



Writ Appeal No.2948 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.07.2023

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**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.2948 of 2019
and C.M.P.No.19166 of 2019**

1. The Chief General Manager,
State Bank of India,
Chennai Local Head Office, “Circletop House”,
16, College Lane, Nungambakkam,
Chennai – 600 006.
2. The Assistant General Manager (HR),
HR Department, LHO,
State Bank of India,
Chennai Local Head Office, “Circletop House”,
P.O.No.737, 16, College Lane,
Chennai – 600 006.
3. The Deputy General Manager (Personnel and HR),
State Bank of India,
Zonal Office,
No.86, Rajaji Salai,
Chennai – 600 001.

... Appellants/ Respondents

Vs

Mrs.Poongodi
D/o.Late M.Poogavanam

... Respondent/Petitioner



Writ Appeal No.2948 of 2019

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 20.08.2019 passed in W.P.No.3271 of 2018 and allow the writ appeal.

For Appellants : Mr.S.Ravindran
Senior Counsel
for Mr.K.Chandrasekaran
For Respondent : Mr.Arun Anbumani

JUDGMENT

(Judgement of the Court was made by Mr.R.SURESH KUMAR.,J.)

This writ appeal has been directed against the order of the Writ Court dated 20.08.2019 made in W.P.No.3271 of 2018.

2. The respondent's father was an employee in the appellant bank. While he was in service, he died on 28.09.2000. At the time of the death of the employee, the respondent's mother was 50 years old and the respondent was 20 years old and the respondent's younger sister was 16 years old.

3. Since the family suddenly lost the head of the family, who is the sole breadwinner of the family, they have been put under severe financial crisis, therefore they have been under indigent and penurious circumstances.



4. Therefore, the mother of the respondent, who is the wife of the deceased employee made an application on 14.02.2001 to the appellant bank seeking compassionate appointment.

5. Though the said application was filed in time i.e., very immediately after the demise of the employee and the respondent also was eligible to be considered for compassionate appointment to any post at the appellant bank, that was not immediately considered and it has been kept pending.

6. This position continues till 2005. In 2005, the appellant bank has come out with a new scheme, under which, the scheme of compassionate appointment has been dispensed with in lieu of an ex-gratia compensation scheme which has been brought in with effect from 17.10.2005.

7. In view of the new scheme, the appellant bank wrote a letter to the respondent saying that in view of the new scheme instead of giving compassionate appointment, they have considered for paying the ex-gratia compensation, for which a fresh application in the format to be



made. Therefore, the respondent was directed to make such an application.

8. However, the respondent in response to the said communication of the bank dated 17.10.2005, in her reply dated 01.12.2005 has stated the following:

*“COMPASSIONATE APPOINTMENT IN VIEW OF
THE DEATH OF SHRI. M.POONGAVANAM MESSENGER*

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*With reference to your letter ZO: CHE:PER:A:3297
Dated 17.10.2005 I humbly request your goodselves to
consider my application for compassionate appointment in
view of the family conditions instead of Cash
Compensation.*

Thanking You,

Yours faithfully,

sd/-

(P.POONGODI)”

9. The said application cum reply made by the respondent on 01.12.2005 insisting upon her candidature for the purpose of compassionate appointment had been kept pending and no decision was



taken.

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10. Since several years have gone, nothing was happened, once again the respondent had made request on 13.12.2013 reiterating her earlier request seeking for compassionate appointment.

11. The said request dated 13.12.2013 has been turned out by the appellant bank vide communication dated 27.12.2013, wherein the appellant bank has stated the following:

**“APPLICATION FOR APPOINTMENT ON
COMPASSIONATE GROUND LATE
M.POONGAVANAM, MESSENGER”**

With reference to your representation dated 13.12.2013, addressed to the Chief General Manager, SBI, LHO, Chennai, we have to state that, the scheme of compassionate appointment has been discontinued by the Bank as per the directives of Government of India, and our Bank has also introduced a system for payment of Ex-gratia lump sum amount in lieu of compassionate appointment.

2. In these circumstances, as the compassionate appointment has been totally withdrawn a long ago, we once again reiterate that we are not in a position to accede to your request for compassionate appointment and please note that further correspondence will not be entertained from you in this regard.”

12. Aggrieved over the said communication dated 27.12.2013, the respondent filed a writ petition in W.P.No.3271 of 2018, which came to



be decided by the learned Judge by order dated 20.08.2019, whereby the learned Judge having set aside the order dated 27.12.2013 directed the appellant bank to provide compassionate appointment to the respondent herein in any suitable post in terms of the qualification of the respondent in line with the implementation of the order issued by the appellant bank in pursuance of the direction of this Court dated 22.12.2016 made in W.P.No.24499 of 2014.

13. Aggrieved over the said order passed by the Writ Court dated 20.08.2019, the present writ appeal has been filed.

14. Heard Mr.S.Ravindran, learned Senior Counsel appearing for the appellant bank and Mr.Arun Anbumani, learned counsel appearing for the respondent.

