

THE HON'BLE SRI JUSTICE BATTU DEVANAND

WRIT PETITION No. 1159 of 2016

ORDER:

This Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India for the following relief:

"....this Hon'ble Court may be pleased to issue an order, direction more particularly in the nature of Writ of Mandamus and set aside the impugned order No.(HR-1) 278, dated 08.05.2015 issued by the 3rd respondent as illegal, arbitrary and consequently direct the respondent authorities to consider the case of the petitioner herein for appointment on compassionate grounds forthwith and be pleased to pass such other order, orders, and as deemed fit and proper in the interest of justice."

- 2) A counter-affidavit has been filed by the respondents.
- 3) Heard Sri K. Sudhakar Reddy, learned counsel for the petitioner and Ms. V. Uma Devi, learned Standing Counsel for State Bank of India appearing for the respondents and perused the material available on record.
- 4) The case of the petitioner is that the father of the petitioner, who worked as Head Messenger in Market Yard Branch of State Bank of India, Adoni Branch, died on 26.11.2012 in harness. Thereafter the petitioner made a representation, dated 20.01.2013 to the 4th respondent

requesting to provide employment on compassionate grounds. The mother of the petitioner made a presentation to the Assistant General Manager, SBI/Tirupati seeking appointment on compassionate grounds to the petitioner. The petitioner also submitted another representation, dated 05.05.2014 to the 1st respondent seeking for appointment on compassionate grounds. The respondents by their letter, dated 03.11.2014 rejected the request of the petitioner. Aggrieved by the same, the present writ petition is filed.

5) Learned counsel for the petitioner submits that the father of the petitioner died on 26.11.2012 in harness leaving behind his wife, petitioner, two other sons and two unmarried daughters and that there is no other earning member in the family.

6) Learned counsel for the petitioner would submit that the Indian Bank Association vide letter No.CIRHR&IR/2014-15/532/576, dated 11.08.2014 communicated to all the Chief Executives of all Public Sector Banks with regard to scheme of compassionate appointment on compassionate ground in Public Sector Banks after receiving approval from the Government of India vide its letter DOF No.18/2/2013-IR, dated 07.08.2014. The copy of the scheme for adoption was sent to all banks for approval of the Board of Bank. In the

light of the said scheme, the petitioner case has to be considered to provide compassionate appointment in favour of the petitioner.

7) On the other hand, learned Standing Counsel for the respondents submits that as per the existing instructions, the compassionate appointment scheme has been discontinued with effect from 04.08.2005 and replaced with SBI scheme for payment of ex-gratia lump sum amount in lieu of compassionate appointment and advised the petitioner to submit application in the prescribed format for payment of ex-gratia. Learned Standing Counsel contends that the revised scheme for compassionate appointment is applicable in exceptional cases which are specifically stated in the Circular Instructions, which is effective from 05.08.2014. The said scheme is not applicable to the petitioner's case, as the date of death of petitioner's father (i.e.) 26.11.2012 was prior to the introduction of compassionate appointment on exceptional cases (i.e.) 05.08.2014 and also the case did not fall under the category of exceptional case as specifically envisaged in the circular. As such, the claim of the petitioner was rejected. Therefore, the learned Standing Counsel sought for dismissal of the writ petition.

8) Having heard the submissions of the learned counsel for both sides and upon perusing the material available on record, it is an admitted fact that the father of the petitioner died on 26.11.2012 in harness, leaving behind his wife, petitioner, two other sons and two unmarried daughters.

9) The respondent Bank declined the claim of the petitioner for compassionate appointment, as the same is non-existent and replaced by scheme of payment of ex-gratia lump sum amount. However, the petitioner is continuously making representations seeking appointment on compassionate grounds.

