

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2009

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Petition No.5957 of 2001

N.Kanniammal

.. Petitioner

vs.

1.Reserve Bank of India,
Represented by its Manager
Fort Glacis, Rajaji Salai
Chennai 600 001.

2.The Assistant General Manager (P)
Reserve Bank of India
Fort Glacis, Rajaji Salai
Chennai 600 001.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to order dated 19.09.2000 made in GAD (Che)/4153/07.01.057/ 2000-01 by the Assistant General Manager (P), Reserve Bank of India, General Administrative Department, Fort Glacis, Rajaji Salai, Chennai - 600 001, the second respondent herein, quash the same and consequently, direct the respondents herein to consider and appoint the son of the petitioner in Class IV service of the respondents Bank by applying the old scheme on compassionate ground.

For Petitioner : Mr.S.Anil Sandeep

For Respondents : Mr.T.Poornam

O R D E R

The petitioner seeks to challenge the order of the second respondent dated 19.9.2000 passed in No.GAD (Che)/4153/07.01.057/2000-01 and while praying for setting aside the said order, also seeks for a direction to the respondents to consider and appoint the petitioner's son in Class IV Service of the respondents Bank by applying the old scheme applicable to compassionate appointments.

2. The brief facts, which are required to be stated are that the petitioner's husband was appointed in the bank on 3.2.1971 and he died in harness on 20.06.1991, leaving behind the petitioner, one minor son and two minor daughters. One of the daughters is stated to be a physically handicapped child. At the time of the death of her husband, the petitioner was left with a small piece of vacant land at

Guduvanchery, which did not yield any income. Apart from the terminal benefits, which she received due to the demise of her late husband, the family pension that is being paid is hardly stated to be around Rs.2000/- and odd. At that point of time, the petitioner applied for an employment for her son, who was 15 years old, as per the scheme for compassionate appointment that was in vogue. The application was stated to have been made on 04.09.1991. Since her son was a minor, the respondent Bank vide its reply dated 07.09.1991, advised her to renew her request after her son becomes major.

3. The petitioner applied again on 15.04.1994. The respondent Bank sent a Proforma along with their letter dated 28.04.1994 and called for more particulars. The petitioner filled in the Proforma and sent it back on 30.05.1994, wherein the details about the cause of death of her husband, the terminal benefits, which were disbursed to her, pursuant to his demise, the property left behind as well as the liabilities that were to be met on that date and the family details. The family details furnished disclose that none were employed even at that point of time and that her son, who sought for employment, was 19 years old, had just then successfully completed his S.S.L.C. The said part of the proforma in Serial Nos.16 to 22 were relating to the ward for whom the application for compassionate appointment is made. Apart from the above details, the son also sent a communication dated 30.05.1994, making it clear that if he is given appointment as Class IV employee on compassionate ground, he will look after his sisters' studies and their marriages and the welfare of his grand mother.

4. By a reply dated 20.06.1995, that is after more than a year, the respondents informed the petitioner that the facility of compassionate appointment was restricted to the spouse of the deceased and therefore, they were not in a position to offer appointment to her son and that the bank is prepared to offer a lumpsum ex gratia of Rs.75,740/- to the affected family. The willingness of the petitioner to accept the offer was also sought for. Immediately the petitioner sent her reply dated 20.07.1995 contending that the claim for compassionate appointment should be considered as per the Rules as on the death of her husband namely, 20.06.1991 and on that basis the petitioner's son was entitled for an appointment in the services of the bank. However, by reply dated 16.04.1997, the respondent bank once again rejected the claim of the petitioner and came forward to offer the lumpsum ex gratia of Rs.75,740/- as advised in the letter dated 20.06.1995.

5. Be that as it may under similar circumstances, the claim for compassionate appointment in respect of another employee who died in harness came to be made by the son of the deceased which was also rejected by the respondent bank. In respect of the said claim, a writ petition came to be filed in this Court in W.P.No.8284 of 1995. The claim in that case was also identical to that of the present petitioner. By order dated 28.09.1999, the said writ petition was allowed and a direction was issued to the respondents to consider the claim of the said writ petitioner afresh for the appointment of her son on compassionate ground and provide such employment. While

giving the said direction, it was held that the claim for compassionate appointment should be considered under the scheme that existed prior to 01.10.1992 and the rejection of the claim by applying new circular and scheme cannot be sustained. It is stated that the said order of the learned Judge was complied with and compassionate appointment was given to the son of the said writ petitioner.

6. The petitioner herein was periodically approaching the respondents and insisting for employment to her son on compassionate ground. Such claims were turned down by the respondents in their communications dated 08.06.2000 and 19.09.2000. The respondent bank however called upon the petitioner to accept the offer of ex gratia payment. It was in the above said background the petitioner has come forward with the present writ petition seeking to challenge the last of the communication dated 19.09.2000 of the second respondent and while seeking to quash the same also prays for consequential direction to consider and appoint the petitioner's son in Class 4 service of the respondent bank by applying the old scheme within a prescribed time limit.

