

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 19907 of 2021

Priyanka Nayak, W/o Late Vishal Raj, R/o Prabhat Colony, P.S.-K.Hat, Dist.-
Purnia, at present residing with D/o Pankaj Kr. Nayak, Mohala - Dr. Rajendra
Nagar (Road No. 2), Gulabbag (Hansda), P.S.-Sadar, District-Purnia.

... .. Petitioner/s

Versus

1. The State Bank of India, through its Chairman, State Bank Bhawan, Madam Cama Road, Nariman Point, Mumbai, Maharashtra, Pin- 400021.
2. The Chairman, State Bank of India, State Bank Bhawan, Madam Cama Road, Nariman Point Mumbai, Maharashtra, Pin - 400021.
3. The Assistant General Manager (HR), State Bank of India, Human Resources Depart., Local Head Office North Eastern Circle, G.S. Road, P.O. -Assam Sachivalaya, Dispur, Guwahati, Assam -7810063. Po. Bag No. 103.
4. The Deputy Zonal Manager, Zonal Office at Kala Bhawan Road, Shivaji Colony, Purnia.
5. The Assistant General Manager, State Bank Learning Centre, Jorhat M.G. Road, Ha-Ali Opposite A.S.E.B. Vidyut Bhawan, Jorhat, Assam, Pin- 785001.
6. The Manager S.B.I. (Balijan Branch), P.S. - Gohpur, District - Biswanath, State - Assam.

... .. Respondent/s

Appearance:

For the Petitioner/s	:	Mr. Onkar Nath, Adv.
For the Respondent/s	:	Mr. Kaushlendra Kumar Sinha, Adv.
For the SBI	:	Mr. Amish Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 21-03-2024

The present writ petition has been filed for setting aside
the order dated 30.7.2021, issued by the Assistant General
Manager (HR), State Bank of India, Human Resources



Department, North Eastern Circle, Guwahati, Assam i.e. the Respondent No. 3, whereby and whereunder the petitioner has been informed that her case does not fall within the purview of the Bank's policy of compassionate appointment, however, she can deposit the requisite documents, whereupon ex-gratia amount shall be paid to her instead of grant of compassionate appointment.

2. The brief facts of the case, according to the petitioner, are that the husband of the petitioner was appointed as Assistant / Stenographer in the Clerical Cadre of the Respondent-Bank, vide appointment letter dated 17.12.2012 and during the course of time, he was promoted to the post of Assistant Manager. The husband of the petitioner unfortunately died in harness in a road accident on 22.01.2021, while posted as Assistant Manager at the Balijan Branch of the State Bank of India.

3. The learned counsel for the petitioner has submitted that the petitioner is well qualified, inasmuch as she is a graduate from the B. N. Mandal University as also possesses diploma in Information Technology from Ascent Computer Education, hence, she should be granted appointment on compassionate ground. It is also submitted that after the petitioner came out of shock & trauma, she had filed an application for grant of appointment on



compassionate ground on 20.7.2021, by an email sent to the Respondent No. 2, however, the Respondent No. 3, vide letter dated 30.7.2021, has denied appointment on compassionate ground and has instead asked her to submit requisite documents so that adequate ex-gratia amount can be paid to her.

4. Per contra, the learned counsel for the Respondents has submitted, by referring to the counter affidavit filed in the present case that first of all, the present writ petition is not maintainable, inasmuch as the impugned order dated 30.7.2021 has been passed by the authority, situated at Guwahati, in the State of Assam, hence, the petitioner ought to have preferred a writ petition before the appropriate forum / Court of law having competent jurisdiction. It is further submitted that the impugned order dated 30.7.2021 has been passed by the Respondent No. 3, as per the “State Bank of India Scheme for Compassionate Appointment in Exceptional Circumstances” (herein after referred to as the “Scheme dated 27.12.2014”), issued vide E-Circular No. CDO/P&HRD- PM/65/2014-15, dated 27.12.2014 [which was applicable on the date of death of Late Vishal Raj i.e the husband of the petitioner], hence the same does not warrant any interference by this Hon'ble Court.

5. The learned counsel for the Respondent-Bank has further



submitted that as per the applicable scheme dated 27.12.2014 (Annexure-R/1), compassionate appointment can be given only in exceptional circumstances and the mere death of an employee in harness does not entitle his family for compassionate appointment. The said scheme dt. 27.12.2014 provides for either of the two eventualities, which are being reproduced herein below-

“The compassionate appointment can be given in eligible cases to dependent family members of a permanent employee of the Bank who:-

(i). Dies while performing official duty, as a result of violence, terrorism, robbery or dacoity, or

(ii). Dies within five years of first appointment or before reaching the age of 30 years, whichever is later, leaving a dependent spouse and / or minor children.”

6. Thus, it is submitted by the learned counsel for the Respondents that as per the First Information Report bearing Gohpur FIR No. 58/21, dated 19.02.2021, the death of Late Shri Vishal Raj (deceased husband of the petitioner) occurred on 22.01.2021 on account of road accident and not due to any exceptional circumstances, as has also been admitted by the petitioner in her writ application. Moreover, on the date of death, the age of Late Vishal Raj was 35 years, 2 months, 26 days and he had already completed 8 years, 1 month and 5 days of service with the respondent Bank, hence the petitioner was



not found eligible for compassionate appointment under the Scheme dated 27.12.2014.

