(2014) 12 DEL CK 0339

In the Delhi High Court

Case No : Writ Petition (Civil) 7417/2013

Resham Devi APPELLANT

Vs

Vijaya Bank RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 32

Citation : (2014) 12 DEL CK 0339

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Prabhat Kiran, Advocate for the Appellant; Kush Sharma and Anshul Pathak, Advocate for the Respondent

Judgement

Hima Kohli, J.—The petitioner is the wife of late Shri Ram Phal, who was working as an Armed Guard in the respondents/Bank and she has filed the present petition praying inter alia for issuance of directions to the respondents/Bank to grant compassionate appointment to her son upon her husband''s demise, and in the alternate, to release ex gratia payment in lieu of the aforesaid relief and further, to permit her and her family members to participate in the pension scheme floated by the respondents/Bank.

2. Briefly stated, the facts of the case are that Shri Ram Phal was working on the post of Armed Guard in the respondents/Bank with effect from the year 1993. After rendering service for sixteen years with the respondent/Bank, he had died in harness on 18.05.2009, having suffered a heart attack while on duty. On the very same day, the respondents/Bank had issued a letter to the petitioner informing her of the Bank''s Scheme for payment of ex gratia relief in lieu of appointment on compassionate grounds that is applicable to the dependents of the deceased employees. It is an admitted position that the petitioner had received the aforesaid letter alongwith the form that was required to be filled up by her and submitted to the Bank within six months from the date of Shri Ram Phal''s demise, in order to claim the benefit under the aforesaid Scheme.

However, she failed to submit the said form to the respondents/Bank within the prescribed timeline.

3. As per the petitioner, after her husband''s demise, the respondents/Bank had paid her a sum of Rs. 1,72,496/- towards the gratuity dues, a sum of Rs. 1,17,270/- under the Family Welfare Scheme and a sum of Rs. 2,64,334/- towards the Provident Fund dues. There is some difference between the parties with regard to the extent of the gratuity amount received by the petitioner. While the petitioner has claimed that she had received gratuity dues of Rs. 1,72,496/- from the respondents/Bank under cover of letter dated 17.06.2009 (Annexure P-5) , as per the respondents/Bank, it had paid a sum of Rs. 2,01,840/- was paid to the petitioner, as per the details submitted by her to the Bank in an application dated 24.01.2011 (pages 107 to 110 of the paper book) . However, for deciding the issue raised herein, not much would turn on the aforesaid aspect for the reason that the petitioner has not raised a grievance in this petition that the gratuity amount received by her from the Bank, is short.

4. After the passage one and a half year from the date of her husband''s demise, on 01.11.2010, the petitioner had submitted an application to the respondent/ Bank, seeking appointment of her son on compassionate grounds or for payment of ex gratia relief in lieu thereof. In the meantime, the respondents/Bank had introduced a Pension Scheme, without any budgetary support. The terms and conditions of the said Scheme stipulated that the family members of the employees, who were in service of the Bank prior to 02.09.1995, but had died in harness while in service after that date but prior to 27.04.2010, were also eligible to exercise their option in writing of becoming member of the pension fund within a period of sixty days from the date of the offer and within thirty days after the expiry of sixty days, they were required to refund the entire amount of the Bank''s contribution to the Provident Fund and interest accrued thereon as may have been received by the employee on retirement, together with his share in the contribution, for meeting 30% of the estimated funding gap for those eligible under the said Scheme. In other words, the respondents/Bank required an applicant to pay 56% of the amount over and above the Bank''s contribution to the Provident Fund and the interest thereon received by an employee on retirement, for being eligible to claim benefits under the said Scheme.

5. Vide letter dated 09.10.2010, the respondents/Bank informed the petitioner about the aforesaid Pension Scheme and it had specified therein that a sum of Rs. 2,45,175/- was required to be refunded by her. The petitioner claims that in response to the aforesaid family pension option form received by her on 22.11.2010, she had deposited a sum of Rs. 1,48,636/- in her saving account maintained with the respondents/Bank. It has been averred in the petition that the petitioner was unaware of the cut-off date for deposit of the total amount with the Bank and thereafter, she had to be admitted in the hospital with a heart problem and she remained there from 25.11.2010 to 29.11.2010. On recovering,

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the petitioner claims to have deposited the balance amount in her account on 03.01.2011 and vide letter dated 06.01.2011, she had informed the respondents/ Bank of making the said deposit and explained the reasons for the delay in making compliance.

