

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION 2415 OF 2016

Malkhansingh s/o. Mahendrasingh Bais,
Aged about 28 yrs, Occ. Nil,
R/o. Rajputpura, Daryapur,
Tahsil Daryapur, District Amravati

.....PETITIONER

...V E R S U S...

1. State Bank of India,
through its Chief General Manager
(Personal & HRD Department),
I.R. Cell, Bandra Kurla Complex,
Mumbai.

2. The Deputy General Manager,
State Bank of India Zonal Office,
S.V. Patel Marg, Kingsway, Nagpur

3. The Regional Manager,
State Bank of India,
Regional Business Office,
Near S.B.I. Camp Branch,
Old Bye-Pass Road,
Camp Amravati 444 602

4. The Branch Manager,
State Bank of India,
Daryapur Branch, District Amravati

..RESPONDENTS

Mr. V.P. Marpakwar, counsel for petitioner.
Mr. S.N. Kumar, counsel for respondent 4.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 20.04.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. With consent, heard finally.

3. The petition originally sought direction that the petitioner be appointed on compassionate grounds. By amending the petition, the alternate relief which is claimed is that ex-gratia lumpsum amount in lieu of appointment be paid.

4. The father of the petitioner Mr. Mahendrasingh was employed with the respondent State Bank of India (SBI) as a Messenger (Naik) since 10.4.1978. He expired in harness on 24.8.2001 leaving behind his widow, two daughters and two sons including the petitioner Mr. Malkhansingh, who was aged 15 years then.

5. Petitioner contends that his mother Mrs. Lata sought appointment on compassionate grounds for her son in 2001. She pursued the application and it was on 6.10.2005

that the SBI informed her that the scheme of appointment on compassionate grounds is discontinued. Petitioner contends that on 4.8.2005, the SBI introduced the scheme of payment of ex-gratia lumpsum amount in lieu of appointment. It is further contended that the Branch Manager forwarded favourable recommendation to the Assistant General Manager on 15.11.2010 to the effect that the petitioner is qualified and can be considered for appointment.

6. Petitioner then contends that in view of the new scheme, the petitioner applied for ex-gratia lumpsum amount which application was favourably recommended by the Assistant General Manager on 16.12.2011. However, the mother of the petitioner was informed in 2013 that she was not entitled to ex-gratia payment.

7. According to the petitioner, mutually inconsistent stands were taken by the SBI. On one hand, the appointment on compassionate grounds was denied in view of the substitution of the scheme by the new scheme which

envisages payment of ex-gratia lumpsum amount, and on the other hand, the ex-gratia payment was denied on the ground that the death was prior to the introduction of the scheme. Petitioner contends, that in view of such stands, he again sought appointment on compassionate grounds and on 10.12.2014, he received information under Right to Information Act, that the application submitted by his mother is pending for consideration. It is on this broad averments that the relief noted supra is claimed.

8. SBI has filed affidavit in response dated 10.3.2017 and we may reproduce the relevant portions thereof.

“2. The Bank had a scheme called as “Scheme for appointment in Clerical and/or Subordinate cadre of dependents of deceased employees of the State Bank of India, on compassionate grounds”, which provided the grant of compassionate appointment to enable the family to tide over the sudden crises due to death of the bread winner. The copy of the said scheme, which had come into force from 1.1.1979 and which was in force till 3.8.2005, is filed herewith and marked as Annexure No. R-1.

3. The mother of the petitioner or to say the widow of deceased employee had given a letter dated September, 2001 for seeking compassionate appointment for the petitioner, who was then minor and aged about 13 years according to the mother of the petitioner. Since, the application given by the mother of the petitioner was not in

the standard format, the same was returned by the Zonal Office of the Bank situated at Nagpur. However, thereafter, the mother of the petitioner did not make any application for compassionate appointment until 25.8.2005 when the fresh application was made by her.

4. On 4.8.2005, the scheme for ex-gratia lumpsum amount in lieu of appointment on compassionate grounds named as "SBI Scheme for Payment of Ex-Gratia Lumpsum Amount" came into effect. The said new scheme replaced the existing Compassionate Appointment Scheme. As per the new scheme for payment of ex-gratia amount, the applications pending under the Compassionate Appointment Scheme as on which the new scheme was approved by the Executive Committee of the Central Board i.e. 4.8.2005, shall be dealt with in accordance with the new scheme for payment of ex-gratia lumpsum amount provided they fulfill all the terms and conditions of the said new scheme. However, the application of the mother of the deceased was not pending as the same was returned to her. The copy of the new scheme for payment of ex-gratia lumpsum amount is filed by the petitioner at Annexure No. 4.

