

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 11910 of 2016

Raju Purkait

Vs.

The State Bank of India & Ors.

For the Petitioner : Mr. Dilip Kumar Saha
Ms. Dhriti Das advocates

For the Respondent Bank : Mr. S.K. Sinha
Mr. S. Pal Chowdhury
Ms. Tithi Paul
Ms. Shilpi Paul advocates

Reserved on : 05.09.2024

Judgment on : 12.09.2024

Hiranmay Bhattacharyya, J.:-

1. The writ petitioner has prayed for issuance of a writ of mandamus to command the respondent Bank to appoint the petitioner in the category of died-in-harness in place of his deceased father.
2. The father of the petitioner who was a Senior Head Messenger of State Bank of India, Baruipur Branch (for short "the Bank") died-in-harness on 18.04.2003. On 19.08.2003, petitioner submitted an application before the Chief Manager of the Bank for appointment on compassionate ground. On 05.04.2004, the Chief Manager forwarded the application to the Regional Office along with his recommendation for compassionate appointment. Petitioner claims to have submitted several representations. Alleging inaction on the part of the authorities of the Bank, petitioner filed this writ petition on 04.07.2016.

3. Bank contested the writ petition by filing an affidavit-in-opposition. It has been stated therein that the application claim to have been submitted by the petitioner and the recommendations as alleged to have been forwarded by the Branch Manager vide letter dated 05.04.2004 are not available or traceable in the records of the Bank. It was stated that a new scheme for payment of *ex gratia* lump sum amount came into existence on 04.08.2005 and since then the scheme for compassionate appointment is not in existence. It was stated that the writ petition was filed at a belated stage when the scheme for compassionate appointment was not in existence and for such reason the writ petition is liable to be dismissed.
4. Mr. Saha, learned advocate for the petitioner submitted that the petitioner submitted the application for compassionate appointment immediately after the death of his father and at a point of time when the scheme for compassionate appointment was in existence. He further contended that the authorities of the Bank sat tight over the matter for a considerable period of time. He submitted that the petitioner should not be made to suffer because of the delay caused by the Bank and the coming into force of the subsequent scheme in the meantime as the petitioner applied for compassionate appointment immediately after the death of his father and also made several representations thereafter. Mr. Saha contended that introduction of the scheme for payment of *ex gratia* lump sum amount cannot deprive the petitioner of his right to be appointed on compassionate ground as the policy prevalent at the time of death of the deceased employee should be considered and not the subsequent scheme. In support of such contention, Mr. Saha placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh and Others vs. Ashish Awasthi*** reported at **(2022) 2 SCC 157** and ***Secretary to Government Department of Education (Primary) and Others vs. Bheemesh alias Bheemappa*** reported at **(2021) 20 SCC 707**.

5. Per contra, Mr. Saha, learned advocate for the Bank contended that the object of compassionate appointment is to enable the family to get over the financial crisis which it faces at the time of death of the sole bread winner. He contended that such employment cannot be claimed after lapse of considerable length of time. He contended that the writ petition has been filed 12 years after the death of the deceased employee and the writ petition is liable to be dismissed only on that ground. In support of such contention, Mr. Sinha placed reliance upon the following decisions of the Hon'ble Supreme Court.

(1) ***Umesh Kr. Nagpal vs. State of Haryana and Others*** reported at **(1994) 4 SCC 138**.

(2) ***Haryana State Electricity Board vs. Naresh Tanwar and Another*** reported at **(1996) 8 SCC 23**.

(3) ***State of J&K and Others vs. Sajad Ahmed Mir*** reported at **(2006) 5 SCC 766**.

(4) ***State of Himachal Pradesh and Another vs. Shashi Kumar*** reported at **(2019) 3 SCC 653**.

(5) ***State of West Bengal vs. Debabrata Tiwari and Others*** reported at **2023 SCC OnLine SC 219**.

6. Mr. Sinha also placed reliance upon an order of the Hon'ble division Bench of this Court dated 27.06.2023 in ***FMA 2642 of 2015*** in the case of ***Arun Seal vs. State Bank of India*** in support of his contention that an applicant is not entitled to compassionate appointment after several years.

7. Mr. Sinha contended that the new scheme for payment of *ex gratia* lump sum amount came into force on 04.08.2005 and such scheme specifically provides that all pending applications are to be considered under the new scheme. He contended that the scheme that is in force when the application is actually considered will be applicable and not the scheme that was in force at the time when the application was made. In support of such contention, Mr. Sinha

placed reliance upon the decision of the Hon'ble Supreme Court in **State Bank of India and Another vs. Raj Kumar** reported at **(2010) 11 SCC 661**.

