 20th June, 2019, by a letter dated 18.07.2018, the Sr. Branch Manager, Bank of Baroad, Kanchrapara Branch communicated the fate of the application for compassionate appointment to the mother of the petitioner. From the letter dated 18.07.2018, it would be explicit that the application was rejected by the higher authority of the Sr. Branch Manager, Kanchrapara Branch on the ground that the petitioner's age had exceeded 26 years and the petitioner's mother was advised to apply for 'Ex Gratia Financial Relief' in lieu of appointment of the petitioner on

compassionate ground.

Mr. Dutta arduously contends that by a cryptic order, the prayer for compassionate appointment of the petitioner has been turned down on the plea that the petitioner has crossed the age of 26 years but no opportunity of hearing was given to the petitioner and even no recruitment rule has been placed before the petitioner showing that the upper age limit for any employee of subordinate cadre would be 26 years. He contends that the petitioner is a candidate belonging to scheduled caste community and hence, the petitioner is entitled to get relaxation of upper age limit up to 5 years and the authority concerned has not taken into account this fact while considering the application for compassionate appointment.

Drawing my attention to clause 5.2 of the scheme for compassionate appointment adopted by the bank, Mr. Dutta submits that the bank authorities have been empowered to relax the upper age limit wherever it is found to be necessary.

He submits that the scheme of compassionate appointment is a beneficial legislation and liberal interpretation should be given to the scheme. He contends that object underlying a provision for grant of compassionate employment is to assist the family of the deceased employee to tide over the sudden financial crisis

faced by the family on account of sudden demise of the deceased employee. In support of his such contentions, he placed reliance upon the judgments delivered in the case of *Bhawani Prasad Sonkar v. Union of India & Ors*, reported in (2011) 4 SCC 209, *Directorate of Education (Secondary) v. Pushpendra Kumar*, reported in (1998) 5 SCC 192.

In response, Mr. Banerjee, learned advocate representing the bank placed a circular issued by the General Manager of the bank on 6th March, 2020 and claimed that there is no iota of doubt that as per recruitment rules of the bank the upper age limit for the post of any subordinate cadre is 26 years.

He strenuously contends that appointment on compassionate grounds cannot be claimed to be a vested right and the financial crisis is not the only criterion to be considered for grant of appointment on compassionate grounds. According to him, the person seeking such appointment must have the necessary qualifications which include being within the prescribed age for entry in the service. He submits that at the time of making application for compassionate appointment, the petitioner crossed the age of 33 years and before making the application, the petitioner had tied matrimonial chord and the petitioner submitted a scheduled caste certificate which was issued in 2019 i.e. after the date of making

such application. He vehemently contends that compassionate appointment can be given if the dependent of the deceased employee fulfills the eligibility criteria laid down in the scheme and/or in the recruitment rules. To buttress his argument, he places reliance upon a judgment delivered in case of *N.C. Santhosh –vs- State of Karnataka & Ors.*, reported in (2020) 7 SCC 617.

Heard the learned advocates appearing for the respective parties. Perused the materials on record placed before me.

There is a catena of judgments on the proposition of law that the compassionate appointment is given solely on humanitarian ground to provide immediate relief to the family of the deceased to tide over the sudden crisis. As a rule, appointment in public service should be strictly on the basis of open invitations and merit. However, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury. Needless to observe that the scheme and the recruitment rules containing provisions for compassionate appointment is beneficial legislation and hence, such scheme and/or rules must receive liberal interpretation.

In the given case, prayer for compassionate appointment of the petitioner has been turned down only

on the ground that the petitioner crossed the age of 26 years. So, it can be presumed that the petitioner fulfilled the other criteria.

The Circular issued in 2020 cannot have retrospective operation. From the circular dated 18th February, 2016 (Annexure –P-11 to the writ petition), it transpires that the respondent/bank adopted a scheme for compassionate appointment. The clause- 4.1 of the circular dated 18. 02.2016 speaks that the compassionate appointment shall be made in the clerical and sub-staff cadre only and the clause 5.2(b) thereof prescribes that for both the clerical and subordinate cadre, minimum age limit would be 18 years and the bank authorities have not been given liberty to relax lower age limit. Regarding upper age limit Clause 5.2(b) makes following prescription:

‘the upper age limit will be as per the rules applicable from time to time to direct recruitment in clerical cadre.

Where no dependent of the deceased employee within the prescribed age limit is available for employment the maximum age limit may be relaxed wherever found to be necessary...

Note – In case of dependents belonging to Scheduled Castes/Tribes/OBCs, the existing concession as per government guidelines for Scheduled Castes/Tribes/OBCs for upper age limit will continue to apply.’

So, it is clear as day that circular dated 18.02.2016 has given discretion to the bank authorities to relax the upper age limit whenever found to be necessary. Clause 16.5 of the circular dated 18.02.2016 lays down that requests for compassionate appointment may be considered with greater sympathy on applying relaxed standards depending on the facts and circumstances of the case.

Indisputably, the petitioner crossed the age limit of 26 years on the date of making the application. From the caste certificate annexed to the writ petition, it would be explicit that the petitioner is a candidate belonging to the scheduled caste community. Mr. Banerjee contends that such certificate was issued after the petitioner made the application for compassionate appointment. Suffice it to observe that a candidate does not become a candidate belonging to Scheduled caste or Scheduled Tribe or OBC community on the date of issue of certificate but on the day he/she was born. By issue of certificate, it is only certified that the candidate belongs to Scheduled Caste or Schedule Tribe or OBC community, as the case may be.

The petitioner is entitled to get relaxation of upper age limit up to 5 years and the petitioner's sister by giving no objection declared that she will not accept the compassionate appointment and hence, it is obvious that there is no dependent in the family who has fulfilled the

eligibility criterion prescribed in clause 5.2(b) of the circular dated 18th February, 2016. The authority concerned has not taken into account such aspect say, relaxation of upper age limit while considering the case of appointment of the petitioner on compassionate ground.

Admittedly, the respondent no. 3 while communicating the fate of application of the petitioner only mentioned that his higher authority rejected the petitioner's prayer for compassionate appointment and it has not been mentioned who is the authority to consider the case of appointment on compassionate ground.

Hence, taking stock of chronological events and resume, I am inclined to dispose of the writ petition directing the respondent no.2 to reconsider the case of appointment of the petitioner on compassionate ground as per the guidelines contained in clause 16.5 of the circular dated 18.02.2016 and keeping in mind that the petitioner is a candidate belonging to Scheduled caste community. The authority shall consider whether or not the petitioner can get benefit of relaxation of upper age limit. While reconsidering the case of the petitioner, the respondent no.2 shall afford an opportunity of hearing to the petitioner and at the time of hearing, the petitioner shall be at liberty to place all sort of documents in support of his contention. Such exercise must be completed within a period of 8 weeks from this date. If the

application of the petitioner is decided in favour of the petitioner, the respondent no. 2 shall take next follow up action and if the same is decided against the petitioner, the respondent no. 2 shall pass a reasoned order and communicate such order to the petitioner within two weeks from the date of taking such decision.

It is clarified that despite having inter-departmental circular or notification to the contrary, if any, the reconsideration of the application of the petitioner in terms of this order shall be deemed to be the reconsideration by the competent authority of the bank.

With these observation and order, the writ petition stands disposed of.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.)