5. Since, the new Scheme for payment of ex-gratia lumpsum amount came into force on 4.8.2005, therefore, the application given by the mother of petitioner on 25.8.2005 for compassionate appointment for the petitioner was rejected by letter dated 6.10.2005 filed at Annexure No. 3 by the petitioner. The mother of the petitioner or the petitioner never challenged the said rejection and for the first time, after a period of about 10 years from the said date, the petitioner has filed the present petition seeking direction to the Bank for considering him to appoint on compassionate ground. The petitioner cannot be permitted to raise the challenge after such a long period of 10 years. Thus, on the grounds of delay and laches, the petition is liable to be dismissed with costs.

6. After rejection of the request for appointment on compassionate grounds on 6.10.2005, neither the mother of the petitioner nor the petitioner, approached the Bank for grant of ex-gratia lumpsum in lieu of the compassionate appointment until 16.11.2011, when the mother of the petitioner applied for payment of ex-gratia amount. The clause 11 of the new scheme for grant of ex-gratia lumpsum amount provide that the application for the payment of ex-gratia relief has to be made on the prescribed application form within 6 months from the date of death. In any case, the mother of the petitioner or the petitioner did not apply for grant of ex-gratia lumpsum amount within 6 months from 6.10.2005 when the request for compassionate appointment was rejected by the Bank in view of the discontinuance of the earlier scheme for compassionate appointment.

9. The petitioner then filed rejoinder dated 4.7.2017 asserting thus:

“3. That, the petitioner upon attaining the age of majority, applied several times to the respondents. The bank on 10.12.2014 categorically informed that the case of the petitioner is pending at Zonal Office, Nagpur regarding grant of appointment on compassionate grounds. Thus on one hand the bank is stating that the petitioner cannot be appointed on compassionate ground as new scheme of ex-gratia has been introduced and on the other hand the bank categorically rejected the claim for ex-gratia on the ground that the said scheme was introduced in 2005 whereas the father of the petitioner expired on 24.8.2001. Thus, the respondents are blowing hot and cold at the same time which is not permissible.

4. The petitioner had given application alongwith

all the relevant details to the respondents' way back in 2002. The scheme for ex-gratia lumpsum payment in lieu of appointment was introduced in 2005. Subsequently, the said scheme has been discontinued and again the old scheme of grant of appointment on compassionate grounds has been reintroduced w.e.f. 5.8.2014, a copy of which is enclosed to this rejoinder and marked as Annexure P-X. In view of the new scheme, several persons have been appointed to the exclusion of the petitioner.

5. Thus, the petitioner is deprived of appointment and also deprived of the ex-gratia payment. The bank is showing favouritism and partiality by appointing similarly situated persons to the exclusion of the petitioner which amounts to discrimination and violation of Article 16 of the Constitution of India. That, the respondents have stated in their submissions that the petitioner is running a Computer Institute. The petitioner, at this stage, categorically states that the petitioner was employed as a part time employee with one Computer Institute viz Sharp Computers for the period from January 2016 to October 2016. Thereafter, the petitioner is unemployed and is having no source of income to maintain himself.

In view of the rejoinder filed by the petitioner, the SBI has filed additional affidavit dated 4.8.2017 and the relevant portions read thus:

"2. The Bank had issued the circular dated 7.7.2011 and 12/13.9.2011 and thereby the one time opportunity was granted for submission of application for payment of ex-gratia lumpsum amount to such cases declined or not entertained on account of late submission of application. The said scheme was earlier made available to all the cases of death on or after 4.8.2005, however, the said facility was extended to all the cases of death

on or after 4.11.2004 and the last date to apply for such payment was 31.12.2011. The copy of the said circulars are filed herewith and collectively marked as Annexure No. 2.

3. The mother of the petitioner had, therefore, applied for such ex-gratia payment on 16.12.2011 as per Annexure No. VI filed by the petitioner. However, the same was rightly rejected by the Bank by the letter dated 18.1.2012 filed on record by the petitioner at Annexure No. 8 on the ground that the payment of ex-gratia was applicable to the cases of death on or after 4.11.2004.

4. The claim of the compassionate appointment made by the mother of the petitioner for the petitioner was rejected by the Bank on the ground that the scheme was discontinued by letter dated 6.10.2005, which is filed by the petitioner at Annexure No. III. The respondents have already submitted that the petitioner or his mother not having challenged the same, cannot be permitted to raise the challenge after such a long period of more than 10 years, which also implies that the petitioner or his mother have not been living in penury. Instead of challenging the decision of the Bank, the mother of the petitioner had again requested the Bank by application dated 10.10.2014 to consider the compassionate appointment for the petitioner, which was rejected by the Local Head Office of the Bank on 23.2.2015. The Zonal Office of the bank i.e. respondent No. 2 had communicated the said rejection to the respondent No. 3 on 02.03.2015. The said communications dated 23.2.2015 and 2.3.2015 are filed herewith and collectively marked as Annexure No. 3. However, the same remained to be communicated to the mother of the petitioner. In 2012 also, the claim for the compassionate appointment was rejected by the Bank. The rejection of the request by the Local Head Office of the Bank, dated 9/11.1.2012 is filed herewith and marked as Annexure No. 4. The petitioner cannot revive the cause of action, which occurred on

6.10.2005 when his claim was rejected by the Bank merely by making repeated applications and then file the present petition on the basis of last rejection of application or by saying that the last application for compassionate appointment is pending before the Bank.