7. It is next contended by the Ld. Counsel for the respondents that appointment on compassionate ground is not a source of routine appointment as also the same is not a matter of right, whereas on the contrary, it can only be granted in exceptional cases, subject to fulfillment of other parameters, as aforesaid. It is stated that the case of the petitioner for compassionate employment cannot be considered in terms of the new revised scheme for compassionate appointment, inasmuch as the effective date of the revised scheme is 24.2.2021, whereas the death of the husband of the petitioner took place on 22.1.2021, hence, the case of the petitioner shall be governed by the Scheme dt. 27.12.2014, as aforesaid.

8. It is stated by the Ld. counsel for the Bank that as per the stipulations contained in the revised scheme, its retrospective implementation has been extended only to the dependents of the employees who have died on account of COVID-19 infection but since the husband of the petitioner died due to road accident, her case shall not be governed by the revised scheme.

9. The Ld. counsel for the Respondent-Bank has clarified that the Bank, vide letter dated 30.7.2021, has advised the



petitioner that since her case is not eligible for compassionate appointment, as per the scheme applicable to her case, she can file an application for payment of ex gratia lump sum amount, which shall definitely be paid to her, subject to submission of the necessary documents by her.

10. Lastly, it is submitted by the learned counsel for the Respondent-Bank that it is a well-settled law that compassionate employment cannot be claimed as a matter of right and in this regard, reference has been made to a judgment dt. 16.12.2021, rendered by the Hon'ble Supreme Court of India, in the case of ***Secretary to Government, Department of Education (Primary) & Ors. vs. Bheemesh @ Bheemappa***, reported in ***(2021) 20 SCC 707***, para no. 19 whereof is reproduced herein below:-

“19. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the



decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions. Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable.”

11. In view of the law laid down by the Hon’ble Apex Court in the case of **Bheemesh @ Bheemappa** (supra), it is contended by the learned counsel for the Respondent-Bank that the Bank has not violated any fundamental rights of the petitioner by denying compassionate appointment under the scheme, as applicable at the time of death of the husband of the petitioner, inasmuch as no vested right is possessed by the petitioner for appointment on compassionate ground, hence, the present writ petition is fit to be dismissed, being devoid of any merit.

12. I have heard the learned counsel for the parties and perused the materials on record. Admittedly, the husband of the petitioner died on account of road accident on



22.01.2021, when the Scheme dated 27.12.2014 was in force. The said Scheme dated 27.12.2014 stipulates that the same shall be applicable to a dependent family member of permanent employee of the Bank, who dies either during the course of performing official duty, as a result of violence, terrorism, robbery or dacoity or dies within five years of first appointment or before reaching the age of 30 years, whichever is later, leaving behind a dependent spouse and / or minor children. This Court finds that unfortunately in the present case, neither of the said two conditions are fulfilled, inasmuch as death of the husband of the petitioner took place on 22.1.2021 on account of road accident and not due to any exceptional circumstances. Moreover, the husband of the petitioner had already completed 8 years, 1 month and 5 days of service and was aged about 35 years, 2 months and 26 days, hence, denial of compassionate appointment to the petitioner, by the impugned order dated 30.7.2021, cannot be said to be arbitrary or contrary to law.

13. This Court further finds that admittedly, the new revised scheme of compassionate appointment is effective from 24.2.2021, whereas the death of the husband of the petitioner took place on 22.1.2021, hence, the petitioner is not amenable to the new revised compassionate appointment scheme of the



Respondent Bank. This Court also finds that the present case is squarely covered by the law laid down by the Hon'ble Apex Court in the case of ***Bheemesh @ Bheemappa*** (supra), inasmuch as it is a well-settled law that firstly, compassionate appointment is not automatic upon the death of any employee since the same is not a vested right in law and secondly, grant of compassionate appointment is subject to strict scrutiny of various parameters stipulated in the scheme, existing at the time of death of the employee. Therefore, this Court is of the view that the claim of the petitioner for grant of compassionate employment is devoid of any merit, nonetheless, it finds that since the Respondent-Bank has been benevolent enough to offer to pay ex-gratia amount, instead of compassionate appointment, subject to submission of the requisite papers, this Court deems it fit and proper to grant liberty to the petitioner to approach the Respondent No. 3 for grant of ex-gratia lump sum amount and in case, appropriate application / representation is filed within a period of twelve weeks from today, appropriate decision shall be taken thereon by the Respondent No. 3, in accordance with law, within a period of six weeks, thereafter and the admitted ex-gratia lump sum amount shall then be paid to the petitioner within the same time frame.



14. Having regard to the facts and circumstances of the case and for the foregoing reasons, I do not find any merit in the present writ petition, hence, the same stands dismissed, however, subject to the aforesaid liberty granted to the petitioner to approach the Respondent No. 3 for payment of ex-gratia lump sum amount in lieu of death of her husband in harness.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.05.2024
Transmission Date	NA

