**(2008) 02 DEL CK 0033**

**In the Delhi High Court**

**Case No :** WP (C) No. 2490 of 2007

Smt. Vidyawati APPELLANT

Vs

Vijaya Bank RESPONDENT

**Date of Decision :** 14-02-2008

**Acts Referred:**

**Citation :** (2008) 02 DEL CK 0033

**Hon'ble Judges :** Anil Kumar, J

**Bench :** Single Bench

**Advocate :** L.S. Chaudhary and Anil Dwivedi, for the Appellant; Rajesh Rattan, for the Respondent

**Final Decision :** Allowed

## Judgement

Anil Kumar, J.—The petitioner, widow of a deceased employee of the respondent bank, has filed this petition for appointment of her son, Shri Sushil Kumar, on compassionate ground or to pay ex gratia relief in lieu of the scheme dated 11th February, 1999 which was alleged to be under suspension and in accordance with the subsequent scheme dated 20th November, 2004

2. The facts relevant for adjudication of the present petition are that the husband of the petitioner, late Shri Ved Prakash, was an employee of the respondent-Bank who died while in service. The respondent-Bank had a scheme for compassionate appointment in terms of Circular No. 31/99 dated 11.02.1999 under which the Bank at its discretion could appoint a widow or a son or a daughter of a deceased employee of the Bank in clerical or subordinate staff cadre.

3. On the demise of the husband of the petitioner on 15th January, 2005, who was working as Daftry for 22 years and who was the only earning member of the family, the petitioner applied for compassionate appointment of her son, Shri Sushil Kumar, enclosing with the application, school leaving certificate of Sushil Kumar, his certificate and mark sheet, death certificate of her husband, nomination-cum-consent letter of petitioner, letter of undertaking, affidavit by

 

the petitioner for no-objection to give compassionate appointment to her son, statement of loan account taken by late Shri Ved Prakash and the statement of monthly tuition fee of sons and daughters.

4. The application for appointment on compassionate ground was filed within a short time after the death of the petitioner''s husband on 5th February, 2005.

5. In reply to the application of the petitioner for appointment of her son on compassionate ground, a letter dated 1st April, 2005 was received by the petitioner intimating her that the scheme for appointment on compassionate ground has been kept under suspension but relief in lieu of appointment on compassionate ground to the dependent of deceased employee in place of earlier scheme can be given. Petitioner was asked to come and collect full information and do the needful. In lieu of the offer given by the Bank on 1st April, 2005 to collect the information and do the needful in terms of 20th November, 2004 scheme, an application dated 3rd August, 2006 was filed by the petitioner giving the details as had been sought under the scheme dated 20th November, 2004

6. The petitioner also submitted authorization for payment of lump sum ex gratia amount/relief in lieu of appointment on compassionate ground. The application of the petitioner for grant of ex gratia in lieu of her application for appointment of her son on compassionate ground was, however, declined in terms of Clause 4 of the said scheme dated 20th November, 2004 Clause 4 of the scheme dated 20th November, 2004 is as under:

4.0.0. Time Limit for Submission of Application for Grant of Exgratia/relief:

Application in the prescribed form for payment of Ex-gratia amount/relief under the Scheme from the dependent/s of the deceased employee should be received by the Bank within 6 months from the date of death of the employee.

7. The petitioner made a representation against the rejection of her application for grant of ex gratia payment on the ground of non-compliance of Clause 4 by letter dated 4th October, 2006 which was not replied and consequently the present petition was filed.

8. The petition is contested by the Bank contending inter alias that the scheme of compassionate appointment was suspended as there was surplus man power in all the banks and financial institutions on account of modernization and adaptation of new technology and consequently after the approval from the Government of India, the fresh scheme was circulated by Circular No. 233 of 2004 dated 20th November, 2004 In the counter affidavit, it was contended by the respondent that the scheme evolved in 2004 by Circular dated 20th November, 2004 was in super session of the earlier guidelines issued by Circular No. 31 of 1999 dated 11th February, 1999. Reliance was placed by the respondent on Clause 8.6 of the scheme that the payment of ex gratia amount/ relief is not the entitlement but is to be granted at the sole discretion of the Bank looking into the financial conditions and in deserving and eligible cases only.