15. Learned Senior Counsel appearing for the appellant bank would contend that insofar as the claim of the respondent for compassionate appointment is concerned, that was under consideration under 1998 compassionate appointment scheme of the bank. For want of vacancy or for any other reasons it could not be immediately complied



with and in the meanwhile, in 2005, based on the Government of India directions, the bank has taken a decision not to implement the compassionate appointment scheme in view of the technological advance that has been adopted by the bank and therefore, whoever make such applications for compassionate appointment would be taken as an application seeking for one time ex-gratia compensation and in order to implement the same, a new scheme has been envisaged and brought in the year 2005.

16. He would further submit that under the new scheme no compassionate appointment would be given to any one at the appellant bank, instead, if there is any death occurred of the employee or official of the bank concerned, the said family would be considered for paying the one time ex-gratia compensation depending upon the service of the deceased employee put in to the bank and the rank in which, he was working and expired.

17. He would further submit that under the 2005 scheme, the application which were pending under 1998 scheme also has been brought in, therefore, what are all the applications that are pending



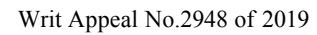
seeking for compassionate appointment in 1998 scheme would also be considered under the 2005 scheme, where instead of offering any compassionate appointment, this one time ex-gratia compensation would be offered. For the said purpose, when it was asked for in the year 2005 itself, the respondent had not made any application seeking such ex-gratia compensation and only belatedly in 2013, she made an application reiterating her stand to get compassionate appointment and in view of 2005 scheme, the request of the respondent was rejected through the order dated 27.12.2013.

18. The learned Senior Counsel would further submit that the said decision has not been considered in proper perspective by the learned Judge in the order impugned. He would also submit that, in the meanwhile a development has taken place, where yet another employee of the bank in the same branch was also expired. On whose behalf, compassionate appointment was sought for, where also the very same stand was taken by the appellant bank that under 2005 scheme she was not entitled to get compassionate appointment and only an ex-gratia compensation shall be considered for payment and that stand taken by the bank was questioned by the legal heirs of the deceased employee in



that case and filed writ petition in W.P.No.24499 of 2014, where a learned Judge has taken the view that the 2005 scheme has come only later, before which, during the regime 1998 scheme whatever the application that was filed and pending seeking for compassionate appointment, that application should have been dealt with only under the 1998 scheme and not under the 2005 scheme. Therefore, the legal heir was entitled to seek for compassionate appointment. Accordingly, the said writ petition was allowed.

19. Learned Senior Counsel would further contend that, as against the said order though intra-court appeal was filed by the appellant bank, that become unsuccessful. Therefore, that has become final also, where the orders were implemented. Learned Senior counsel would further contended that, the issue as to the compassionate appointment especially in respect of the deceased employee of the appellant bank itself, had gone to the consideration of the Hon'ble Supreme Court, where 1998 as well as 2005 schemes had been taken into account and accordingly, atleast in one judgment, the issue was decided in favour of the appellant bank. However, subsequently when similar issue had come up before the Hon'ble Supreme Court in respect of Canara Bank employee, the similar



20. However, subsequently in order to get a further authoritative pronouncement it seems that the issue had been referred to a Larger Bench and the issue is still pending for a decision of a Larger Bench of the Hon'ble Supreme Court.

21. Therefore, the learned Senior Counsel appearing for the appellant bank would contend that the legal position is fluid, therefore the contra decision cannot be taken in these kind of matters unless and until the issue is settled by the Hon'ble Supreme Court by having an authoritative pronouncement. Therefore, the learned Senior Counsel would contend that even today the bank would be ready and willing to make the compensation by way of ex-gratia compensation as per the 2005 scheme depending upon the eligibility of the deceased employee, for



which, if the respondent come forward to make an application the bank would consider. However, insofar as the stand of the respondent to stick on with the application for compassionate appointment is concerned, the bank is not in a position to consider the same in view of 2005 scheme, which is in vogue as of now and therefore, the learned Senior Counsel would contend that these aspects since have not been considered in proper perspective by the learned Judge, the said order has to be construed as an erroneous one. Therefore, he seeks indulgence of this Court against the impugned order.

22. We have also heard the learned counsel appearing for the respondent, who would submit that as per the judgment of the Hon"ble Supreme Court in Canara Bank case as well as the judgment made by this Court in W.P.No.24499 of 2014, which has been confirmed by the subsequent order of the Division Bench, the bank is bound to consider the application of the respondent for compassionate appointment under the 1998 scheme and therefore, no exception can be taken by the bank in this regard, he contended.

23. We have considered the said submissions made by the counsel



for the parties and have perused the materials placed before this Court.

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24. It is an admitted fact that the employee of the bank died in the year 2000 in harness and at the time of the death what were the family circumstances has already been narrated. There were two female children at the age of 20 and 16 and the widow. Therefore certainly, the said family by having lost the sole breadwinner of the family could have been in indigent and penury circumstances and therefore, it was a deserving case to be considered for compassionate appointment.

25. Immediately application had been made by the widow of the employee in 2001 itself at the time 1998 scheme of the appellant bank was in vogue and therefore, the bank could have considered the said application in time.

