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W.A.(MD) No.2022 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2023

CORAM:

**THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

W.A.(MD) No.2022 of 2023

and

C.M.P.(MD) No.15995 of 2023

1.Canara Bank
represented by its Managing Director
Human Resources Wing
Head Office, 112 J C Road
Bangalore-560 002

2.The General Manager
Canara Bank
Human Resources Wing
Head Office, 112 JC Road
Bangalore-560 002

3.The Assistant General Manager
Human Resources Wing
Head Office, 112 JC Road
Bangalore-560 002

4.The Branch Manager
Canara Bank
Kombai, Theni District

... Appellants

-VS-

A.Arun Prabhu

... Respondent



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Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 26.07.2023, passed in W.P.(MD) No.20567 of 2021, on the file of this Court.

For Appellants : Mr.N.Dilip Kumar

For Respondent : Mr.K.Jeyamohan

J U D G M E N T

[Judgment of the Court was made by The Hon'ble CHIEF JUSTICE]

Heard Mr.N.Dilip Kumar, learned counsel for the appellant – Bank and Mr.K.Jeyamohan, learned counsel for the respondent.

2. The respondent filed the writ petition against the order passed by the appellant – Bank rejecting his application for compassionate appointment.

3. The learned Single Judge, under the impugned Judgment and Order, allowed the writ petition, thereby directing the appellant – Bank to appoint the respondent on compassionate ground in any suitable post within a period of twelve weeks from the date of the order i.e. 26.07.2023.



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4. Learned counsel for the appellant – Bank strenuously contends that the learned Single Judge failed to consider that the respondent is not the dependent on his deceased father. His father died in the year 2014. The application was filed by the respondent on 15.04.2015. The said application was rejected on 12.01.2018. The respondent filed a writ petition before this Court. This Court set aside the order of rejection and remitted the matter to the appellants for a decision afresh. According to the learned counsel for the appellants, the appellants considered all the aspects of the matter and arrived at a conclusion that the respondent is not entitled for compassionate appointment.

5. Learned counsel for the appellant – Bank submits that the respondent had crossed 25 years of age as on the date of the application and in view of the definition of “family” as embodied in Section 2(o) of the Canara Bank (Employees') Pension Regulations, 1995 (hereinafter, referred to as “the Regulations, 1995”), the application of the respondent could not have been accepted. It is further contended by the learned counsel for the appellant – Bank that the respondent was earlier in employment with a Multi National Company. He has not substantiated that he was wholly dependent upon the deceased. It is further submitted that the respondent is not an indigent person. There are three properties i.e. two house properties and one



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agricultural land, admeasuring 0.87 cents, owned by the respondent and his family members. All these aspects are not considered by the learned Single Judge in its proper perspective, thereby has arrived at an erroneous conclusion.

6. We have gone through the Judgment delivered by the learned Single Judge and also considered the submissions canvassed by the learned counsel for the parties.

7. The scheme/policy of the appellant – Bank for appointment on compassionate ground is a beneficial and benevolent policy. The purpose of compassionate appointment is to provide immediate succour to the family of the deceased, who died in harness. The father of the respondent was a Class-IV employee of the appellant – Bank. He died on 06.10.2014. The respondent immediately filed an application on 15.04.2015 seeking appointment on compassionate ground.

8. The policy as applicable as on the date of the application filed for compassionate appointment would be relevant. Clause-3 of the said scheme of compassionate appointment specifies the dependent family members. It includes wholly dependent son (including legally adopted son). The



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respondent is the natural son of the deceased. It has also been observed that in the year 2016-2017, the respondent was appointed on daily wage basis by the appellant – Bank and thereafter, he was removed from service. It is submitted that prior to the respondent being appointed on daily wage basis by the appellants, he was in employment of a company. However, nothing is brought on record to substantiate that after the respondent was removed from service as a daily wager by the appellant – Bank, he was gainfully employed elsewhere. The 0.87 cents of land owned by the family of the respondent is a dry agricultural land, even according to the appellant – Bank. The house property does not yield any income.

9. One of the contentions of the learned counsel for the appellant – Bank that the son to be a member of the family of the deceased as per the definition of “family” enshrined in the Regulations, 1995 is that he should be less than 25 years of age. We cannot import the provisions of the Pension Rules while applying the scheme for compassionate appointment. The scheme for compassionate appointment is a complete policy in itself. The said scheme does not restrict the definition of dependent son to be less than 25 years of age.



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10. Learned counsel for the appellant – Bank further submits that as per the scheme for compassionate appointment, discretion vests with the appellant – Bank either to appoint the respondent on compassionate ground or to grant him *ex gratia* payment.

11. The contention of the learned counsel for the appellants that the discretion exists either to appoint the respondent on compassionate ground or to grant him *ex gratia* payment is not an ordinary or unregulated discretion. But, it is a discretion that has to be exercised judiciously and in a reasonable manner. While rejecting the application for compassionate appointment, the appellant – Bank did not come forward and say that they are ready to pay *ex gratia* payment to the respondent. But, rejected the application for compassionate appointment on the sole ground that the respondent is not the dependent of the deceased. The appellant – Bank cannot be allowed to approbate and reprobate. The appellant – Bank is a Nationalized Bank. It is an instrumentality of the State. The instrumentality of the State is expected to be a model litigant.

12. In the light of the above, the learned Single Judge has not committed any error in passing the impugned Judgment. As nine years have lapsed after the death of the deceased and the respondent has not yet been



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given employment on compassionate ground, the appellant - Bank shall be compassionate at least now to give appointment to the respondent. The appointment order shall be issued expeditiously, preferably within a period of four weeks from today.

14. The writ appeal, as such, is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

[S.V.G., .C.J.]

[K.K.R.K., J.]

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NCC : Yes / No
Index : Yes / No
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