8. Heard the learned advocates for the parties and perused the materials placed.
9. The father of the writ petitioner died-in-harness on 18.04.2003. Petitioner applied for appointment on compassionate ground on 19.08.2003. The scheme for payment of *ex gratia* lump sum amount in lieu of appointment on compassionate ground in State Bank of India (for short "New Scheme") came into force on 04.08.2005.
10. Clauses 14 and 15 of the New Scheme will be relevant for our purpose and the same is extracted hereinafter.

"14. DATE OF EFFECT OF THE SCHEME AND DISPOSAL OF PENDING APPLICATIONS:

The Scheme will come into force with effect from the date it is approved by the Executive Committee of the Central Board. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Executive Committee of the Central Board will be dealt with in accordance with the new Scheme for payment of ex-gratia lumpsum amount provided they fulfil all the terms and conditions of this Scheme."

"15. MISCELLANEOUS PROVISIONS OF THE SCHEME:

.....

vi. With effect from the date the "SBI Scheme for Payment of Ex-gratia Lumpsum Amount" comes into force the Bank's scheme of compassionate appointments shall be deemed abolished/ withdrawn and no request for compassionate appointment shall be entertained or considered by the Bank under any circumstance."

11. The New Scheme which came into force on 04.08.2005 fell for consideration in **Raj Kumar** (supra) wherein the Hon'ble Supreme Court held that where the earlier scheme is abolished and the New Scheme which replaces it specifically provides that all pending applications will be considered only in terms of the

New Scheme, then the New Scheme alone will apply. The Hon'ble Supreme Court held thus-

"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.

13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts."

12. In **Canara Bank vs. M. Mahesh Kumar** reported at **(2015) 7 SCC 412**, there was a shift in policy and instead of compassionate appointment scheme, a scheme for *ex gratia* payment was proposed. The Hon'ble Supreme Court after noting that the right to claim appointment stood extinguished due to coming into force of the subsequent scheme held that the "dying in harness scheme" which was prevalent at the time of death of the employee shall be the basis for consideration.
13. Three Hon'ble Judges of the Supreme Court in **N.C. Santosh vs. State of Karnataka and Others** reported at **(2020) 7 SCC 617** felt that the view taken in **Canara Bank** (supra) is to be reconciled with the contrary view of the Coordinate Bench in **Raj Kumar** (supra) **and M.G.B Gramin Bank vs. Chakrawarti Singh** reported at **(2014) 13 SCC 583**. The Hon'ble Supreme Court held that the norms prevailing on the date of consideration of the application should be the basis for consideration of claim for appointment. The Hon'ble Supreme Court held thus-

"19. Applying the law governing compassionate appointment culled out from the abovesaid judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis

for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee."

14. In **Ashish Awasthi** (supra) the Hon'ble Supreme Court noticed that the Hon'ble Supreme Court in **State of M.P vs. Amit Shrivastava** reported at **(2020) 10 SCC 496** while considering the very same scheme held that the claim of compassionate appointment must be decided only on the basis of relevant scheme prevalent on the date of demise of the employee and subsequent scheme cannot be looked into. The Hon'ble Supreme Court in **Ashish Awasthi** (supra) followed the view taken in **Amit Shrivastava** (supra).
15. In **Bheemesh** (supra), the Hon'ble Supreme Court noted that the 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 would apply revolves around two dates, namely (i) date of death of the employee and (ii) date of consideration of the application of the dependant. It was observed therein that date of death is a fixed factor that does not change and the date of consideration of the claim is variable as it depends upon many variables. The Hon'ble Supreme Court held that the interpretation as to applicability of a modified scheme should depend upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor.
16. **Bheemesh** (supra) took note of several judgments including **N.C. Santosh** (supra).
17. The fact of the case in **Bheemesh** (supra) is that the applicant for compassionate appointment/respondent therein was the unmarried brother of a deceased female unmarried government servant. The Rules as they stood on the date on which the sister of the respondent died-in-harness, did not include an unmarried brother, within the definition of the expression "dependant of a

deceased government servant" vis-a-vis a deceased female unmarried government servant. By way of amendment of the Rules, which took effect after the date of death of the government servant, an unmarried brother of a deceased female unmarried government was included within the definition. In the light of the aforesaid facts, the Hon'ble Supreme Court held that merely because the application for appointment was taken up for consideration after the issue of the amendment, the respondent therein could not have sought the benefit of amendment.