 

Reliance was also placed on Clause 9 of the said scheme providing a prescribed form and other particulars which were to be furnished in the application for payment of lump sum compensation/relief in lieu of appointment on compassionate ground in case of death.

9. The respondent bank categorically contended in the counter affidavit on behalf of the respondent that the petitioner had requested appointment of her son on compassionate grounds by her letter dated 24th January, 2005, however, the petitioner was asked to come and collect relevant information from the branch and do the needful as the scheme was under suspension. The respondent also refuted the claim of the petitioner on the ground that Clause 8 (A) and (B) of the application were not filled up which information was crucial and very much essential for the respondent Bank for arriving at the eligibility of the applicants for granting ex gratia payment. The respondent Bank also refuted the liability to pay ex gratia amount on the ground that the application was filed six months after the demise of deceased employee in contravention of Clause 4.0.0 of the November, 2004 Scheme and consequently the petitioner is not entitled for any amount. The respondent also gave the details of the payment released to the petitioner under different heads, namely, Rs. 1,36,030.38 towards Provident Funds; Rs. 2,31,385/- towards gratuity and Rs. 1,16,531.25 towards Family Welfare Funds, which amounts were not disclosed by the petitioner in her application dated 3rd August, 2006 in clause No. 8(A) nor the petitioner gave the liability on the death of her husband in terms of Clause 8(B) of the application. It was also contended that the petitioner is a pension opted under Vijaya Bank (Employees) Pension Regulation, 1995 and petitioner has received a sum of Rs. 3,884.46 per month as family pension immediately after the death of Shri Ved Prakash and at present she is receiving family pension of Rs. 4,383.73 per month.

10. I have heard the learned Counsel for the parties and perused the writ petition, counter affidavit and rejoinder affidavit and the documents filed by the parties. This is not disputed that the petitioner applied for compassionate appointment of her son Shri Sushil Kumar on 5th February, 2005 after the demise of her husband on 15th January, 2005. In reply to the application of the petitioner, it was not communicated to her that the earlier scheme has been superseded and she will have to apply in terms of the new scheme within the time stipulated therein. What was rather communicated to the petitioner was that the scheme for appointment of her son on compassionate ground has been kept under suspension and Therefore she should come to the respondent and apply afresh. The communication dated 1st April, 2005 addressed to the petitioner is as under:

VIJAYA BANK To, Smt. Vidyawati W/o Late Sh. Ved Parkash R/o 16, Sarojni Naidu Park, Shastri Nagar, Delhi-31 Dept. Branch/R.O. Dept. /Branch/R.O. Ref. No. Date: 01.04.2005

Madam,

 

Ref: Appointment n Compassionate ground to dependent of the deceased employee? Sh. Sushil Kumar.

With reference to the above regarding your application for employment on compassionate grounds dated 05.02.2005 duly forwarded by us to our R.O. Delhi, has been verified and is transmitted to us with their remarks as the scheme for appointment on compassionate grounds has been kept under suspension, but relief in lieu of appointment on compassionate grounds to the dependents of the deceased employee in place of earlier scheme has been given.

Kindly come to us to collect full information please, to do the needful.

Sd/- Chief Manager

11. Perusal of the communication reveals that the petitioner was asked to come and collect the information about the new scheme as the scheme for grant of compassionate appointment was under suspension and the petitioner was asked do the needful. The petitioner, Therefore, applied under the scheme for grant of ex gratia by her application dated 3rd August, 2006.

