

(2022) 08 MP CK 0027

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 823 Of 2021

State Bank Of India And Others

APPELLANT

Vs

Meena Dhaigude

RESPONDENT

Date of Decision : 16-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Madhya Pradesh Uchha Nyayalaya (Khand Nayaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Evidence Act, 1872 — Section 108

Citation : (2022) 08 MP CK 0027

Hon'ble Judges : Subodh Abhyankar, J;Pranay Verma, J

Bench : Division Bench

Advocate : Naman Nagrath, Ankit Premchandani

Final Decision : Allowed

Judgement

Subodh Abhyankar, J

1. Heard.

2. This writ appeal has been preferred by the appellant Bank of India under Section 2(1) of Madhya Pradesh Uchha Nyayalaya (Khand Nayaypeeth Ko Appeal) Adhiniyam, 2005, and the rules made thereunder assailing the order dated 26.07.2021, passed in Writ Petition No.7249 of 2012 by the Single Judge of the writ Court, whereby the writ petition filed by the respondent/writ petitioner(hereinafter referred to as 'the petitioner') under Article 226 of the Constitution of India for her compassionate appointment has been allowed with a cost of Rs.2 lakhs to be paid by the appellant (hereinafter referred to as 'the respondent Bank') to the writ petitioner.

3. In brief, the facts of the case are that the petitioner's husband Ashok Dhaigude, who was an employee of the erstwhile State Bank of Indore went missing on 20.10.1998, and as his absence was for more than 90 days, in terms

of para 17(a) of Bipartite Settlement dated 10.04.1989 read with para 522(3) of Sastry Award, he was served with 30 days notice on 21.01.1999, calling upon him to resume duties within 30 days from the date of notice, failing which he would be treated to have voluntarily retired. The aforesaid notice was replied to by the wife of Ashok Dhaigude, vide her letter dated 08.02.1999, informing the bank that her husband has been missing since 20.10.1998 and she has also lodged a police report in this regard. As it turned out, Ashok Dhaigude did not report on duty till 10.06.1999 i.e., much after the expiry of the said notice dated 21.01.1999, the Controller of the Branch treated him as voluntarily retired with effect from 20.10.1998 i.e., the date on which he went missing.

4. The case of the petitioner is that in the meantime, on 17.05.1999, she also applied for employment in the bank in place of her husband (although this fact is disputed by the appellants). Subsequently, as per the letter dated 11.11.2005, the Superintendent of Police, after thoroughly searching for the petitioner's husband also informed the petitioner that police have already tried its level best to locate her husband even by telecasting the information through Doordarshan and through Gazette notification, but his whereabouts are still unknown. On 03.09.2007, a legal notice was also sent by the petitioner to the respondent Bank that as it has already been more than 7 years since the husband of the petitioner got missing, and earlier when the petitioner approached the Bank with a request of her compassionate appointment, she was informed by the Bank that her request can only be considered after lapse of 7 years, thus it was demanded that the petitioner be given employment in the bank in place of her husband. According to the petitioner, her husband shall be presumed dead with effect from 20.10.2005 under Section 108 of the Evidence Act, 1872 as he went missing on 20.10.1998.

5. On 05.05.2008, the petitioner was informed by the erstwhile bank that the scheme of granting compassionate appointment has come to an end with effect from 10.01.2006, hence, her application for compassionate appointment cannot be accepted, however, she would be entitled to receive the other emoluments including Provident Fund, Gratuity etc. In response to the aforesaid letter, vide her letter dated 06.06.2008, the petitioner also wrote to the respondent Bank again seeking compassionate appointment contending that her husband was presumed dead on 20.10.2005, on which date the scheme of grant of compassionate appointment was in force and had the bank acted promptly, they could have appointed her under the scheme prior to 10.01.2006. A reply to the aforesaid representation was also sent by the bank on 14.01.2009, again reiterating that as the scheme of compassionate appointment has already come to an end on 10.01.2006 her application cannot be considered, which led the respondent/writ petitioner to file W.P. No.7249 of 2012, which came to be allowed with costs by the learned Judge of the writ Court vide its impugned order dated 26.07.2021, while relying upon the decision rendered by the Hon'ble Supreme Court in the case of Canara Bank Vs. Mahesh Kumar reported in 2015 (7) SCC 412 directing the appellants/respondents therein to give compassionate

appointment either to the respondent or to any of her two sons.