10) While the representations of the petitioner are pending for consideration, it appears that the Indian Banks Association vide their letter No.HR&IR/KC/Govt./532/9274, dated 22.04.2014 and 13.06.2014 sent proposal to the Government of India for revising the compassionate appointment scheme in Public Sector Banks. The Director, Department of Financial Services, Ministry of Finance, Government of India, New Delhi, vide letter in DOF No.18/2/2013-IR, dated 07.08.2014 informed Indian Banks Association that their proposal has been examined and decided to convey the approval of the Government on the proposal of IBA as follows:

(1) To open the compassionate appointment in PSBs on the lines of Central Government;

(2) Discontinuing the provision of Ex-gratia in lieu of compassionate appointment in PSBs.

Accordingly, IBA is requested to take appropriate action to circulate the revised scheme to all PSBs for adoption with the approval of their respective Boards. The scheme shall be applicable from 05.08.2014. It is also mentioned in that letter that in the letter, dated 07.08.2014 stating that with the approval of the Hon'ble Finance Minister this letter was issued.

Later, the State Bank of India approached the Government of India proposing for the need to continue the earlier provisions of scheme i.e., compassionate appointment in exceptional cases or payment of Ex-gratia lump sum amount in lieu of compassionate appointments. The Department of Financial Services, Ministry of Finance, Government of India vide letter, dated 05.12.2014 with the approval of Finance Minister informed that all Public Sector Banks can have both the options (i.e.) the compassionate appointment or payment of lump sum ex-gratia amount. However, it is made clear that any of these two options can

be used only when the other conditions of compassionate appointments are met.

Accordingly, following receipt of communication from Ministry of Finance, GOI, vide letter F No.18/2/2013-IR, dated 05.12.2014, the Executive Committee of the Central Board of the State Bank of India in its meeting held on 23.12.2014 has approved continuation of following two schemes duly modified as under:

- (i) A. Scheme for compassionate appointment in exceptional cases (as per annexure-I and B1, B2;
- B. Scheme for payment of ex-gratia lump sum amount in lieu of compassionate appointment with the following directions;
- C. The dependents of deceased employees falling under scheme (A) i.e., where death is treated as in "Exceptional Circumstances" will have the option to chose either compassionate appointment or Ex-gratia lump sum amount as per the eligibility under the scheme.

However, in all other cases of death as also in case of premature retirement due to incapacitation before reaching the age of 55 years only, ex-gratia lumpsum amount will be

paid as per the eligibility and no compassionate appointment will be considered.

11) It is mentioned in the scheme of compassionate appointment of State Bank of India that the whole object of granting compassionate employment in such exceptional cases is to enable the family to tide over the sudden crisis due to death of bread winner. The mere death of an employee in harness does not entitle his family to such a serious of livelihood. The object is to offer compassionate appointment only when the bank is satisfied that the financial condition of the family is such that but for the provision of employment the family will not able to meet the crisis.

12) At para No.11 of the SBI scheme for compassionate appointment on compassionate grounds in exceptional cases- 2014, it is provided as under:

11. TIME LIMIT FOR CONSIDERING APPLICATIONS

11.1 Application for employment under the scheme from eligible dependent will be considered upto five years from the date of death.

11.2 Request for compassionate appointment under exceptional circumstances may be considered even when the death of the employee took place long back. While

considering such belated requests, it should be kept in view that the concept of compassionate appointment under exceptional circumstances is largely related to the need for immediate assistance to the family of the employee in order to relieve it from economic distress.

13) It is clear that as per the scheme formulated by the respondents, there is option to the dependents of the deceased employee to offer for compassionate appointment or for payment of Ex-gratia lumpsum amount in lieu of compassionate appointment. In the present case the family of the dependents opted for payment under compassionate scheme. The objection of the respondent Bank to consider the case of the petitioner for compassionate appointment is on the ground that as on the date of the death of the father of the petitioner, the Scheme-2014 is not in existence and at that time the scheme for payment of Ex-gratia lumpsum amount is only available, and as such, the Scheme-2014 is not applicable to consider the case of the petitioner.

