

107

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5777-2020

Date of Decision:04.08.2023

VAKEEL CHAND AND ANOTHER

..... Petitioners

Versus

STATE BANK OF INDIA

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. K.B. Raheja, Advocate
for the petitioners.

Mr. Shreesh Kakkar, Advocate for
Mr. Kapil Kakkar, Advocate
for the respondent-Bank.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking direction to the respondent to provide compassionate appointment to the petitioner No.1 on account of death of his father in harness.

2. Father of petitioner No.1 and husband of petitioner No.2 was working with respondent-Bank and he passed away due to heart attack while on duty. The death took place on 01.10.2018. The petitioner applied for compassionate appointment, however, respondent-Bank on 30.04.2019 deposited a sum of Rs.7 lakhs in the account of petitioner as compassionate compensation. The respondent-Bank formed an opinion that case of petitioner does not fall in exceptional categories as envisaged in circular dated 27.12.2014 (Annexure R-1), thus, petitioners are

entitled to compassionate compensation, however, they are not eligible for compassionate appointment.

3. Learned counsel for the petitioners does not dispute the fact that death of deceased employee took place on 01.10.2018 and at that point of time, policy dated 27.12.2014 was in vogue. He further does not dispute the fact that a sum of Rs.7 lakhs has already been transferred in the account of the petitioners.

4. Learned counsel for the petitioners submits that deceased employee was appointed much prior to December, 2014, thus, petitioners are entitled to compassionate appointment in terms of policy prevailing prior to December, 2014.

5. I have heard the arguments of both sides and with the able assistance of learned counsel have perused the record.

6. It is undisputed fact that petitioner applied for compassionate appointment after 2014 and at that point of time policy dated 27.12.2014 was in vogue. The petitioners are not entitled to compassionate appointment in terms of policy dated 27.12.2014 and they were eligible to compassionate compensation which has already been paid to them.

7. Hon'ble Supreme Court in ***State Bank of India Vs. Raj Kumar, 2010 (4) SCT 77*** and ***M.G.B. Gramin Bank Vs. Chakrawarti Singh, 2013 (4) SCT 541*** has held that scheme as is in force on the date of consideration shall be applicable for compassionate appointment. The relevant extracts of the judgment passed in ***Raj Kumar*** (supra) are reproduced as below:

“2. The respondent's father employed as a Messenger in the appellant Bank, died on 1-10-2004. The respondent's mother made applications dated 6- 6-2005 and

14-6-2005 requesting for his appointment on compassionate grounds. When the applications were being processed and verified, the Compassionate Appointment Scheme was substituted by the “SBI Scheme for payment of ex gratia lump sum amount” with effect from 4-8-2005. The new Scheme abolished the old Scheme for compassionate appointments and instead provided for payment of an ex gratia lump sum amount as per its terms.

x x x x

8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

x x x x

12. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several

circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable.”

The relevant extracts of the judgment in **MGB Gramin Bank** (supra) are as under:

“2. The facts and circumstances giving rise to this appeal are that: the father of the respondent who was working as a Class III employee with the appellant Bank died on 19-4-2006 while in harness. The respondent applied for compassionate appointment on 12-5-2006. During the pendency of the application filed by the respondent, a new scheme dated 12-6-2006 came into force with effect from 6-10-2006. Clause 14 thereof provides that all applications pending on the date of commencement of the scheme shall be considered for grant of ex gratia payment to the family instead of compassionate appointment.

x x x x

15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc. the application has to be considered in accordance with the scheme. In case the scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In SBI vs. Raj Kumar (2010) 11 SCC 661, this Court

held that in such a situation, the case under the new scheme has to be considered.

16. In view of the above position, the reasoning given by the learned Single Judge Chakrawarti Singh vs. Marwar Ganganagar Bikaner Gramin Bank, Civil Writ Petition No.7869 of 2008, decided on 27.7.2009 (Raj.) as well as by the Division Bench MGB Gramin Bank vs. Chakrawarti Singh, Civil Special Appeal (W)No.798 of 2009, decided on 27.1.2010 (Raj.) is not sustainable in the eye of the law. The appeal is allowed and the impugned judgments 4 & 5 of the High Court are set aside.”

8. In the case in hand, at the time of death of employee as well as date of application, policy of 2014 was in vogue and petitioner admittedly is not entitled to compassionate appointment as per aforesaid policy, thus, in view of judgment of Hon’ble Supreme Court, the petitioner has rightly been granted compassionate compensation and he is not entitled to compassionate appointment. The present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

04.08.2023
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No