IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:
The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Supratim Bhattacharya

FMA 2642 of 2015
With
IA No. CAN 1 of 2015
(Old No. CAN 1936 of 2015)
Arun Seal

Versus

The State Bank of India & Ors.

For the Appellants : Mr. Subrata Ghosh
Mr. Janaki Khan

For the Respondents : Mr. Subrata Kumar Sinha
Mr. S. Paul Chaudhuri

Heard on : 09.06.2023

Judgment on : 27.06.2023

Subrata Talukdar, J:- In this appeal, the appellant is aggrieved by the final order of the Hon'ble Single Bench dated 22nd January, 2015 passed in the writ petition, being WP 132 (W) of 2015, by which the Hon'ble Single Bench dismissed the claim of the appellant for compassionate appointment in the Bank in issue, being the State Bank of India (for short the Bank). The Hon'ble Single Bench was of the view that since the father of the appellant died in the year 2003 and the appellant had survived for more than a decade before filing the writ petition in 2015, there could be no reason to grant the appellant either compassionate appointment or *ex gratia* after such long delay.

On behalf of the appellant it has been argued that upon the death of his father and within the period prescribed, the mother of the appellant had applied to the Bank seeking compassionate appointment. The prayer of the appellant had been recommended by the Branch Manager of the Bank after taking into consideration the service benefits of the deceased receivable by his family.

It is submitted that since the prayer for compassionate appointment was not considered, the mother of the appellant applied to the Bank for release of the *ex gratia* amount. The prayer for release of *ex gratia* was made without prejudice to the rights of the family to opt for any other settlement at the level of the Bank or at the industry level.

The appellant further submits that by a communication by the Bank dated 17th December, 2013, it was specified that the family of the deceased be requested to resubmit the original application and other papers for payment of *ex gratia*.

The appellant points out that when no steps were taken by the Bank to release the *ex gratia* and neither steps were taken to provide the compassionate appointment, by an advocate's letter dated the 4th of September, 2014, the prayer for *ex gratia* was withdrawn and it was submitted that since the Scheme for compassionate appointment was existing on the date of the death of the father of the appellant in 2003, compassionate appointment be expeditiously granted. It is further pointed out that by a communication dated 30th of September, 2014, the Bank took the position that the prayer for compassionate appointment was fit to be declined on the ground that the financial condition of the family of the deceased was not found to be penurious. It was further communicated that the appellant is also not eligible to receive *ex gratia* introduced in the Bank with effect from 4th August, 2005 on the ground that the prayer for compassionate appointment was declined by the Bank prior to implementation of the *ex gratia* scheme as well as the further ground that under the *ex gratia* scheme, the family of the deceased employee was not found to be penurious. The Bank also took the position *vide* the said communication dated 30th September, 2014 (*supra*) that after the lapse of more than 10 years from the death of the deceased employee, a claim to compassionate appointment is not sustainable in law.

Per contra, on behalf of the respondent Bank, it is submitted that the dues received by the family of the deceased employee were assessed and it was found that the total monthly income of the family of the deceased estimated in April, 2005 when such prayer for compassionate appointment was filed, was Rs. 4,364/-. It was also assessed that comparatively the last take home pay of the deceased employee was found to be Rs. 1400/-. Accordingly, assessing the monthly income of Rs. 4,364/- of the family of the deceased employee comprising of only two persons, the appellant and his mother, such could not be considered to be penurious on a comparative assessment with the last take home pay of Rs. 1,400/- of the deceased employee.

Accordingly, inspite of the recommendation by the Bank's Branch, the prayer for compassionate appointment of the appellant was turned down. The Bank further points out that while arriving at the calculation of the total benefits receivable by the family of the deceased, the Bank was guided by its Scheme for appointment on compassionate ground which was operative in 2005. Accordingly, as provided by Clause 10 of the said Scheme for compassionate appointment each of the amounts mentioned in Clause 10 (*supra*) were reckoned with by the Bank for computing the total benefits. Accordingly, the figure of Rs. 4,364/- (*supra*) was arrived at by the Bank.

The Bank takes the further position that the appellant renewed his prayer for compassionate appointment after more than ten years of the date of death of the deceased. It is pointed out that while initially making the prayer for compassionate appointment in 2005, such prayer was abandoned by the appellant when praying for *ex gratia in lieu* of compassionate appointment which was applied for by the wife of the deceased in

December, 2013. The Bank has therefore submitted that the family of the appellant very well knew that the benefits received by them as calculated above did not qualify them to be in a penurious condition. Therefore, the appellant shifted his prayers from grant of compassionate appointment to receipt of *ex gratia*.

Finally, when the prayer for *ex gratia* was turned down in 2013, again a convenient application was placed in 2014, i.e. more than ten years after the death of the deceased employee for compassionate appointment. The Bank points out that during this long period of around eleven years between 2003 and 2014, the appellant had received the regular monthly benefits and therefore was not in a penurious condition at all.

The Bank asserts the point that in view of the long lapse of time from the death of the deceased to filing of the writ application in 2015, the appellant, who was trying to build his case one way or the other for compassionate appointment or *ex gratia,* had lived without penury on the basis of the monthly benefits paid by the Bank to the family and hence the appellant is not eligible to receive compassionate appointment.

Having heard the parties and considering the materials placed, this Court is of the view that the facts on the ground do not entitle the appellant to seek compassionate appointment. The comparative assessment of financial benefits received by the family upon the death of the employee with the last take home of the deceased employee has not been denied by the appellant. This Court thus finds the Bank to be justified in its reasons for refusing the prayer for compassionate appointment.

The order of the Hon'ble Single Bench does not therefore required any interference.

FMA 2642 of 2015 with **IA No. CAN 1 of 2015** stands thus **dismissed.**

Parties shall be entitled to act on the basis of a server copy of this Judgement 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.

(Supratim Bhattacharya, J.) **(Subrata Talukdar, J.)**