

(2000) 07 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 4797 of 1998

Vijayaraghavan G.

APPELLANT

Vs

General Manager (Personnel), Indian Bank Head Office and
Another

RESPONDENT

Date of Decision : 19-07-2000

Acts Referred:

Citation : (2001) 88 FLR 509 : (2001) 3 LLJ 580

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The petitioner has approached this Court to issue a writ of mandamus directing the respondents to consider

sympathetically and provide a suitable job in Indian Bank to him on compassionate ground without rejecting his claim on technicalities and also on the ground of laches.

2. The case of the petitioner is briefly stated hereunder. According to him, he is the only son apart from two sisters to his late father Govindaraj

who was working as a peon in Indian Bank, Pondicherry Union Territory. His father died in harness on June 7, 1981 leaving behind him, his wife

and two daughters. At the time of his father's death, he was only 8 years old. After the death of his father, his mother requested the respondent-

bank through its branch at Neravy, the second respondent herein to give her an appointment on compassionate grounds. It is further stated that he

has passed SSLC with good marks apart from Higher Examination in typewriting in both Tamil and English and also obtained diploma in computer

applications. In spite of various representations, the respondents failed to consider his claim, hence has filed the present writ petition.

3. On behalf of the respondents, the Assistant General Manager, Indian Bank, has filed counter-affidavit disputing various averments made by the

petitioner. It is stated that the petitioner has approached this Court after a lapse of about 10 years and on the ground of laches, the writ petition is

liable to be dismissed in limine. As per the scheme of the bank for appointment under compassionate grounds, the claim should be made within one

year from the date of death and a further period of three years allowed if none of the dependents have requisite educational qualification. Though

the petitioner was a minor at the time of the death of his father on June 7, 1981, he attained majority during 1988-89 and even if three years

allowed, the petitioner would have made his representation on or before 1992. The wife of the deceased employee and the mother of the petitioner

requested the bank to provide employment to her brother on compassionate grounds by her letter, dated October 14, 1981. Subsequently, the

mother of the petitioner had opted for full term service gratuity and waived her right for appointment on compassionate grounds. Having received

the entire terminal benefits for full term, there is no scope for appointment of the dependents of the deceased employee under the scheme.

Eventhough she claimed appointment to her brother, subsequently withdrew her claim and opted to receive the entire terminal benefits. Again on

April 9, 1983, the mother of the petitioner requested for appointment of her brother on compassionate grounds. Since the same was not provided

for the scheme and the petitioner's mother did not seek employment for herself the terminal benefits were paid to her and the accounts were

settled. Since she had settled the accounts fully and finally, it is not open to the petitioner to stake a claim for compassionate appointment that too

after a lapse of 10 years. The belated request of the petitioner was rightly rejected on verification of the records available with the respondent-

bank. With these averments, they, prayed for dismissal of the writ petition.

4. In the light of the above pleadings, I have heard the learned counsel for the petitioner as well as respondents. There is no dispute that the father

of the petitioner while working as a peon in Indian Bank, Neravy branch, near Karaikal Commune in Pondicherry, died on June 7, 1981. It is the

case of the petitioner that at the time of the death of his father, he was aged about 8 years. He belongs to Harijan community. It is also the definite

case of the petitioner that though his mother had made representation even on October 14, 1981 and the second respondent had also

recommended to the first respondent for considering the claim of the mother for appointment of her brother and in spite of subsequent

representations/letters, the respondents failed to consider the same. It is also the grievance of the petitioner that in spite of the fact that the second

respondent had recommended the claim of the mother or the petitioner to give employment to her brother, the same was not considered by the

first respondent. On the other hand, the learned counsel appearing for the respondents by drawing my attention to the scheme framed by the Indian

Bank regarding appointment under compassionate grounds would contend that inasmuch as the claim of the petitioner is beyond the time

prescribed under the scheme, the same cannot be considered. It is also stated that in view of the fact that the mother of the petitioner withdrew her

claim for appointment to her brother and received full term gratuity and other benefits, the claim of the petitioner cannot be considered at this

juncture.

5. I have carefully considered the rival submissions. After the death of her husband (i.e.,) on June 7, 1981, the mother of the petitioner made a

representation even on October 14, 1981. This has been admitted in Para. 3 of the counter-affidavit filed by the respondents. Since the

petitioner's mother did not receive any information about her request for appointment, she made another representation on February 26, 1982

wherein she claimed appointment for her and also assurance that on attainment of majority, her son (petitioner herein) may be appointed in a

suitable job. On March 9, 1982, the second respondent herein had written a letter to the Deputy General Manager, Indian Bank, Madras,

recommending the claim made by the mother of the petitioner. On June 8, 1982, the mother of the petitioner made another representation

requesting employment for her and assurance for her son's employment after attainment of majority. Again on August 14, 1982, she made another

reminder to the first respondent. On April 9, 1983, the mother of the petitioner made another representation to the respondents wherein she had

given up her earlier claim and once again requested the respondents to provide employment to her, brother - Ganesan. She also enclosed the

assurance letter given by her brother that in the event of his appointment in the respondent-bank, he would take care of his sister namely the

mother of the petitioner and other family members. On April 11, 1983, the second respondent recommended the claim made by the mother of the

petitioner. In the said letter, the second respondent has requested the first respondent as follows:

We request your goodselfs to consider this application sympathetically and issue your favourable instructions for further proceedings. In this

connection, we wish to add that though the approved strength for sub-staff of our branch is two at present we are having only one sub-staff in our

Branch. So we request you to consider his application and to post him on our branch itself.

