
(2021) 03 KL CK 0349
In the High Court Of Kerala
Case No : Writ Petition (C) No. 22244 Of 2012

Harijith J.K

APPELLANT

Vs

State Bank Of Travancore And Ors

RESPONDENT

Date of Decision : 29-03-2021

Acts Referred:

State Bank Of India Act, 1955 — Section 35

Citation : (2021) 03 KL CK 0349

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : P. Babu Kumar, P. Ramakrishnan

Final Decision : Disposed Of

Judgement

1. The petitioner's father M.Jenardhanan while working as D.C.C.P at State Bank of Travancore, Madathara Branch expired on 10.06.2004. The deceased was survived by his wife, mother, two sons of which the petitioner is the eldest and a daughter. The petitioner belongs to Scheduled Caste community. The petitioner applied for compassionate appointment before the respondent Bank vide Ext.P2 application dated 28.02.2005. According to the petitioner, though he filed Ext.P2 application before the Assistant General Manager of the respondent Bank shortly after his father's demise, the said application was not considered and the petitioner was not intimated about the fate of the said application though he met the officers of the respondent Bank in person several times. Therefore, the petitioner has filed this writ petition for directing the respondents to appoint him in the post of Peon in the respondent Bank and for a declaration that the petitioner is in all respect eligible for appointment under the compassionate appointment scheme.

2. A statement dated 12.10.2015 is filed on behalf of the respondents wherein, it is stated that the Managing Director of the respondent Bank has rejected the request of the petitioner for compassionate appointment as he did not come within the parameter of the scheme for appointment on compassionate grounds.

It is stated that the decision of the Managing Director, rejecting the application of the petitioner for compassionate appointment was informed to the petitioner from the Madathara Branch of the respondent Bank, where the petitioner's father had last worked. It is further stated that the writ petition was filed after 8 years after the death of the employee and therefore liable to be dismissed on that short ground.

3. A counter affidavit sworn in by the Assistant General Manager (HR) of State Bank of India is also placed on record, wherein it is stated that during the pendency of the writ petition the respondent Bank has been acquired by the State Bank of India under Section 35 of the State Bank of India Act, 1955, w.e.f 01.04.2017. The counter affidavit is filed reiterating the stand of the 1st respondent in the statement dated 12.10.2015. It is stated that the petitioner's father did not have unblemished service records and is not entitled for compassionate appointment as per the scheme for compassionate appointment followed by the Bank. It is further stated that Ext.P2 application of the petitioner has been rejected by the Managing Director of the Bank and was informed to the Deputy General Manager, Thiruvananthapuram who in turn had informed the Branch Manager of Madathara Branch where the petitioner's father had last worked and the same was communicated to the petitioner from Madathara Branch of the Bank. It is stated that the application of the petitioner was rejected 7 years back and the writ petition filed after 7 years shall not be entertained. The circular that deals with the scheme for appointment on compassionate grounds is also produced along with the counter affidavit. According to the respondents, the object of granting compassionate appointment is to enable the family of the deceased employee to tide over the sudden financial crisis and the family of the deceased was not living in penury so as to make the petitioner eligible for grant of compassionate appointment. Therefore, the respondents prayed for dismissal of the writ petition.

4. Head the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

5. The counsel for the petitioner submitted that till date, the petitioner has not been served with any communication rejecting Ext.P2 application and till the filing of the writ petition, the petitioner had been knocking at the doors of the respondents for employment under the compassionate scheme. The counsel for the petitioner submits that the petitioner is still unemployed and finds it difficult to eke a living with the coolie work he may get on certain days.

6. The learned standing counsel for the respondents contend that the petitioner has approached the Court after 7 years after the rejection of his application for compassionate appointment. Relying on the decision of the Division Bench of this Court in *Manager, Naduvathur U.P.School and Another v. Bijeesh K. and Others* [2019(3) KHC 472], the learned standing counsel submitted that the whole object of granting compassionate appointment is to enable the family to tide over the sudden financial crisis and that the object is not to give a member of such

family a post, much less a post for the post held by the deceased. The counsel also relied on the decision of the Apex Court reported in Santosh Kumar Dubey v. State of U.P. and Others [2009(6)SCC 481], wherein it was held that the object of compassionate appointment is to provide immediate financial assistance to the family, who has lost its bread winner and the request for appointment on compassionate grounds should be reasonable and proximate to the time of death of the bread-earner of the family.

7. Usually, this Court would have dismissed the writ petition taking note of the long delay in filing the writ petition. The writ petition is filed after more than 7 years after the death of the father of the petitioner. However, it has to be noted that though the respondents have stated that Ext.P2 application of the petitioner has been rejected, no order or any communication rejecting the same application is produced either with the statement dated 12.10.2015 or with the counter affidavit dated 09.06.2020. It is stated that the Managing Director of the respondent Bank had rejected the application for compassionate appointment of the petitioner and the same was informed to the Deputy General Manager, Trivandrum, who in turn had informed the Branch Manager of the Madathara Branch, where the petitioner's father had last worked and the same was communicated to the petitioner from the Madathara Branch of the respondent Bank. None of the aforesaid communications are produced by the respondents before this Court.

8. It is the specific case of the petitioner that his application for compassionate appointment is not considered by the respondents and that he has been approaching the respondents for getting relief and that the respondents did not even send a reply to his request for compassionate appointment. Apart from the statement of the respondents that the application of the petitioner for compassionate appointment has been rejected by the Managing Director, no details whatsoever, not even the date of such proceedings and the details of the communications issued by the office of the Managing Director to the Deputy General Manager, Deputy General Manager to the Branch Manager, Branch Manager to the petitioner are stated in the statement/counter affidavit. 9. This is not a case where there was delay on the part of the petitioner in approaching the respondents for employment under the dying in harness scheme. The father of the petitioner expired on 10.06.2004 and Ext.P2 application was made on 28.02.2005. Therefore, the petitioner had made request for appointment on compassionate grounds within a reasonable period. Going by Ext. P1 caste certificate, the petitioner belongs to schedule caste community. He has studied upto 10th standard and has not passed SSLC. When the respondents have taken a stand that Ext.P2 application has been rejected, they could have very well produced the said order or any communication in that regard along with their statement dated 12.10.2015 or along with the counter affidavit dated 09.06.2020. No document is produced to show that the petitioner was ever intimated about the fate of his application for compassionate appointment. Therefore, the respondents cannot seek dismissal of the writ petition on the

ground of delay or laches on the part of the petitioner in filing the writ petition. According to the counsel for the petitioner, the petitioner was all along under the impression that the respondents would consider his request for employment under the compassionate scheme as no order was communicated to him rejecting his application and finally when no orders were forthcoming on Ext.P2 application, the writ petition was filed.

10. Since the application of the petitioner for compassionate appointment was filed within a reasonable time and that the respondents have not placed on record any order or communication rejecting Ext.P2 application for compassionate appointment, this Court finds it appropriate to direct the 1st respondent; the State Bank of India through its competent officer to consider Ext.P2 application of the petitioner for compassionate appointment afresh, in accordance with law, within a period of three months from today. It is specifically noticed that this Court has not gone into the eligibility or other merits of the petitioner's claim in Ext. P2; but only directed consideration of the application of the petitioner for compassionate appointment in accordance with law.

The writ petition is disposed of accordingly.