5. The petitioner has stated in the rejoinder that the old scheme for grant of appointment on compassionate grounds has been reintroduced with effect from 5.8.2014. In this regard it is submitted that the Bank has not reintroduced the old scheme for compassionate appointment but the scheme named as SBI Scheme for Compassionate Appointment on Compassionate ground in Exceptional Cases – 2014” has been introduced for the following cases:

“a) Where on employee died while performing official duty, as a result of violence, terrorism, robbery dacoity, or;

b) Where on employee died within five years of first appointment or before reaching the age of 30 years, whichever was latter, leaving a dependent spouse and/or minor children.;

The copy of the said scheme is filed herewith and marked as Annexure No. 5.

6. The case of the petitioner does not fall under the exceptional case as provided in the said scheme and therefore, the petitioner was/is not entitled for the compassionate appointment under the said scheme.

10. A further /additional affidavit is then filed by the SBI on 23.2.2018, and the relevant portions read thus:

2. After the application of September, 2001 made by the mother of the petitioner i.e.

Smt. Lata Bais for grant of compassionate appointment for the petitioner was returned to her being not in standard format, she gave an application dated 25.08.2005 to the Bank for grant of compassionate appointment for the petitioner. The copy of the said application dated 25.08.2005 is filed herewith and marked as Annexure No. 6. The said application was rejected by the Bank by communication dated 06.10.2005 as the scheme for grant of compassionate appointment was discontinued and in its place the scheme for ex-gratia lumpsum amount came into effect from 04.08.2005, the copy of which is filed by the petitioner at Annexure No. 3.

3. The request was to be made by the dependents of the deceased employee for payment of ex-gratia amount within 6 months from the date of coming into effect the scheme, by 03.02.2006. However, the time for submission of such application by the dependents / families of deceased employee was extended by the Bank up to 31.05.2006 by circular dated 16.02.2006. The copy of the said circular dated 16.02.2006 is filed herewith and marked as Annexure No. 7.

4. The mother of the petitioner i.e. Smt. Lata Bais was repeatedly advised to sign the application / form for payment of ex-gratia amount, however, she failed to sign such form. The Bank has even given a letter dated 31.05.2006 to the mother of the petitioner informing her she was not signing the application form inspite of repeated reminders and that she would not be entitled for the ex-gratia amount if she did not sign the application form with the further request to sign the application form as the last date of submission of the application form was 31.05.2006. The mother of the petitioner although received the said letter, however, she did not sign the application form. Had she signed the application form, she would have received the ex-gratia lumpsum amount. The copy of the letter dated 31.05.2006 is filed herewith and marked as Annexure No. 8.

5. *After the last date was over, the mother of the petitioner applied for the payment of ex-gratia amount by application dated 03.08.2006, which the Bank was unable to entertain as it was submitted after the last date i.e. 31.05.2006. The copy of the application for payment of ex-gratia dated 03.08.2006 is filed herewith and marked as Annexure No. 9.*

6. *The mother of the petitioner raised the industrial dispute before the Assistant Labour Commissioner (Central), Nagpur through State Bank Karmchari Sena under Industrial Dispute Act, 1947 for compassionate appointment. The said dispute ended by issuance of Failure of Conciliation Report dated 21.06.2007. The Government of India did not refer the matter to the Central Government Industrial Tribunal. The petitioner or his mother or the said union did not challenge such non-reference of the dispute by the Government of India and therefore, the petitioner cannot raise any grievance at such a belated stage, for which reason itself the petition is liable to be dismissed. The copy of the Failure of Conciliation Report dated 21.06.2007 is filed herewith and marked as Annexure No. 10.*

7. *The mother of the petitioner once again made an application dated 24.05.2008 to the Regional Manager of the Bank for grant of compassionate appointment, which was raised by the Bank by letter dated 04.09.2008. The copy of the application dated 24.05.2008 and the letter dated 04.09.2008 are filed herewith and marked as Annexure P 11 and 12 respectively.*

8. *The mother of the petitioner further made the application dated 30.06.2010 for grant of compassionate appointment. In the said application, she has categorically mentioned that the Bank had advised her to sign the application form for ex-gratia amount and that she had refused to accept such amount. The copy of the*

application dated 30.06.2010 is filed herewith and marked as Annexure No. 13. The request of the mother of the petitioner was rejected. The rejection of request by the Local Head Office of the Bank, dated 09/11.01.2012 is already filed by the Bank at Annexure No. 4.