14) In view of the fact that in the Scheme-2014 of the respondent Bank at para 11.2 wherein it is provided that the request for compassionate appointment under exceptional circumstances may be considered even when the death of the employee took place long back, the case of the petitioner

ought to have considered by the respondent in view of the fact that the death of father of petitioner is on 26.11.2012 and the SBI Scheme for compassionate appointment on compassionate ground in exceptional cases, 2014 is came into effect from 05.08.2014. Hence, the case the petitioner can be considered under the scheme in the light of the procedure provided at para 11.2 of the scheme.

15) Learned counsel for the petitioner relied on a judgment of the Hon'ble Supreme Court of India in **State Bank of India and another vs. Raj Kumar**¹, in which it was held at para No.10 as extracted hereunder:

10. "In this case the employee died in October, 2004, the application was made only in June, 2005. The application was not even by the respondent, but by his mother. Therefore, it was necessary to ascertain whether respondent really wanted the appointment, whether he possessed the eligibility, and whether any post was available. Within two months of the application, the new scheme came into force and the old scheme was abolished. The new scheme specifically provided that all pending applications will be considered under the new scheme. Therefore it has to be held that the new scheme which came into force on 04.08.2005 alone will apply even in respect of pending applications." (*emphasis is ours*)

¹ (2010)11 SCC661

16) On the other hand, learned Standing Counsel for respondents relied on the following decisions to support their case:

(1) Indian Bank and others vs. Promila and another²;

(2) Canara Bank and another vs. M. Mahesh Kumar³;

(3) State of Himachal Pradesh and another vs. Parkash Chand⁴ and

(4) State of Madhya Pradesh and others vs. Amit Shrivastava⁵.

17) This Court has gone through the judgments relied by the learned Standing Counsel for respondents and with great respect, this Court is fully agreeing with the proposition of law laid down by the Hon'ble Apex Court in those judgments, but the facts and circumstances of the present case are different.

18) In *Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.*, (2000) 6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised

² (2020) 2 SCC 729

³ (2015) 7 SCC 412

⁴ (2019) 4 SCC 285

⁵ (2020) 10 SCC 496

was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

"13.But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation." Referring to Steel Authority of India Ltd.'s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground.

19) In the present case, the father of petitioner worked as Head Messenger in the respondent Bank. He died in harness leaving behind wife, three sons and two unmarried daughters. After considering the post held by the deceased and the number of the members of the family he has to maintain, one can understand the financial position of that family. Due to sudden demise of the bread winner of the family, the family of the deceased employee has to face serious financial problems. The respondent Bank formulated the SBI Scheme for compassionate appointment on compassionate ground in exceptional cases-2014 with a laudable object of granting compassionate appointment in such exceptional cases is to enable the family to tide over the sudden crisis due to the death of a bread winner.

20) As and when the respondent Bank introduced such scheme for the benefit of family members of the deceased employees, rejecting the claim of the petitioner by the respondent authorities on the ground that the petitioner is not entitled for compassionate appointment is unjustified.

21) In view of the procedure provided at para No.11.2 of the scheme and by following the judgment of the Hon'ble Apex Court in the case of *Rajkumar (1 supra)*, this Court is of the

considered opinion that rejecting the claim of the petitioner for compassionate appointment is against to the scheme provided by the respondent Bank. As such, we hold that the impugned order No.(HR-1) 278, dated 08.05.2015 issued by the 3rd respondent is illegal, arbitrary and unjust.

22) Accordingly, this writ petition is disposed of with the following directions:

(i) The impugned order No.(HR-1) 278, dated 08.05.2015 is set aside;

(ii) The respondents are directed to consider the claim of the petitioner for compassionate appointment in any suitable post, within a period of six (06) weeks from the date of receipt of copy of the order; and

(iii) There is no order as to costs.

Consequently, miscellaneous petitions pending, if any, in this writ petition shall stand closed.

JUSTICE BATTU DEVANAND

Date: 16.04.2021

PGR

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

Orders
in
WRIT PETITION No.1159 of 2016

Date :16.04.2021

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