6. On 07.02.2011, the petitioner sent an application to the respondents/Bank, requesting for lump sum payment of the ex-gratia amount in lieu of appointment on compassionate grounds. Vide letter dated 13.04.2011, the petitioner''s application for release of ex gratia payment was rejected on the ground of belated submission. Aggrieved by the aforesaid rejection order, after the passage of over two years, the petitioner had filed the present petition in July, 2013.

7. Notice was issued on the present petition on 27.11.2013. After the pleadings were completed and the matter was placed before the Court on 12.09.2014, it was noticed that the petitioner had not furnished the complete information with regard to the family members left behind by late Shri Ram Phal. As the purpose of compassionate appointment is to provide financial succor to the family members of the deceased employee as a tide over, the petitioner was directed to file an additional affidavit furnishing the details of her family members, the place of their residence, the nature of vocation being pursued by them, their source of income and the immovable property/land, if any, owned by her and her family members. Liberty was also granted to the counsel for the respondents/Bank to file some additional documents as prayed for by him.

8. Subsequently, the petitioner filed an affidavit dated 07.11.2014, stating inter alia that the deceased Ram Phal was survived by his wife (the petitioner herein) , two sons and a daughter. Shri Rajkumar, the elder son, is aged 30 years and stated to be employed in a private company. Mr. Karan, the second son, is aged 20 years and studying in college. Ms. Geeta, the school going daughter of the petitioner is 18 years old. The affidavit states that the total monthly income of the family is Rs. 13,000/- (Family pension from the Army: Rs. 7,000/- per month + salary of Mr.Rajkumar: Rs. 6,000/- per month) . The petitioner has also stated that she has a fixed deposit of Rs. 2 lacs in the respondents/Bank that is in the name of her daughter, Ms. Geeta and she owns a dwelling house admeasuring 88 sq. yards situated at Narela, Delhi.

9. Learned counsel for the petitioner argued that having expired in harness in the course of his employment with the respondents/Bank, a family member of Late Ram Phal is entitled for appointment on compassionate grounds with the respondents/Bank. It was urged that in lieu of appointment on compassionate grounds, the petitioner is entitled to receive ex gratia payment and the said entitlement cannot be dislodged on the ground of belated submission of the application. Lastly, it was contended that as per the Family Pension Scheme floated by the respondents/Bank, upon the demise of her husband, the petitioner is entitled to receive pension but the respondents/Bank has flatly refused to extend the said benefit to her and her family members. In support of his submission that the limitation period of six months prescribed under the Scheme

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of compassionate appointment cannot be construed as a statutory limitation to non-suit the petitioner, learned counsel had relied on the judgment dated 14.02.2008 in W.P.(C) 2490/2007 entitled Smt. Vidyawati vs. Vijaya Bank.

10. Per contra, learned counsel for the respondents/Bank opposed the maintainability of the present petition on the ground that the petitioner has approached this Court with unclean hands as at the threshold, she had failed to reveal all the material information with regard to the financial status of the legal heirs of the deceased employee and in view thereof, this Court should decline to exercise its discretion in her favour. To substantiate the said submission, he had pointed out that at the time of filing the present petition, the petitioner had concealed the total monthly income received by her and her family members, which is to the tune of Rs. 13,000/- per month. Further, the petitioner did not inform the Court that she had a fixed deposit of Rs. 2 lacs and she owns a dwelling house measuring 88 sq. yards at Narela, Delhi. He stated that on the aforesaid ground of concealment/suppression of material facts alone, the present petition ought to be dismissed without examining the merits of the case. In support of the said submission, he referred to the decision of the Supreme Court in the case of K.D. Sharma Vs. Steel Authority of India Ltd. and Others, .

11. On merits, learned counsel submitted that the petitioner did not adhere to the prescribed timelines either for seeking appointment on compassionate grounds or for submitting an application for payment of ex gratia amount and resultantly, vide letter dated 22.01.2011, the Bank had rejected her application on the ground that it was highly belated.

12. Further, it was submitted that when the Bank had introduced a Pension Scheme and informed the petitioner in writing about the said Scheme and the period within which she was required to submit her option form with the requisite payment, she had again defaulted. As a result, she was not admitted under the said Scheme. In support of his submission that ordinarily, the courts ought not to interfere with the cut-off date as it is a policy decision, which falls within the domain of the executive authority, learned counsel for the respondents/Bank had referred to the decision of the Supreme Court in the case of Sudhir Kumar Consul Vs. Allahabad Bank, and of the High Court in the case of Central Bank Retirees'' Association and Others Vs. Union of India (UOI) and Others, .