12. The plea of the petitioner to grant ex-gratia amount under the scheme of 20.11.2004 was declined on the ground that the application should have been filed by 15th July, 2005. The communication dated 24th August, 2006 declining relief to the petitioner is as under:

VIJAYA BANK VIJAYA BANK Phone Branch/Office Grams Ansari Road, Telex New Delhi. Ref. No. Date: 24.08.06

To,

Smt. Vidyawati and Others W/o Late Sh. Ved Prakash H. No. 16, Sarojni Naidu Park, Shastri Nagar, Delhi-31. Madam,

Exgratia/Relief in lieu of Appointment on Compassionate grounds ''Your application dated 03.08.2006'' Late Sh. Ved Prakash.

With reference to above, we have been informed that in terms of Clause 4.0.0 of H.O. Circular No. 233/2004, the time limit for submission of application form is six months from the date of death of the employee. Since the captioned that Mr. Ved Prakash was expired on 15.01.05. The application should have been submitted by 15.07.2005. The application was returned to us and you may please note the same.

Yours faithfully, sd/- Chief Manager

13. The order was passed by the respondent declining the relief on the ground that the application was not filed within six months from the date of death in terms of Clause 4 of the scheme. However, in the counter affidavit filed by the respondent various other grounds have been taken refuting the pleas of the petitioner for grant of ex-gratia payment under the scheme. Whether the respondent can be allowed to improve and modify the order passed by him

 

declining the relief prayed by the petitioner. It is no more res integra that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons. The Apex Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, had held that the order cannot be supplemented by fresh reasons as otherwise an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. The Supreme Court at page 417 had held:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanj AIR 1952 SC 16:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

14. Consequently the respondent cannot validate his order on the grounds now raised in the counter affidavit filed by the respondent except that the claim was not filed by the petitioner within six months of the death of her husband, employee of the respondent on 15th January, 2005, in accordance with Clause 4 of the scheme of 2004 In the circumstances efforts by the respondent to supplement their order by giving other reasons cannot be accepted.

15. The claim of the petitioner seeking ex gratia payment cannot be denied on the ground that the petitioner has not disclosed some of the particulars in Clause 8A and Clause 8B which pertains to details of provident fund, gratuity, leave encashment and any other amount paid under the Bank''s scheme and the loan taken from the Bank as the respondent themselves have given the amounts paid to the petitioner under various heads and the plea that the application of the petitioner was not complete was not taken into consideration for rejection of her claim for grant of ex gratia payment which has been declined only on the ground that the application was filed six months after the death of the husband of the petitioner on 15th January, 2005.

16. The next question to be decided is whether the benevolent scheme is to be construed so technically so as to deny the relief to the petitioner though under Clause 8.6.0 the grant of ex gratia amount/relief under the scheme is not an

 

entitlement but is to be granted at the discretion of the respondent Bank looking into the financial condition and to deserving and eligible cases only.

17. The application of the petitioner is not denied on the ground that the petitioner is not a deserving and eligible case which is apparent from the decision communicated by letter dated 24th August, 2006. The husband of the petitioner died on 15th January, 2005 and the first application for appointment of her son on compassionate ground was filed by the petitioner on 24th January, 2005 and application in proper format was filed on 5th February, 2005. Consequently, the application for grant of relief is filed by the petitioner within a few days of the demise of her husband. The respondent Bank itself took considerable time even to communicate to the petitioner that the scheme of 1999 for grant of compassionate appointment is under suspension and she was asked to come and collect information and do the needful. While communicating the decision on 1st April, 2005 that the scheme for compassionate appointment is under suspension and the petitioner should come and do the needful, it was not communicated to her that she can avail the scheme of grant of ex gratia payment in lieu of appointment on compassionate ground within six months of the death of her husband. In the meantime, it appears that petitioner was paid amounts towards provident fund, gratuity and few welfare funds. The petitioner was also given a pension of Rs. 3,884.46 per month which was later on enhanced to Rs. 4,383.73 per month. In the circumstances, the respondent ought to have either rejected the application on the ground that the petitioner is not eligible for ex gratia payment which has not been done by the respondent Bank, rather the plea taken is that the application was not filed within six months in terms of Clause 4 of the scheme.