Kindly instruct us for further actions.

It is not clear as to what was the ultimate decision taken by the first respondent with regard to the request of the second respondent. On June 8,

1994, the Assistant General Manager has informed the mother of the petitioner that as per their compassionate appointment scheme, the

application for compassionate appointment has to be made within one year from the date of death of the employee. It is further stated that since the

application was not made within the time prescribed, he conveyed his inability to consider her request for compassionate appointment to her son.

I have already referred to various representations/letters made by the mother of the petitioner starting from October 14, 1981. When the mother of

the petitioner had made proper representation even on October 14, 1981 followed by various representations it is not clear how the Assistant

General Manager, Personnel Department, in letter, dated June 8, 1994, had informed the petitioner's mother that the application was not made

within the time as prescribed in the scheme.

6. The learned counsel for the respondents very much relied on certain clauses in the scheme for appointment under compassionate grounds. The

following clauses are relevant for our consideration.

2. Under the scheme, "dependent" in relation to the deceased employee will mean:

(a) widow

(b) son (including adopted son)

(c) daughter

(d) any other close relative nominated by the widow on In the case of a married whom she will be wholly dependent and who would give in employee writing that he/she would look after the family of the deceased employee

(e) brother In the case of an unmarried employee

(f) sister

4. Under this scheme the dependant should apply to the bank for appointment within a period of one year of the date of death of the deceased

employee. In case none of the dependants have the requisite minimum educational qualification for appointment under this scheme, then on

application within one year of the date of death of the deceased employee, a further period of three years will be allowed to any of the dependants

to acquire the minimum educational qualification and apply for appointment under this scheme.

As per the said scheme, in the case before me, widow is eligible to apply. Though the mother of the petitioner initially applied for appointment on

compassionate grounds, subsequently, she requested employment for her brother. Her brother had also filed necessary undertaking. As per Clause

2(d) of the scheme, the said request is acceptable. As per Clause (4), the dependent should apply to the bank for appointment within a period of

one year from the date of the death of the deceased employee. I have already stated that the employee in question died on June 7, 1981 and

widow of the deceased made application even on October 14, 1981. I have also referred to subsequent representations/letters of the mother of

the petitioner. All those documents find place in the typed set of papers filed by the petitioner. No doubt, in the counter-affidavit filed by the

respondents, it is stated that the mother of the petitioner had opted for full term service gratuity and waived her right for appointment on

compassionate grounds. It is also stated that having received the entire terminal benefits for full term, there is no scope for any appointment of the

dependent of deceased employee in the scheme. I am of the view that irrespective of settlement of full term service gratuity and other benefits,

eligible persons can claim appointment on compassionate grounds. In this regard it is useful to refer the observation of Hon''ble Supreme Court in

Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, Their Lordships have held, in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, :

2. Sri Bhasme further contended that family members of a large number of the employees have already availed of the Family Benefit Scheme and

as such it would be taken to be otherwise more beneficial to the concerned employee. We are not called upon to assess the situation but the fact

remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor

reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as (respondent) pointed out

that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for law Courts also to apply the law

depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law Court would

be to administer justice having due regard in that direction.

7. The learned counsel for the respondents very much relied upon the decision of the Hon''ble Supreme Court reported in Haryana State Electricity

Board v. Hakim Singh 1997(3) L.L.N. 783. By relying on the said decision, the learned counsel for the respondents would contend that the

present claim of the petitioner cannot be considered after a long time and the same is liable to be rejected on the ground of laches. In that case, the

High Court came to the conclusion that in case of minor child, a period of three years would be applicable from the date he becomes major. The

Hon''ble Supreme Court has set aside the interpretation made by the High Court and held that if the family members of the deceased employee can

manage for fourteen years after his death, one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of right of

inheritance. She also very much relied upon another decision of the Supreme Court namely Managing Director, MMTC, Ltd v. Pramoda Dei 1997

(11) S.C.C. 39, wherein the Lordships of the Supreme Court have held that

compassionate appointment is to enable the penurious family to tide over the sudden crisis and is not to provide employment. Considering the factual position in our case that the mother of the petitioner had made proper representation even on October 14, 1981, within the time prescribed in terms of the scheme and various representations thereon, highlighting her family circumstances and unable to maintain herself, I am of the view that both the decisions are not helpful to the stand taken by the respondents. On the other hand, the continuous representations from October 14, 1981 show that the mother of the petitioner was unable to maintain her family and requested employment initially to her brother and subsequently to herself. In as much as the request of the mother of the petitioner was turned down the petitioner herein has made representation to consider his claim for appointment on compassionate grounds. I have already referred to the fact that at one stage considering the grievance expressed by the mother of the petitioner, the second respondent had recommended to the first respondent for accepting her claim. In such circumstances, I hold that the petitioner has made out a case to consider his claim for appointment on compassionate grounds in the respondent- bank. The request of the petitioner cannot be rejected on the ground of laches more particularly in view of the prolonged requests and representations made by mother of the petitioner.

8. In the light of what is stated above, there shall be a direction to the respondents to consider the claim of the petitioner for providing a suitable job in the respondent-Bank on compassionate ground and pass orders within a period of four weeks from the date of receipt of a copy of this order. The writ petition is allowed to the extent mentioned above. No costs.