6. Shri Naman Nagrath, Senior Counsel assisted by Shri R. C. Singhal, Counsel for the appellants has drawn the attention of this Court to the decision rendered by the Supreme Court in the case of N.C. Santosh Vs. The State of Karnataka reported as (2020) 7 SCC 617 wherein the Supreme Court has considered the different conflicting decisions, which have been passed by the various Courts including the decision relied upon by the respondent in the case of Canara Bank (supra), and it is held that the norms prevailing on the date of consideration of the application for compassionate appointment would prevail and not the policy which prevailed at the time of death of the employee. Senior Counsel has also submitted that the appellants-bank is the largest public sector bank and has employed lakhs of employees throughout India and was a model employer and was bound by the Rules and Regulations of the bank and could not have granted the compassionate appointment to the respondent by flouting the aforesaid Regulations, which could have led to the flooding of such applications throughout India by the persons, who were not eligible to get the compassionate appointment. It is submitted that the writ Court has also made certain unwarranted observations regarding the bank's conduct in not giving the compassionate appointment to the respondent. Senior Counsel has submitted that husband of the respondent went missing on 20.10.1998 and the presumption of his death could have been only made on 20.10.2005, whereas the S.P. also wrote a letter to the respondent that her husband could not be located vide his letter dated 11.11.2005.

Thus, it is submitted that the bank was under legal obligation not to treat the missing employee as dead even before the period of 7 years as provided under Section 108 of the Evidence Act, 1872 had expired.

7. Senior counsel has submitted that it is true that the policy of compassionate appointment was in force till 10.01.2006, but prior to that, various other benefits emanating from the presumed voluntarily retirement of the respondent's husband were accorded to the petitioner and thus, it cannot be said that her case was ignored by the bank officers in an inhuman way. Senior counsel has submitted that unfortunately none of the counsel appearing for the parties brought to the notice of the learned Judge the decision rendered by the Supreme Court in the case of N. C. Santosh (supra) nor to the other decision, which has been rendered by full bench of this Court in the case of State of Madhya Pradesh & Ors. Vs. Laxman Prasad Raikwar in Review Petition No.868 of 2018 dated 04.10.2018 wherein also the sole question, which was referred to the larger bench was regarding the applicability of compassionate appointment policy and the reference was answered in favour of the Bank.

8. Senior counsel has also drawn a decision rendered by the full bench of this Court in the case of Bank of Maharashtra Vs. Manoj Kumar Deharia reported as MPLJ 2010 3 213 wherein the following questions were formulated by the larger bench:-

“In a case of compassionate appointment pursuant to the death of a deceased employee, which policy of the Government is to be applied:- 1. THE policy prevailing at the time of the death of employee? OR 2. THE policy prevailing at the time of application for compassionate appointment? OR The policy prevailing at the time of consideration of the application for compassionate appointment.”

And, it was held by the full bench of this Court, way back in the year 2009 that the scheme in vogue at the time of consideration of the application would be applicable. Thus, it is submitted that the impugned order cannot pass the test of the aforesaid dictum of the full bench of this Court as also the Supreme Court in the case of N. C. Santosh (supra).

9. Counsel appearing for the respondent, on the other hand, has opposed the prayer and it is submitted that the appeal deserves to be dismissed as the writ Court has rightly passed the order after appreciating the record of the case and even if the decision rendered by the Supreme Court was not brought to the notice of the single Judge, it would not lead to any adverse inference being drawn against the petitioner, especially when the order passed by the Supreme Court in the case of N. C. Santosh (supra) itself provides that the norms prevailing at the time of filing of the application would be applicable.