18. There is also an apparent contradiction in the stand taken by the respondent Bank inasmuch as by letter dated 1st April, 2005, the petitioner was intimated that scheme for appointment on compassionate ground has been kept under suspension whereas in the counter affidavit it has been contended that the scheme for grant of ex gratia payment evolved in 2004 is in supersession of earlier guidelines issued in regard to appointment on compassionate grounds. If there was no scheme for appointment of son of the petitioner on compassionate grounds and the petitioner had applied under the same, the same should have been rejected which was not done. Rather the petitioner was asked to come and collect information and do the needful meaning thereby that the respondent asked the petitioner to provide further details in compliance with the requirements of grant of ex gratia payment in lieu of appointment on compassionate ground.

19. The objective of providing a period of six months within which the legal representative of the deceased employee should claim compensation seems to be that after that period, the dependent may not be requiring it. The learned Counsel for the respondent is unable to give any plausible reason for fixing the time for filing an application within six months only. If the steps have been taken

 

by the widow, son or the daughter of a deceased employee within six months, may not be strictly in accordance with the scheme, the relief of grant of ex gratia payment should not be disallowed merely on this technicality that the application requesting grant of ex gratia payment was not filed on the format prescribed by the respondent under the scheme of 2004 The alleged limitation of six months is also not a statutory limitation to be construed so strictly that after the expiry of that period, the relief will not be granted on any ground. The petitioner did apply for grant of compassionate appointment after the death of her husband for appointment of her son, though according to the respondent that scheme was superseded. If the scheme for compassionate appointment had been superseded in November, 2004 and in February, 2005, the petitioner applied for relief on the ground that her husband died as an employee and after his death she requires some relief, her application can be construed as an application under the scheme of November, 2004 for grant of ex-gratia payment. For this reason the respondent did not reject her application filed on 5th February, 2005 but intimated her vide communication dated 1st April, 2005 to contact the respondent and collect the information and do the needful. If the respondent wanted to enforce the limitation of six months under the November, 2004, the respondent ought to have communicated to the petitioner on 1st April, 2005 that the petitioner should collect the information and do the needful before the expiry of six months after the demise of her husband. The respondent has not disclosed as to when all the information, which the petitioner was asked to come and collect had been given to her. The format of the application which has been filed by the petitioner has columns regarding the amounts received by the petitioner as provident funds etc. It is not disputed that these amounts were given by the respondent. The respondent has not given the dates when these amounts were given to the petitioner. Without receiving the amount of the provident fund etc. the petitioner could not claim the ex-gratia amount under the scheme and could not fill the form completely. Therefore, even if there was some delay in filing the proper application on the format prescribed under the scheme of November, 2004, the delay should have been condoned by the respondent.

20. In the circumstances, the inevitable inference considering the entirety of facts is that the petitioner cannot be denied grant of ex gratia payment in accordance with the scheme of 2004 merely on the ground that the application in the prescribed format was not filed by the petitioner within six months from the date of the death of her husband, i.e., 15th January, 2005. The petitioner had applied for compassionate appointment on 24th January, 2005 and a proper application in a proper format was also submitted on 5th February, 2005. Thereafter, the petitioner was intimated to come and collect the information and do the needful as the scheme for compassionate appointment had been superseded. In the circumstances, it will not be appropriate to deny the petitioner the grant of ex gratia payment on demise of her husband who worked for 22 years with the respondent Bank.

21. In the circumstances, the Rule is made absolute and the writ petition is

allowed and the respondent is directed to pay the ex gratia amount to the petitioner in terms of Clause 6.1.1 (iii) of scheme dated 20th November, 2004 annexed with the writ petition as Annexure P2. The ex gratia amount be paid to the petitioner within a period of four week. With these directions, the writ petition is allowed, however, the parties are left to bear their own costs.

 