13. The broad principles that have been laid down in a catena of judgments for considering a case of compassionate appointment are well settled by now. Compassionate appointment is given solely on humanitarian grounds with the object of providing immediate succor to a deceased employee''s family to enable them to overcome the grave and sudden financial crisis faced by them on the death of the sole breadwinner. However, mere death of an employee in harness does not entitle his family to compassionate appointment. It is necessary for the Government/public authority to examine the financial condition of the family of the deceased and only upon being satisfied that the family will not be able to meet the crisis that a job ought to be offered to the eligible member of such a

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family. For compassionate appointment, posts in class III and class IV, being the lowest posts, can be offered, the aim being to enable the family to overcome financial destitution faced by them.

14. Further, compassionate appointment is permissible only to one of the dependents of the deceased/incapacitated employee, i.e., parents, spouse, son or daughter and not to all relatives. The favourable treatment given to such a dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution and the Court is expected to be mindful of the fact that as against the destitute family of the deceased, there are several other families that are equally, and may be more destitute and an exception to the rule that is made in favour of the family of the deceased employee is purely in consideration of the services rendered by him and to meet the legitimate expectations of his legal heirs.

15. The provisions for compassionate appointment are required to be guided by the rules/executive instructions/scheme/policy framed by the Government or the concerned public authority that can withstand the test of Articles 14 and 16 of the Constitution of India, the object being that an employment of such a nature cannot be offered by an individual officer or on an ad hoc basis. Such a rule/ scheme/policy/guideline, as framed, is binding on both, the employer and the employee. Compassionate appointment ought not to be granted after a lapse of a reasonable period as may be stipulated in the rules. The family member of the deceased, who approach the employer for being considered for compassionate appointment cannot claim a vested right to such an appointment and nor can such a right be exercised at any time in the future. As the sole object of such an appointment is to extend a helping hand to the family of the deceased employee for them to tide over the immediate financial crisis faced on account of the death of the breadwinner while in service or on medical invalidation, compassionate appointment cannot be claimed or offered after the crisis blows over. Another factor that ought to be examined by the courts when approached by the family members of the deceased employee for seeking compassionate appointment, is the extent of retiral benefits received by the heirs of the deceased employee.

16. The aforesaid legal position has developed over the years through a number of judicial pronouncements made on the parameters that the Court must keep in mind when dealing with a case of compassionate appointment, including the cases of Umesh Kumar Nagpal Vs. State of Haryana and Others, ; Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, ; Punjab National Bank and Others Vs. Ashwini Kumar Taneja, ; State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, ; V. Sivamurthy Vs. State of Andhra Pradesh and Others, ; Eastern Coalfields Ltd. Vs. Anil Badyakar and Others, and Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, .

17. Coming to the facts of the instant case, the timeline prescribed for the family members to submit an application under the Scheme for payment of ex gratia amount in lieu of appointment on compassionate grounds and appointment of

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dependents of deceased employees on compassionate grounds, circulated by the respondents/Bank on 17.10.2007 and prescribed under Clause 1.14 is six months, which is to be reckoned from the date of the employee''s demise and for being eligible to seek employment under the Scheme, twelve months from the date of an employee''s demise.

18. A perusal of the records reveals that the petitioner''s husband had expired on 18.05.2009 and on the very same date, the respondents/Bank had taken steps to write to the petitioner and apprise her of the Bank''s Scheme for payment of ex gratia/relief in lieu of appointment on compassionate grounds for the dependents of the deceased employees. Accompanying the said letter was a form required to be filled up by the applicant.

19. Upon examining the Scheme for Compassionate Appointment framed by the respondents/Bank, it is noticed that the petitioner and her family members are not even eligible to apply for the reason that the said Scheme has been extended to two categories of employees as envisaged under Clause 1.2 thereof. The first category that has been carved out is of an employee dying while performing his official duty, as a result of violence, terrorism, robbery or dacoity and the second category is of an employee dying within five years of his first appointment or before reaching the age of thirty years, whichever is later, leaving a dependent spouse and/or minor children. Neither of the aforesaid circumstances exist in the present case. Though Shri Ram Phal had expired on duty, the cause of his death was that he had suffered a heart attack and further, he was 49 years of age at the time of his demise and by then he had rendered service of sixteen years with the Bank. As a result, the family members of the petitioner cannot claim entitlement for appointment with the respondents/Bank on compassionate grounds.