10. Heard counsel for the parties and perused the record.

11. The facts of this case are not disputed. It is not disputed that the husband of the petitioner went missing on 20.10.1998. Thereafter, after lapse of 7 years he was presumed dead under Section 108 of the Evidence Act, 1872 on 20.10.2005, however, as per the letter issued by the S.P., the police also failed to locate the missing husband of the respondent and in the meantime the respondent had already filed her representation for compassionate appointment. The only fact which has been disputed by the appellants/bank is that the petitioner never filed any application for compassionate appointment soon after 20.10.2005. It is also found that the respondent also sent a legal notice to the appellants/bank on 30.09.2007, which was replied to by the bank vide their letter dated 05.05.2008 and thereafter the respondent once again reiterated her prayer for her compassionate appointment on 06.06.2008.

12. In the considered opinion of this court, the issue of applicability of the relevant policy for compassionate appointment is no more res intetra as has been laid down by the full bench of this court as well as the Supreme Court. In the case of Laxman Prasad Raikwar (supra) wherein also the sole question, which was referred to the larger bench was regarding the applicability of policy of compassionate appointment, and the following question was referred to the larger bench:-

“Whether the right for consideration of compassionate appointment is a vested right?” and “in case of consideration of case of compassionate appointment pursuant to death of deceased employee, whether the policy prevailing at the time of death of employee or the policy prevailing at the time of application for

compassionate appointment would be applicable ?”

13. This, question was answered by the larger bench in the following manner in para 9:-

“9. In view of the aforesaid, we follow the ratio laid down by the Full Bench of this Court in the case of Bank of Maharashtra Vs. Manoj Kumar Dehria (Supra) and the reference is answered that compassionate appointment can not be claimed as a matter of right as it is not a vested right and the policy prevailing at the time of consideration of the application for compassionate appointment would be applicable.”

14. So far as the decision rendered by the Supreme Court in the case of N.C. Santosh (supra) is concerned, the relevant paras of the same read as under:-

“13. It is well settled that for all government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. In Steel Authority of India Limited vs. Madhusudan Das & Ors. it was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirant.

14. This Court in SBI vs. Raj Kumar while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer’s right to modify the scheme depending on its policies was recognized in this judgment. Similarly in MCB Gramin Bank vs. Chakrawarti Singh this Court reiterated that compassionate appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per the scheme existing on the date of death of the Government employee.

15. However in Canara Bank & Anr. vs. M. Mahesh Kumar in the context of major shift in policy, whereunder, instead of compassionate appointment (envisaged by the scheme dated 8.5.1993), ex gratia payment was proposed (under the circular dated 14.02.2005), the Court adopted a different approach. Noticing the extinguishment of, the right to claim appointment, this Court held the “dying in harness scheme” which was prevalent on the death of the employee, be the basis for consideration.

16. A two judges bench headed by Justice Uday U. Lalit noticed the Supreme Court’s view in SBI vs. Raj Kumar (supra) and MCB Gramin Bank vs. Chakrawarti Singh (supra) on one side and the contrary view in Canara Bank & Anr. vs. M. Mahesh Kumar (supra) and felt the necessity of resolution of the conflicting question on whether the norms applicable on the date of death or on the date of consideration of application should apply. Accordingly, in State Bank of India & Ors. vs. Sheo Shankar Tewari the Court referred the matter for consideration by

a larger Bench so that the conflicting views could be reconciled.

17. The above discussion suggest that the view taken in *Canara Bank & Anr. vs. M. Mahesh Kumar* (supra) is to be reconciled with the contrary view of the coordinate bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellants counsel on *Canara Bank & Anr. vs. M. Mahesh Kumar* (supra) as also the opinion of the learned Single Judge of the Karnataka High Court in *Uday Krishna Naik vs. State of Karnataka & Ors .*, it can not be said that the appellants claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the Government employee.

18. In the most recent judgment in *State of Himachal Pradesh & Anr. vs. Shashi Kumar* the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the bench, Dr. Justice D.Y. Chandrachud reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The Dependent of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy.

19. Applying the law governing compassionate appointment culled out from the above cited judgments, o ur opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.

