(2020) 03 MP CK 0142

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1276 Of 2017

Smt. Sudha Sital & others. APPELLANT

Vs

Canara Bank & Others. RESPONDENT

Date of Decision : 16-03-2020

Acts Referred:

Citation : (2020) 03 MP CK 0142

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Jyoti Maheshwari, R.C. Sinhal

Final Decision : Allowed

Judgement

1. The petitioners have filed the present petition being aggrieved by the order dated 1.6.2009 whereby the respondent/Bank has declined to grant compassionate appointment and order dated 1.8.2012 whereby the payment of the lumpsum exgratia amount in lieu of compassionate appointment has also been declined.

2. Facts of the case, in short, are as under :

(i) Petitioner No.1 is wife and petitioners No.2 and 3 are son and daughter of Late Ramesh Sital who was an officer of Canara Bank. He was appointed on 13.6.1978 and got promotions from time to time. He nominated his wife - petitioner No.1 in the nomination form while in service. On 5.12.2007 he suffered a paralytic attack while on duty and was admitted in the hospital but unfortunately died on 14.12.2007.

(ii) After his death, petitioner No.1 submitted an application on 6.1.2008 and 10.1.2008 to respondent No.3 for grant of compassionate appointment to petitioner No.2(son). Vide letter dated 3.3.2008, respondent No.3 informed the petitioners that the scheme for employing on compassionate ground has been discontinued but the Bank has introduced a new scheme for lumpsum exgratia payment in lieu of appointment on compassionate ground. Along with the aforesaid letter, formats were also sent to be submitted by the petitioners. The petitioners submitted the formats for lumpsum exgratia payment. Vide letter dated 22.4.2008, respondents informed the petitioner No.1 that the Trustees of Canara Bank have sanctioned the family pension in her favour.

(iii) Vide letter dated 1.6.2009, respondents have informed petitioner No.1 that the competent authority has declined the request for lumpsum exgratia payment. Petitioner No.1 again submitted representation dated 21.7.2012 to Chairman & Managing director of Canara bank. Vide letter dated 1.8.2012, the Divisional Manager has informed the petitioner No.1 that she and her dependents have not been found eligible for lumpsum exgratia payment as per the scheme prevailing in the Bank and as per the Govt. guidelines and the same was conveyed to her by Circle Office, Bhopal. Thereafter, petitioner no.1 has submitted various representations and reminders and finally filed the present petition before this Court.

3. Ms. Jyoti Maheshwari, learned counsel appearing for the petitioners, submits that petitioner No.1 is a widow surviving without a source of income except family pension. Petitioner No.2 is educated up to 12th Standard only and doing some private job and petitioner No.3 who is the daughter of petitioner No.1 is physically 70% disabled and solely dependent on her, hence good amount is needed for her rehabilitation. The respondents have wrongly rejected the claim of compassionate appointment and they ought to have accepted the representation of petitioner No.1 on humanitarian ground as after the death of her husband, she has no permanent source of income accept the family pension which is not sufficient, hence appropriate writ, direction or order be issued to the respondents.

4. After notice, respondents have filed the return by submitting that the scheme for compassionate appointment to the dependent/s of the employee who died in harness was implemented in the Bank in the year 1976. As per the suggestion of Govt. of India, Indian Banks Association formulated a model scheme for payment of monetary assistance in lieu of appointment on compassionate grounds which was approved by the Ministry of Finance, Govt. of India. The Board of Directors of Canara Bank approved the model scheme formulated by Indian Banks Association for payment of lumpsum exgratia for the employees/officers of the Bank. The scheme for appointment on compassionate ground was discontinued w.e.f. 14.2.2005 in terms of circular No.35/2005 dated 14.2.2005.

5. As suggested in the model scheme, respondent Bank formulated the scheme for payment of the exgratia lumpsum amount in lieu of appointment on compassionate ground to employees dying in harness to the family of the deceased employee, employees who voluntarily retire/resign due to total incapacitation in the manner and subject to ceiling specified, if the monthly income of the family from all sources is less than 60% of the last drawn salary (net of taxes) of the employee. However, as per Clause 10(b) of the said scheme,

the entitlement for exgratia cannot be claimed as a matter of right, it is a discretion only and the competent authority as held in the catena of cases by the apex Court and this Court would examine whether there exists penury which warrants for considering the exgratia lumpsum.

6. The Board of Directors revised the scheme during 2007 based on revised model scheme advised by Indian Banks Association, as per which, in certain exceptional cases, scheme for compassionate appointment is applicable and in all other cases scheme for payment of the lumpsum exgratia amount is applicable, both subject to eligibility norms under the said schemes. The exceptional case under which compassionate appointment is applicable is as follows :

(i) Employee dying while performing his official duty as a result of violence, terrorism, robbery or dacoity;

(ii) Employee dying within 5 years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a dependant spouse and/or minor children.