20. Moreover, the date of Shri Ram Phal''s demise was 18.05.2009. On the very same day, the respondents/Bank had admittedly taken steps to write to the petitioner and inform her of the Bank''s Scheme for payment of ex gratia/relief in lieu of appointment on compassionate grounds. The aforesaid Scheme prescribed a period of twelve months reckoned from the date of the employee''s demise, for a family member to submit an application for seeking appointment on compassionate grounds. But the petitioner had filed an application seeking appointment of her son on compassionate grounds on 01.11.2010, i.e., after the passage of one and a half year from the date of her husband''s demise. In view of the timeline fixed in the aforesaid Scheme, it is apparent that the said application was filed six months beyond the period of one year granted for the said purpose, by which time, the crisis faced by the family, would have blown over.

21. Proceeding further, at the time of filing the writ petition, the petitioner did not reveal to the Court the fact that the family''s monthly income was to the tune of Rs. 13,000/- (Family pension from the Army: Rs. 7,000/- plus monthly salary of Mr.Rajkumar: Rs. 6,000/-) . Further, the petitioner had failed to declare that

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she had a fixed deposit of Rs. 2 lacs and she owned a dwelling house measuring 88 sq. yards at Narela, Delhi. All the above facts are of significance when considering the extent of destitution faced by the family members of the deceased employee.

22. It is a settled law that a party, who invokes the extraordinary jurisdiction of the Supreme Court under Article 32 and the High Court under Article 226 of the Constitution of India is under a mandate to be truthful and honest in disclosing all the material facts without any reservation for the reason that the very foundation of writ jurisdiction lies in disclosure of true and complete facts. Failure to disclose material facts fairly and truly or an attempt to distort/twist the facts so as to mislead the Court, would be a ground for the Court to reject a petition outright without examining the merits of the case. Having regard to the contents of the affidavit filed by the petitioner pursuant to the specific directions issued by the Court, it has now emerged that she did not fairly reveal the full and the correct facts that would be necessary for the Court to consider granting the relief of compassionate appointment to a member of her family.

23. In any event, the retiral benefits received by the petitioner upon her husband''s demise are to the tune of Rs. 5,54,100/- (an undisputed amount of Rs. 1,72,496/- towards the gratuity dues, a sum of Rs. 1,17,270/- under the Family Welfare Scheme and a sum of Rs. 2,64,334/- towards the Provident Fund) . The aforesaid amount is considered as a substantial amount and would have provided enough succor to the petitioner and her family members to meet their immediate financial contingencies on the sudden demise of Shri Ram Phal.

24. In this backdrop, the request made by the petitioner for grant of compassionate appointment to her son under the Scheme framed by the respondents/Bank is turned down on the ground that not only was the application submitted beyond the timeline prescribed, but the petitioner and her family members were not even eligible for making such an application under Clause 1.2 thereof. Further, the petitioner has failed to reveal to the Court the correct position with regard to her financial status and that of her family members and added to it is the fact that she and her family members had received a substantial amount towards the terminal benefits of the deceased. Lastly, the delay on the part of the petitioner in approaching the respondents/ Bank as also in approaching this Court, if reckoned from the date of Shri Ram Phal''s demise, adds up to one and a half year for filing an application for compassionate appointment and to four years, when filing the present petition, which is quite fatal to her claim. By the time the present petition is being decided, another year has passed by and all the above factors when taken together, compel this Court to draw an inference that the financial condition of the petitioner and her family members is not so penurious as claimed and they have been able to overcome the sudden distress on account of stoppage of income over the past five years. Resultantly, they are not entitled to the relief of compassionate appointment.

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25. Coming next to the claim of the petitioner for ex gratia payment in lieu of compassionate appointment under the Scheme framed by the respondents/Bank, apart from the eligibility criteria which is common and has been noted above, the same stipulated that the family members of the deceased must submit an application for payment of the ex gratia amount within a period of six months from the date of the employee''s demise. The petitioner herein had submitted such an application with the respondents/Bank on 01.11.2010, i.e., after a passage of one and a half year from the date of Shri Ram Phal''s demise. In other words, the application was filed after the lapse of one year beyond the period of six months granted to the family members for seeking ex gratia relief under the Scheme.