26. However, for whatever reason the application was not considered till 2005 and in the meanwhile on 17.10.2005, new scheme has been introduced, under which, compassionate appointment has been dispensed with, instead payment of ex-gratia compensation has come in.

27. The veracity of the scheme of 2005 has not been questioned,



therefore, we do not want to go into the correctness of the scheme.

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28. The only question that was posed before the Court of Law in the earlier litigation also was that, when there was an application under 1998 scheme whether that can be transferred to 2005 scheme merely because still 2005 the said application was not considered by the employer i.e., the bank, the answer that was given already by this court in W.P.No.24499 of 2014 was in the negative saying that the application should have been considered only under 1998 scheme, merely because the 2005 scheme has subsequently come, the applications cannot be put off to 2005 scheme and therefore, this application should be considered only under 1998 scheme. This view has been confirmed by the Division Bench also.

29. Insofar as the two divergent views as claimed by the learned Senior Counsel appearing for the appellant bank that has been taken by the Hon'ble Supreme Court are concerned, the first case was in respect of the very same appellant bank i.e., State Bank of India and the second case was in respect of Canara Bank.

30. In respect of those decisions, subsequently the issue had been



referred to a Larger Bench, where the issue is pending. As on date, the law that has been declared by this Court as well as the latest judgment of the Hon'ble Supreme Court was that under the old scheme what are all the applications that are pending had to be considered only under the old scheme and not under new scheme.

31. Moreover, against the very same appellant bank, the said writ petition in W.P.No.24499 of 2014 was decided and the said order has become final, seems to have been implemented. When that being so, there has been a complete discrimination in case if the application of the respondent has not been considered in the light of the earlier direction given by this Court as referred to above and this has been taken into account by the learned Judge in the order impugned and also the learned Judge has taken note of the Judgment of the Hon'ble Supreme Court in State Bank of India as well as the Canara Bank case. Having taken note of all these legal position only, the learned Judge ultimately allowed the writ petition by setting aside the order dated 27.12.2013 passed by the appellant bank.

32. Moreover, it is to be noted that between 2001 – 2005 i.e., from



the date of application till the 2005 scheme had come, the application was kept pending, not decided, no reasons plausible has been given by the appellant bank. Subsequently also, after the scheme was introduced in 2005 though it was informed by the bank to the respondent to make a fresh application to get compensation that was not accepted by the respondent and she had given a proper reply to the bank stating that she reiterates only compassionate appointment by her communication dated 01.12.2005, after receipt of communication from the respondent dated 01.12.2005, the appellant bank did not come forward to redress the same, therefore, the respondent was triggered to make further request on 13.12.2013, however that was immediately rejected by order dated 27.12.2013.

33. One more factual matrix that has to be taken into account is that though 2005 scheme was made dispensing with the compassionate appointment, in 2014, another scheme has been made, under which, the compassionate appointment has been introduced, however for only limited persons i.e., exceptional circumstances.

34. One of such criteria was that if the employee died within five years from the date of appointment, leaving behind the children, who are



minor, in that case, the compassionate appointment can be considered.

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35. The reasons for that special circumstances, which has been mentioned in the 2014 scheme is that if an employee dies within five years, certainly the family will have minor children, so in order to nurture and to bring them, some support must be given to the family and therefore, that scheme has been brought in, where the circumstances has been included.

36. We see that in special circumstances, such kind of compassionate appointment would only be given to the widow of the deceased because at that time the children will be definitely minor.

37. For instance, the widow is not willing to work or the widow is not eligible to take any appointment for whatever reasons, then the family will be in great trouble and therefore, the mere induction to these kind of category of employee, who dies within the five years from the date of appointment cannot be said to be based on any intelligible differentia, only consideration for compassionate appointment as per the law declared by various Courts for years together is on the date of the death of the employee whether the dependants i.e., that the family of the employee



was in indigent and penurious circumstances. If it is the criteria, based on such criteria compassionate appointment can be made subject to the availability of the vacancy in the organization.

38. Therefore, the said scheme brought in under the 2014 scheme also will support the case of the respondent as the very scheme of compassionate appointment has not been given a complete go by based on the 2005 scheme. This is one of the added reason, we feel that the denial of compassionate appointment to the respondent is not based on any intelligible differentia.

39. Subsequently only, these legal development has come, where the Court has taken the view as stated supra in the similar case in W.P.No.24499 of 2014 and the same has become final. Therefore, that judgment, where the appellant bank is a party certainly would bind the bank and therefore, the similarly placed persons cannot be treated unequally and in that case it will be discrimination within the meaning of Article 14 of the Constitution. Therefore, this Court has no hesitation to hold that the view taken by the learned Judge through the impugned order dated 20.08.2019 is not an erroneous or flawed one and therefore, the



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said view taken by the learned Judge including the conclusion reached by him has to be approved. Accordingly, the impugned order is sustained and therefore, the appeal fails, hence it is liable to be dismissed, accordingly it is dismissed. Connected miscellaneous petition is closed.

(R.S.K.,J.) (K.B., J.)
11.07.2023

Index: Yes
Speaking Order
Neutral Citation:Yes

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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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