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W.P.No.9737 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.9737 of 2016

R.Kalaivani

... Petitioner

Vs.

1.Indian Overseas Bank,
Rep by its Chief Manager,
Personnel Administration Department,
Central Office, Anna Salai, Chennai-600 002.

2. The Chief Manager,
Indian Overseas Bank,
Nehru Park Branch,
872, Poonamallee High Road,
Chennai-600 084.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in PAD/178/CL/491/2015-2016 and quash the impugned letter dated 10.02.2016 as highly illegal and further direct the 1st respondent to pay the interest at the rate of 24% per annum from the date of Limitation.

For Petitioner : Ms.Karthikaa Ashok

For Respondents : Mr.K.Srinivasamurthy



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ORDER

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The petitioner's husband, while serving as a Messenger in the respondent bank for more than 20 years, died on 07.12.2007. To the request of the petitioner for compassionate appointment, the first respondent herein had rejected on 10.09.2008 on the ground that there is no scheme for compassionate appointment. Thereafter, the petitioner made an application dated 18.07.2010 for Ex-gratia since compassionate appointment was declined. When this request for Ex-gratia was rejected by the respondent on 20.06.2011 the same was challenged before this Court together with the rejection order dated 10.09.2008, rejecting the petitioner's claim for compassionate appointment. This Court, by order dated 10.09.2014 had held that when the bank knew that there was no scheme for compassionate appointment when the petitioner made an application on 12.02.2008, the application itself ought to have been treated as an application for claiming Ex-gratia and proceeded further.

2. In this background, the order rejecting the claim for Ex-gratia was set aside and the petitioner was directed to provide necessary particulars for processing the Ex-gratia payment. In this background, Ex-gratia payment came to be sanctioned on 31.07.2015. The petitioner now seeks for interest on the belated payment of Ex-gratia.



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3. The earlier order of this Court in WP No.21584 of 2012 dated 10.09.2008 has not been challenged and the same has become final. The effect of the order passed by this Court on 10.09.2014 was that the application made by the petitioner on 12.02.2008 was directed to be treated as an application for Ex-gratia. The relevant portion of the orders read as follows:-

“ 11. As stated above, the averments made by the petitioner that the application for compassionate appointment was made on 12.02.2008 was not disputed in the counter affidavit. The bank was providing compassionate appointment for a very long time to one of the members of the deceased family, if the workman dies during service. But the said Scheme was discontinued in 2004 and in its place, the Scheme providing Ex-gratia was introduced. In these circumstances, I am of the view that the application for compassionate appointment shall be treated as application for claiming Ex-gratia. The Bank is perfectly correct in refusing to provide compassionate appointment since there is no Scheme when the application is made for compassionate appointment. When the application is made for



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compassionate appointment, the Bank shall not proceed technically that the application for compassionate appointment was not made in time though the application for compassionate appointment was made within six months. Therefore, the six months' time that is prescribed in Paragraph 5 of the Scheme providing Ex-gratia payment is said to have been complied with in view of the application made by the petitioner for compassionate appointment. Furthermore, it is relevant to take note of the letter dated 08.11.2011 sent by the first respondent, who is the higher authority to the second respondent calling for details to consider the payment of Ex-gratia to the petitioner. The copy of the said letter was also marked to the petitioner.

12. In view of the fact that application for compassionate appointment was made by the petitioner within six months from the date of the death of the employee and in view of the letter dated 08.11.2011 of the first respondent to the second respondent seeking details to consider payment of ex-gratia and the said letter also being marked to the petitioner, I am of the view



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that the order of the second respondent refusing to pay Ex-gratia on the sole ground that application was made belatedly is liable to be interfered with.”

4. As observed by this Court, when the respondents were aware of the fact that there was no scheme prevailing as on 12.02.2008 for compassionate appointment, they ought to have informed the petitioner that there was an alternative scheme for payment of Ex-gratia payment provided the petitioner fulfils certain conditions under the Scheme.

5. In this background learned counsel for the petitioner submits that the petitioner was not aware of the non-availability of the Scheme for compassionate appointment and therefore, she had not made an application, seeking for Ex-gratia payment.

6. While that be so, when this Court itself has treated the application of the petitioner dated 12.02.2008 as an application claiming for Ex-gratia payment, sanction of the same in the year 2015 is an inordinate delay.

7. Learned Standing Counsel appearing for the Bank also submits that



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since the petitioner has not pleaded interest in the earlier round of litigation, the present scheme for payment of interest is barred by the principles of constructive resjudicata.

8. Learned counsel for the petitioner also submitted that since the petitioner did not know of the availability of the Scheme for Ex-gratia payment, she could not plead for payment of interest and when she sought for quashing of the orders passed by the respondents denying compassionate appointment as well as the Ex-gratia payment.

9. The Hon'ble Supreme Court in the case of *M/s Bharat Barrel and Drum Manufacturing Co Pvt Ltd vs Bharat Barrel Employees Union* reported in *(1987) 2 SCC 591* has held that a question which is once decided though can never be re-agitated, there are certain classes of cases like disputes regarding wage structure, service conditions etc., which arise as circumstances change and new situations arise which may not be barred by the rule of *res judicata*. Likewise, in the case of *State of Punjab vs Davinder Pal Singh Bhullar and others* reported in *(2011) 14 SCC 770*, the Hon'ble Supreme Court has held that there may be certain exceptions to the rule that a person was not aware of the correct facts while filing the first petition or the events have



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arisen subsequent to making of the first application. In the instant case, the petitioner was never appraised of the fact that the petitioner was entitled for payment of ex-gratia in lieu of compassionate appointment, even though she had earlier made an application, seeking for such compassionate appointment. When her claim for compassionate appointment was rejected, she had challenged the same before this Court in WP No.21584 of 2012 and this Court by order dated 10.09.2008 has held that the bank ought to have treated the original application for compassionate appointment as one for claiming ex-gratia. In this background, that the petitioner was made aware of the ex-gratia payment. By applying the ratio laid down in the case of ***State of Punjab vs Davinder Pal Singh Bhullar and others*** reported in (2011) 14 SCC 770, I am of the view that the present claim is not barred by the principles of *res judicata*. As such, the failure on the part of the petitioner in not pleading payment of interest in the earlier writ petition may not be an absolute bar for denial of the same. By taking note of the fact that the husband of the petitioner was a Messenger in the respondent bank and that it had taken about 8 years for the widow to receive Ex-gratia payment, which she was entitled to, this Court is of the view that interest at the rate of 6% could be awarded from the date of the application i.e., 12.02.2008 till 31.07.2015.



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10. In the light of the above observations and findings, the impugned order dated 10.02.2016 passed by the first respondent is quashed and there shall be a direction to the first respondent herein to pay interest on the belated payment of the Ex-gratia for the period between 12.02.2008 and 31.07.2015 at the rate of 6% per annum. Such payment shall be disbursed atleast within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs.

24.01.2023

Speaking
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Internet: Yes
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To

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Rep by its Chief Manager,
Personnel Administration Department,
Central Office, Anna Salai, Chennai-600 002.
2. The Chief Manager,
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M.S.RAMESH,J.,

SR

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