26. When examining the Scheme of the respondents/Bank, the Court is expected to apply the actual terms of the Scheme to a case and not to examine what would be more beneficial to a party. In the present case, the Scheme as it stands, is clear and unambiguous and is not found to be so arbitrary or unreasonable that it deserves interference. As observed in the case of V. Sivamurthy (supra) , a policy is not open to interference merely because the court feels that it is not practical or is less advantageous for government servants for whose benefit it is made or because it considers that a more fairer alternative is possible. These are matters of policy and the courts should refrain from interfering with the terms of policy unless it is opposed to any constitutional or statutory provision or suffers from manifest arbitrariness and unreasonableness. The relief of ex gratia payment in lieu of compassionate appointment under the Policy framed by the respondents/Bank has to be examined strictly in accordance with the terms of the Scheme and not by seeking relaxation of the said terms.

27. The petitioner has not offered any explanation, much less just or sufficient cause in belatedly applying to the respondents/Bank for seeking appointment on compassionate grounds or in lieu thereof, ex gratia payment under the Scheme. Resultantly, a glaring lapse of one and half years in submitting the form in question reckoned from the date of Shri Ram Phal''s demise remains unexplained. In such circumstances, the Court finds merit in the submission made by the counsel for the respondents/Bank that the Bank was justified in denying ex gratia payment to the petitioner as her application for the said relief was highly belated.

28. Reliance placed by the learned counsel for the petitioner on the judgment in the case of Smt. Vidyawati (supra) , would also not be of any assistance for the reason that the facts of the said case reveal that the employee of the respondent/ Bank had expired on 15.01.2005 and the petitioner therein had submitted an application for appointment on compassionate grounds in less than a month, on 05.02.2005. Thereafter, the respondent/Bank had addressed a letter dated 01.04.2005 to the petitioner, intimating her that the Scheme for appointment on compassionate grounds had been kept under suspension and relief in lieu of

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appointment on compassionate grounds to the family members of the deceased employee in place of the earlier Scheme could be offered and the petitioner was called to collect the relevant information to do the needful in terms of the 20th November, 2004 Scheme of the Bank.

29. In view of the aforesaid information conveyed to her, the petitioner in the aforecited case had filed an application on 03.08.2006 furnishing the details sought by the Bank under the said Scheme. The said application was rejected by the respondent/Bank on the ground that the same was submitted beyond the prescribed period of six months from the date of the death of the employee. What weighed with the Court in the above case was the delay on the part of the respondent/Bank therein in informing the petitioner that the earlier Scheme of the year 1999 for grant of compassionate appointment had been kept under suspension and that she could avail of the subsequent Scheme of November, 2004 for grant of ex gratia payment in lieu of appointment. The Court had therefore made an observation that the limitation of six months is not a statutory limitation and ought not to be construed so strictly that after expiry of the said period, relief would not be granted on any ground.

30. In the case in hand, the facts reveal that the Bank was very prompt in informing the petitioner about the Scheme but it was the petitioner, who did not take timely steps to submit an application with the respondents/Bank either for grant of compassionate appointment to her son or for grant of ex gratia payment in lieu of compassionate appointment. Furthermore, there is no explanation offered for the delay in filing the present petition, when the impugned order was passed on 13.04.2011. Resultantly, the prayer made by the petitioner for grant of ex gratia payment in lieu of compassionate appointment is also rejected.

31. Coming next to the grievance of the petitioner that the respondents/Bank had declined her the permission to participate in the Pension Scheme, as noted above, the respondents/Bank had voluntarily introduced a Pension Scheme without any budgetary support. Vide letter dated 09.10.2010, the petitioner was informed about the Scheme and called upon to submit an option letter for joining the said Scheme, by refunding 56% of the Bank''s contribution to the Provident Fund already received by her, on or before 06.12.2010. As per the respondents/ Bank, the petitioner did not remit her contribution to the tune of Rs. 2,45,175/- and though she had claimed that she had made available a sum of Rs. 1,48,636/- in her SB account on 22.11.2010, she did not give any instructions for the Bank to adjust the said amount towards her contribution under the Scheme and nor did she remit the balance contribution by the cut-off date.

32. The petitioner has sought to explain the delay in depositing the entire sum of Rs. 2,45,175/- with the respondents/Bank by submitting that she had to be admitted in the hospital with a heart problem in the last week of November, 2010 and on recovering, she had deposited the balance amount in her saving account maintained with the respondents/Bank on 22.11.2010 and vide letter dated 06.01.2011, she had informed the Bank of the said position and explained the

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reasons for the delay in applying for Pension/commutation of Pension.