18. The said decision being distinguishable on facts cannot come to the aid of the petitioner.
19. In the case on hand, the scheme for compassionate appointment was abolished and was replaced by a New Scheme for payment of *ex gratia* lump sum amount which came into force with effect from 04.08.2005. The very same scheme of the respondent Bank fell for consideration in **Raj Kumar** (supra) and it was held therein that where the earlier scheme is abolished and the New Scheme which replaces it specifically provides that all pending applications will be considered only in terms of the New Scheme, then the New Scheme alone will apply in case of pending applications. The said decision is squarely applicable to the dispute involved in this writ petition. That apart, the 3-Judge Bench of the Hon'ble Supreme Court appears to have accepted the view taken in **Raj Kumar** (supra) that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment.
20. In the light of the observations made hereinbefore, this Court holds that the petitioner cannot seek consideration in terms of the scheme applicable on the date of death of his father.

21. There is one more reason why the petitioner is not entitled to any relief. Elaborate arguments have been advanced at the Bar, on the issue of delay in approaching this Court.
22. The learned advocate for the petitioner would contend that the petitioner applied for compassionate appointment immediately upon the death of the employee and when the scheme was in force and the delay, if any, is solely attributable to the authorities of the Bank. Mr. Sinha would submit that a delayed approach to the Court disentitled the petitioner to the discretionary relief under Article 226 of the Constitution.
23. In ***Naresh Tanwar*** (supra), it has been reiterated that since the object of compassionate appointment is to relieve immediate hardship and distress caused to the family by the sudden demise of the earning member of the family, such consideration cannot be kept binding for years.
24. In ***Debabrata Tiwari*** (supra), the Hon'ble Supreme Court after noticing various judgments including ***Umesh Kumar Nagpal*** (supra), ***Sajad Ahmed Mir*** (supra), ***Shashi Kumar*** (supra) held that for reasons of prolonged delay, either on the part of the applicant in claiming compensation or the authorities in deciding the claim, the sense of immediacy is diluted and lost. The Hon'ble Supreme Court took note of the facts of the reported case that the application was submitted in the year 2005-2006 and the writ petitioner approached the Court after 10 years. The Hon'ble Supreme Court after reiterating the proposition of law that mere submission of representation to the competent authority does not arrest time held that a prolonged delay in approaching the High Court would disentitle the writ petitioner to the discretionary relief under Article 226 of the Constitution of India. The Hon'ble Supreme Court held thus-

"41. Applying the said ratio to the facts of the present case, we hold that the Respondents-Writ Petitioners, upon submitting their applications in the year 2006-2005 did nothing further to pursue the matter, till the year 2015 i.e., for a period of ten years. Notwithstanding the tardy approach of the authorities of

the Appellant-State in dealing with their applications, the Respondent-Writ Petitioners delayed approaching the High Court seeking a writ in the nature of a mandamus against the authorities of the State. In fact, such a prolonged delay in approaching the High Court, may even be regarded as a waiver of a remedy, as discernible by the conduct of the Respondents-Writ Petitioners. Such a delay would disentitle the Respondents-Writ Petitioners to the discretionary relief under Article 226 of the Constitution. Further, the order of the High Court dated 17th March, 2015, whereby the writ petition filed by some of the Respondents herein was disposed of with a direction to the Director of Local Bodies, Government of West Bengal to take a decision as to the appointment of the Respondents-Writ Petitioners, cannot be considered to have the effect of revival of the cause of action."

25. In **Debabrata Tiwari** (supra), the Hon'ble Supreme Court even after noticing the tardy approach of the State in dealing with the application, held that a delayed approach to the Writ Court disentitled the petitioner of the discretionary remedy.
26. The Hon'ble Division Bench in **Arun Seal** (supra), refused to interfere with the order of the learned Single Judge wherein it was held that since the father of the writ petitioner died in the year 2003 and the appellant had survived for more than a decade before filing the writ petition in 2015, there could be no reason to grant the writ petitioner either compassionate appointment or ex gratia after such long delay.
27. In the case on hand, the writ petitioner after submitting application in the year 2003 did not pursue the matter diligently excepting submitting representations in the year 2006 and 2015 before filing the writ petition sometimes in the month of July, 2016. The writ petitioner approached the Court almost after 13 years of the death of his father. This Court is, therefore, inclined to accept the contention of Mr. Sinha that the family of the deceased was able to sustain themselves from other sources. Though the authorities of the Bank did not process the application promptly while the Scheme for compassionate appointment was subsisting but the same alone cannot justify the belated approach to this Court. The delay on the part of the petitioner in approaching

the writ Court disentitles him to the equitable relief under Article 226 of the Constitution of India.

28. For all the reasons as aforesaid, the writ petition is liable to be dismissed and accordingly the same stands dismissed. There shall be, however, no order as to costs.
29. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)