7. As regards payment of lumpsum exgratia while there is no change in terms and conditions of the scheme for payment of the lumpsum exgratia amount in lieu of appointment on compassionate grounds, eligibility criteria suggested by Indian Banks Association for dealing with the cases under the scheme is as follows :

(a) Employee dying in harness (other than due to injury sustained while performing the duty as a result of violence, terrorism, robbery or dacoity);

(b) Employee dying due to injury sustained while performing an official duty within or outside the office premises (other than due to violence, terrorism, robbery or dacoity and excluding travel from residence to the place of work and back);

(c) Employee seeking premature retirement due to incapacitation before reaching the age of 55 years.

8. Subsequently, respondent Bank introduced a new scheme for compassionate appointment w.e.f. 5.8.2014 vide circular dated 143/2015 dated 20.3.2015 (Annexure R/3) which reveals that the said new scheme applies - (I) only to the employees of the Bank; and (ii) in cases where the death of the employee has occurred on or after 5.8.2014. It is submitted that since the date of death of Shri Ramesh Sital is 14.12.2007, the above scheme does not apply to the case of present petitioners and as such, circular dated 14.2.2005 and 24.9.2007 are relevant to the present case.

9. Shri Sinhal, learned counsel appearing for the respondents, submits that the petitioners were not found eligible for compassionate appointment as per the scheme which had already been discontinued w.e.f. 14.2.2005 as Shri Ramesh Sital died on 14.12.2007. As regards the claim of lumpsum exgratia payment to

the petitioners, the respondents have duly examined the matter and found that the petitioner No.1 is receiving a family pension of Rs.8,267.37 per month staying in their house and the children are major and old enough to take care of themselves. As such, no penury exists for consideration of payment of lumpsum exgratia payment. He further submits that the petitioners are not entitled to the compassionate appointment because the deceased died in the year 2007 and the new policy for the compassionate appointment came into force w.e.f. 5.8.2014 and it does not apply to the petitioners. They are not entitled to get lumpsum exgratia payment because the same is to be given in lieu of compassionate appointment. Once the petitioners are not entitled to the compassionate appointment, then, they are not entitled to lumpsum exgratia payment also. Now, the Bank has come up with a new scheme for compassionate appointment w.e.f. 20.3.2015 and the same is not applicable in the case of the petitioners. In support of his contention, he has placed reliance over the judgment of Apex Court in the case of General Manager (D&PB) V/s. Kunti Tiwary : (2004) 7 SCC 271; and State Bank of India V/s. Somvir Singh : (2007) 4 SCC 778, in which, it has been held that the scheme prepared by the Bank for grant of compassionate appointment to the dependent of the employee who died in harness only in the case where the deceased employee left his family in penury and without any means of livelihood. He submits that all the terminal dues have been paid and the petitioner No.1 is also getting the family pension. Hence the petition is devoid of any substance and the same is liable to be dismissed.

10. It is not in dispute that husband of petitioner No.1 was an employee/officer of the respondent Bank and he died while in service on 14.12.2007. Petitioner No.1 applied for grant of compassionate appointment to petitioner No.2 immediately after the death of her husband. Vide letter dated 3.3.2008, respondents informed the petitioner No.1 that the scheme for providing appointment on the compassionate ground stands discontinued and the Bank is having another scheme for lumpsum exgratia payment in lieu of compassionate appointment and also provided required formats to be filled by her. However, it has also been mentioned that sanctioning of the lumpsum exgratia amount is at the discretion of the Bank. Petitioner No.1 applied for the release of lumpsum exgratia payment mainly on the ground that petitioner No.3, the daughter of deceased is 70% disabled and dependent on petitioner No.1. Vide letter dated 1.6.2009, respondents informed petitioner No.1 that the matter was placed before the competent authority who did not find the case suitable for lumpsum exgratia payment. No reason has been assigned in the rejection letter. Petitioner No.1 again submitted a representation on 12.9.2009 and the same has been replied that the decision taken earlier had already been communicated. Thereafter, petitioner No.1 submitted a detailed representation to the Chairman & Managing Director which has also been turned down, hence the present petition before this Court.

11. The respondent Bank has disclosed the reason for rejection of the claim in the return. According to the respondents, the scheme for the compassionate

appointment was in force for the employees of the Bank since 1976. In August 1999, the Board of Directors permitted to modify the scheme for providing monetary assistance in lieu of compassionate appointment. Indian Banks Association formulated the model scheme for payment of monetary assistance and circulated to all affiliated banks. Respondent Canara Bank adopted the scheme with certain modifications for appointment on compassionate grounds as well as for payment of the lumpsum exgratia amount. The scheme was made applicable in the cases where the employee dying in harness (other than due to injury while performing duty) or the employee dying due to injury sustained while performing the official duty within or outside the office premises or employee seeking premature retirement due to incapacitation before reaching the age of 55 years. The basis for the calculation of exgratia amount is subject to ceilings specified if the monthly income of the family from all sources is less than 60% of the last drawn salary of the ex-employee or deceased employee. In case of death of officers, the maximum amount is Rs.8,00,000/-.