33. A perusal of the pleadings and the documents placed on record reveals that the respondents/Bank did not convey its decision on the request made by the petitioner for extension of Family Pension to her. It is the respondents/Bank''s case that vide letter dated 09.10.2010, it had forwarded the necessary forms to the petitioner for filling up and applying for the Pension/commutation of Pension and she was required to submit the said form on or before 06.11.2010, alongwith a sum of Rs. 2,45,175/- towards her contribution to the Pension Fund.

34. It is not denied by the respondents/Bank that the petitioner had made available a sum of Rs. 1,48,636/- in her savings account, maintained with the Bank. As for the balance amount of Rs. 96,539/-, vide letter dated 06.01.2011, the petitioner had informed the respondents/Bank that she had arranged sufficient funds in her account, which could be withdrawn towards deposit of balance amount towards her 56% share in the Pension Account. The said letter was forwarded by the Rohini Branch of the respondents/Bank to the General Manager (Personnel) at Bangalore on the very same day (Annexure P-3) . However, while passing the impugned rejection order dated 13.04.2011, the respondents/Bank had only turned down the petitioner''s request for payment of ex gratia amounts but said nothing about her request to participate in the Pension Scheme.

35. Reliance placed by the counsel for the respondents/Bank on the case of Sudhir Kumar Consul (supra) to urge that the court ought not to interfere with the cut off date as it is a policy decision, would not be of any assistance in the present case, for the reason that in the aforesaid case, the Court was examining as to whether the appellant therein was eligible for pensionary benefits under the 1980 Employees Pension Scheme floated by the respondent/Bank in terms of Regulation 46 of the 1979 Service Regulations. The appellant therein had argued that Regulation 46 discriminates against the officers appointed on or before 01.07.1979, the cut-off date fixed for an officer for eligibility to receive pension under the old Pension Scheme. Rejecting the said argument, the Supreme Court held that fixing the cut off date for granting retiral benefits such as gratuity, pension under different schemes incorporated in the subordinate legislation thereby creating two distinct and separate classes of employees is well within the ambit of Article 14 of the Constitution of India. On the aspect of choice of date as the basis for classification, the past precedent was cited and the appeal was dismissed.

36. The other decision referred to by the counsel for the respondents/Bank is the case of Central Bank Retirees Association (supra) , wherein the appellants, who were pre-01.01.1986 retirees from various public sector banks, had challenged the cut-off date of 01.01.1986 for applicability/eligibility to the benefits under the Pension Regulations introduced by the respondents. The said appeals were dismissed by the Division Bench with an observation that there was a distinction between liberalization of an existing scheme and the introduction of a new

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scheme and the provident fund retirees, who had retired and had received their retiral benefits from the employer cannot claim a vested right of coverage under the Pension Regulations.

37. The facts of the present case are entirely different. This is not a case where the Court is required to examine the "cut off date" in that sense of the term. Here, the Court is only called upon to examine as to whether the respondents/ Bank is justified in declining to grant permission to the petitioner and her family members to participate in the Pension Scheme on the ground that she had not submitted the requisite form on or before 06.11.2010, the date communicated to her by the Bank.

38. In the opinion of this Court, the respondents/Bank ought to have independently considered the request made by the petitioner in her representation dated 06.01.2011, for condonation of delay of sixteen days in depositing the substantial amount of Rs. 1,48,636/- and two months in depositing the balance amount of Rs. 96,539/- towards her share in the Pension Account. However, there is nothing on record to demonstrate that the said letter was considered on merits and the explanation offered for the delay in making the deposit examined and thereafter, a decision was taken and duly intimated to the petitioner.

39. In this view of the matter, it is deemed appropriate to direct the respondents/ Bank to consider the letter dated 06.01.2011 submitted by the petitioner for participating in the Pension Scheme in the light of the explanation for the delay offered by her and keeping in mind the objective of the said Scheme, which is benevolent in nature and ought not to be construed so strictly and technically as to oust those for whom it has been tailored. The respondents/Bank are directed to take a decision on the aforesaid aspect and convey the same to the petitioner in writing within six weeks from today.

40. The petition is partly allowed on the aforesaid lines while leaving the parties to bear their own costs. Needless to state that if the petitioner''s grievance still survives, she shall be entitled to seek her remedies in accordance with law.

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