20. In view of the foregoing opinion, we endorse the Tribunal's view as affirmed by the High Court of Karnataka to the effect that the appellants were ineligible for compassionate appointment when their applications were considered and the unamended provisions of Rule 5 of the Rules will not apply to them. Since no infirmity is found in the impugned judgments, the appeals are found devoid of merit and the same are dismissed."

(emphasis supplied)

15. It is apparent from the aforesaid decision that by no stretch of imagination it can be said that the respondent's application for compassionate appointment could have been accepted by the bank as their first denial to the compassionate appointment was on 05.05.2008, informing the petitioner that the scheme of grant of compassionate appointment has already come to an end on 10.01.2006. Thus, for all the practical purposes the date of consideration of the respondent's application for compassionate appointment has to be treated as 05.05.2008 only

and not prior to that as admittedly, the scheme of compassionate appointment had already come to an end by that time, i.e., with effect from 10.01.2006. Thus, although there is no document available on record to show that any application for compassionate appointment was pending as on 10.01.2006, even assuming, for the sake of arguments that it was pending, it could still not have been considered in favour of the petitioner on any day after 10.01.2006 as is held by the full bench of the this court as also by the Supreme Court in the cases cited supra. In such facts and circumstances of the case, this Court finds force with the contentions raised by the Senior Counsel for the appellants, and is of the considered opinion that the impugned judgement rendered by the writ Court cannot be sustained on the anvil of the dictum as laid down by the Supreme Court in the case of N.C. Santosh (supra).

16. So far as the cost of Rs.2 lakhs imposed by the writ Court is concerned, the same also cannot be sustained for the reason that prior to 20.10.2005, i.e., the date of presumption of death of the missing employee which can be drawn under Section 108 of the Evidence Act, the petitioner was not even entitled to get compassionate appointment and she first wrote to the Banking Ombudsman demanding compassionate appointment vide her letter dated 07.02.2008, which is reflected from the Bank's reply dated 05.05.2008 filed as Annexure-P/2, which was much after 10.01.2006 i.e., the date on which the policy of compassionate appointment was done away with by the appellants/Bank. Resultantly, the impugned order dated 26.07.2021 is set aside and the appeal stands allowed.

17. However, this Court is also of the opinion that, if any dues of the respondent are still pending with the appellants/bank, the same shall be cleared by the bank within a period of four weeks from the date of receipt of certified copy of this order.

18. As a parting note, while we express our deep anguish for dismissing the petitioner's claim for compassionate appointment, we are also of the considered view that to some extent the employer Bank is also responsible for the plight of the petitioner who could not get compassionate appointment only either because she could not file her application for compassionate appointment when such policy was in force, or even if her such application was pending, it was not decided by the Bank while such policy of compassionate appointment was in force. It is to be noted that how devastating it must have been for the petitioner whose husband went missing on one fine day after he went to the Bank, and in such circumstances, to expect the petitioner that she should file an application for compassionate appointment soon after passing of the seven years of the incident is unimaginable, especially when she had already requested the Bank to give her some temporary employment soon after her husband went missing. This court is of the considered opinion that if the appellant Bank claims itself to be a modal employer, it should not have treated the petitioner, who happens to be the wife of its missing employee, in such a cavalier manner. Be that as it may, to bring this discussion to some logical ends, and to save the other such persons

from further plight as that of the petitioner's, while exercising our jurisdiction under Art.226 of the Constitution, we dispose of this writ Appeal with the following directions to all the employers in the State of M.P.:-

1. It is directed to the State of M.P., the Banks and other bodies who have a policy of compassionate appointment in force at the time of the death of their employee, to immediately inform the family of the deceased employee in writing about their entitlement to compassionate appointment, and if any application is received from them in this regard, to decide the same as expeditiously as possible, not later than 45 days from the date of receipt of such application.

2. In case, if the Employer is of the opinion that the application for compassionate appointment cannot be decided for any reason during the said period of 45 days, it should also be informed to the applicant in writing by assigning reasons for the same, so that appropriate legal remedies can be resorted to by such applicant/family member of the deceased employee to ventilate his/her grievance.

19. Appeal stands disposed of, accordingly. C. c. as per rules.