12. The Board of Directors of Canara Bank has decided to consider the application for compassionate appointment in certain exceptional cases where (i) the employee dying while performing his duties, as a result of violence, terrorism, robbery or dacoity; (ii) employee dying within five years of his first appointment or before reaching the age of 30 years; and (iii) the scheme shall come into force with retrospective effect from 31.7.2004 and all cases of death occurring after 31.7.2004. So far as a scheme for payment of the exgratia amount is concerned, Canara Bank has adopted the same terms and conditions of the scheme formulated by the Bank communicated vide circular No.35/2005 dated 14.2.2005. Clause B of the said scheme is reproduced below :

"B. SCHEME FOR PAYMENT OF LUMPSUM EXGRATIA AMOUNT IN LIEU OF APPOINTMENT ON COMPASSIONATE GROUNDS - SCHEME IN BRIEF

In respect of the Scheme for payment of lumpsum exgratia amount in lieu of appointment on compassionate grounds, advised now, the terms & conditions of the Scheme formulated by the Bank and communicated, vide HO Circular No.35/2005 date 14.02.2005, stands unchanged. However, the eligibility criteria suggested by IBA for dealing with the cases under the Scheme for payment of the lumpsum exgratia amount is as follows :

(i) Employee dying in harness (other than due to injury sustained while performing of the duty as a result of violence, terrorism, robbery or dacoity);

(ii) Employee dying due to injury sustained while performing official duty within or outside the office premises (other than due to violence, terrorism, robbery or dacoity and excluding travel from residence to place of work and back);

(iii) Employee seeking premature retirement due to incapacitation before reaching the age of 55 years."

It is clear from the aforesaid that the criteria for grant of lumpsum exgratia are altogether different from the criteria for grant of compassionate appointment. Therefore, the contention of Shri Sinhal, learned counsel appearing for respondents/Bank is unsustainable that the payment of the exgratia amount is not liable to be given because the petitioners are not eligible for compassionate appointment. As per aforesaid Clause B, the criteria for grant of the lumpsum exgratia amount is altogether different and the same is liable to be considered independently. Hence, the respondents have wrongly rejected the claim of the petitioners for grant of lumpsum exgratia payment. Since petitioner No.3 who is the daughter of the deceased employee and suffering from 70% disablement has no source of income, therefore, the family dependents are entitled to exgratia payment.

13. So far the claim of petitioner no.2 for compassionate appointment is concerned the respondents have come up with the new scheme for compassionate appointment w.e.f. 20.3.2015. According to the respondents, this scheme does not apply to the petitioners because deceased employee - Ramesh Sital died on 14.12.2007. Certainly, the application for compassionate appointment is liable to be considered under policy available on the date of death of employee/officer as per judgment of the Apex Court in the case of Canara Bank V/s. M. Mahesh Kumar : (2015) 7 SCC 412. At the time of death of Ramesh Sital, no policy for grant of compassionate appointment was there and only the policy for grant of lumpsum exgratia was in vogue in the bank. But in this new scheme for compassionate appointment, there is a time limit for consideration of the application and as per Clause 9.1, the application for employment under the scheme from eligible dependent will normally be considered up to five years from the date of death. As per Clause 9.2, the Bank can consider the request for a compassionate appointment even when the death or retirement on medical grounds of the employee took place long back, even five years ago. Thus, the right of consideration of application has been kept open and made it applicable for those cases where employee/s died long back, even 5 years ago. However, the decision to make an appointment on compassionate grounds in such cases shall be taken only at the Board level.

14. The present case is having exceptional circumstances because the daughter of the deceased employee is suffering 70% disablement and dependent on petitioner No.1 who is not having any independent income except the family pension, which is not sufficient. Petitioner No.2, is in a private job , which is not permanent. Therefore, in this special circumstance, under the new scheme, the case of the petitioner no.2 is liable to be considered for compassionate appointment. If the respondents consider and decide to grant the compassionate appointment, then certainly the petitioners shall not be entitled to lumpsum exgratia payment. If the respondent Bank rejects the claim of petitioners for grant of compassionate appointment, then lumpsum exgratia amount be paid to the petitioner No.1. Since the respondents have wrongly rejected the claim of the petitioners without assigning any reason and the reasons given in the return are unsustanable, therefore, the petitioners are also entitled to get interest @ 8%

per annum on the amount of lumpsum exgratia from the date of death of deceased employee - Ramesh Sital till its actual payment.

15. With the aforesaid, this petition stands allowed. with a cost of Rs. 10,000 (in words:Ten Thousand only)