9. *The Bank had issued the circular dated 07.07.2011 and 12/13.09.2011 and thereby the one time opportunity was granted for submission of application for payment of ex-gratia lump sum amount to such cases declined or not entertained on account of late submission of application. The said scheme was earlier made available to all the cases of death on or after 04.08.2005, however, the said facility was extended to all the cases of death on or after 04.11.2004 and the last date to apply for such payment was 31.12.2011. The copies of the said circulars are already filed by the Bank as Annexure No. 2.*

10. *The mother of the petitioner had, therefore, applied for such ex-gratia payment on 16.12.2011 as per Annexure No. 6 filed by the petitioner. However, the same was rightly rejected by the Bank by the letter dated 18.01.2012 filed on record by the petitioner at Annexure No. 8 on the ground that the payment of ex-gratia was applicable to the cases of death on or after 04.11.2004.*

11. *The mother of the petitioner once again made the application dated 10.10.2014 to the Bank for grant of compassionate appointment while referring to the fact of she having refused to received the ex-gratia amount. The copy of the said application dated 10.10.2014 is filed herewith and marked as Annexure No. 14. The said request was rejected by the Local Head Office of the Bank on 23.02.2015. The zonal office of the Bank i.e. respondent no.2 had communicated the said rejection to the respondent no.3 on 02.03.2015. The said communications dated 23.02.2015 and 02.03.2015 are already filed by the Bank at*

Annexure No. 3.

12. For the first time, the petitioner made an application dated 17.11.2014 seeking the information on the action taken for the compassionate appointment under Right to Information Act, which was replied by the Bank by letter dated 10.12.2014, which has been filed by the petitioner at Annexure No.9. The copy of application dated 17.11.2014 is filed herewith and marked as Annexure No. 15. When the reply dated 10.12.2014 was given to the petitioner, the application dated 10.10.2014 for compassionate appointment was pending with the Bank, which has been rejected on 23.02.2015 as stated hereinabove”.

What we notice having scrutinized the pleadings and after hearing the learned counsel Mr. V.P. Marpakwar for the petitioner and the learned counsel for SBI Mr. S.N. Kumar, is that the facts are slightly peculiar in the sense that even according to the SBI, the ex-gratia lumpsum amount under the scheme introduced on 8.5.2005, and which scheme replaced the scheme providing for appointment on compassionate grounds, was offered to the mother of the petitioner, and she was repeatedly advised to submit the application/form for payment of ex-gratia amount, which she failed to submit. The SBI has averred in paragraph 4 of the additional affidavit filed on 23.2.2018

that letter 21.6.2006 was issued to the mother of the petitioner conveying that if she did not submit the formal application, she would not be paid the ex-gratia amount since the last date of the submission of the application form was 31.5.2006. SBI has averred that had the mother of the petitioner signed the application form, she would have received the ex-gratia lumpsum amount. In paragraph 5 of the same additional affidavit, SBI has averred that after the expiry of the last date for submission of the application forms, the mother of the petitioner preferred an application dated 3.8.2006 for payment of ex-gratia amount which the bank was not in a position to entertain since the last date for submission of the application / form was 31.5.2006.

11. Considering the sequence of events which are discernible from the pleadings, and which we have reproduced in extenso, we do not find any infirmity in the decision not to entertain the request for appointment on compassionate grounds. In so far as the claim to the payment of ex-gratia lumpsum amount from strict and

legalistic perspective, the SBI may be justified in the submission that since the mother of the petitioner refused to accept ex-gratia lumpsum amount presumably since in her perspective, employment for her son would have secured future of the family better, the SBI cannot be faulted as such. Having so observed, as an instrumentality of the State, we would expect the SBI to do substantial justice and not to reject the claim, which even according to the SBI, would have been well justified but for the fact that the application preferred was delayed by three months or thereabout.

12. Without intending to record any adverse observation as regards the stands of the SBI, and in order to strike a golden balance, we are inclined to partly allow the petition and to direct that the legal heirs of the deceased Mr. Mahendrasingh Bais be paid the ex-gratia lumpsum amount within the next eight weeks.

13. We are not inclined to consider the submission of Mr. V.P.Marpakwar that the ex-gratia amount be paid

alongwith interest inasmuch as we find that there are some mistakes committed by the family of the petitioner, as well as the SBI.

14. Petition is partly allowed in the aforestated terms.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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