7. The second respondent has filed a counter affidavit on behalf of the respondents. In the counter affidavit, the claim of the petitioner has been resisted by contending that the writ petition is liable to be rejected on the ground of laches, that when the petitioner initially made a claim for compassionate appointment immediately after the death of her husband on 20.06.1991 by an application dated 04.09.1991 by stating that such claim would be considered after her son attains 18 years of age in April 1994 and advised the petitioner to approach the bank after her son attains majority. According to the respondents the petitioner was also informed that such claim for compassionate appointment would be considered as per the Scheme that would be in vogue at that point of time. In the counter, it is pointed out that subsequent to the initial claim of the petitioner, the bank reviewed its policy on compassionate appointments by which it was decided that any claim for compassionate appointment by any member other than the spouse should be rejected and that such families would be entitled only for payment of lumpsum ex gratia as prescribed by the bank. It is stated that such revised policy was issued in the form of circular dated 28.10.1994 from the Central Office to all the branches through out the country. As per paragraph 7 of Annexure 1 to the said circular, it was stated that old cases where deferment was granted for employment of a ward would be treated as an exception and dealt with as per the Bank's advice then given.

8. In the case on hand, since it was stated that at the time of deferment of the petitioner's claim in the year 1991, it was stated that the claim would be considered as per the Scheme that would be in vogue on the future date, the petitioner is entitled only for lumpsum payment. In other words, according to the respondents, though the petitioner's claim would fall in the category of deferred case for compassionate appointment since the petitioner was advised at the time of deferment that the consideration of the petitioner's claim

for compassionate appointment for her son would be considered as per the policy that would be in vogue at the time when he becomes major and as per the present policy only a spouse is entitled for compassionate appointment, the petitioner is only entitled for a lumpsum payment and she is not entitled to claim appointment for her son. As far as the decision rendered in W.P.No.8284 of 1995 dated 28.09.1999 is concerned, the respondent would contend that the said case is not applicable to the facts of the present case.

9. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondents. The learned respective counsel reiterated their stand as projected in the respective pleadings.

10. The learned counsel for the petitioner would contend that the case of the petitioner is squarely covered by the earlier decision of this Court in W.P.No.8284 of 1995 dated 28.09.1999 and further contend that the policy which was in vogue on the date of death of her husband namely, 20.06.1991 relating to compassionate appointment alone would apply and not the one which came into existence long after his death. The learned counsel further contended that when the petitioner initially applied for compassionate appointment after her husband's demise in the month of September 1991, initially the respondents advised the petitioner to seek for such appointment as and when her son becomes major and that later on when her son attained majority, by letter dated 28.04.1994, the respondent bank called upon the petitioner to apply in the prescribed Proforma furnishing the details for such compassionate appointment which was also duly furnished on 10.05.1994. The learned counsel therefore contended that if those circumstances are taken into account, the same would show that even the respondents did not reject the claim for compassionate appointment but only wanted the petitioner to wait till her son attains majority and in any case not later than 19.06.1995. According to the learned counsel, even going by the subsequent circular of the year 1994 as a deferred claim when the initial advise of the respondent bank has to be honoured and the advise of the bank was to wait till the son becomes major, the respondents cannot now turn around and state that the petitioner is not entitled to seek for compassionate appointment for her son.

11. On the other hand, the learned counsel for the respondents would contend that when the bank in its initial communication dated 07.09.1991 made it clear that the said letter did not confer any right on any member of the family of the deceased employee to claim compassionate appointment nor can it be construed as a commitment to offer such appointment on a future date and that such claim would be considered as per the provisions of the Scheme that would come into vogue at the relevant point of time. According to the learned counsel the respondent is justified in stating that the scheme that came into force after 1994 did not provide for compassionate appointment to any one other than the spouse of the deceased and therefore, the petitioner is only entitled for lumpsum amount.

12. Having bestowed my consideration to the respective submissions as well as the various material papers placed before me, I am not inclined to accept the stand of the respondent bank. In the first place, the case of the petitioner is squarely covered by the earlier decision of this Court in W.P.No.8284 of 1995 dated 28.09.1999. The facts are identical. That was also a case, where at the time of the death of the deceased, compassionate appointment was claimed for the minor son by the wife of the deceased. The said claim was deferred by the very same respondent bank. Subsequently, when the claim was renewed after the minor became major, it came to be rejected by the respondent bank on the very same ground that the subsequent scheme did not provide for compassionate appointment to any one other than the spouse. That apart in that case also, the initial claim was turned down on the footing that the son of the deceased was minor, that his claim would be considered after he attains majority, that such claim would be considered as per the provisions of the scheme that would come into force at the relevant point of time, that is when he becomes major and that the said letter should not be taken as a commitment for compassionate appointment to her son. Dealing with the said claim, vis-a-vis, the subsequent scheme provisions contained in Clause 7 of Annexure I, the learned Judge held as under in Paragraphs 12 and 13:

"12. By circular dated 28th October 1994, the new scheme has been introduced the details of which are set out in Annexure I and in terms of the new scheme, the respondent has to issue a letter of offer in proforma given in Annexure II to the spouse of the deceased employee calling her/his option either for appointment in the Bank or payment of lumpsum ex-gratia on compassionate ground for considering of the Bank. In para 3 of the Circular, it has been stated that the applications received from the bereaved family of the employees who died in harness from 1st January 1992 onwards for compassionate appointments which were kept pending at Central Office will also be entitled to the benefits of the new scheme. Clause 7 of the Annexure I reads thus:

"There will be no deferment of employment on any ground. However, old cases where deferment was granted for employment of a ward will be treated as exception and dealt with as per the Bank's advice then given. "

"cases which are kept pending for decision will be decided as for per the above scheme"

13. The object behind the compassionate appointment is to provide reasonable financial support to the family of any employee dying in harness and it provided for employment to the spouse or ex-gratia, a lumpsum payment at the option of the living spouse to enable the family to get over the financial crisis which it faces at the

time of death of the sole bread winner. It was further contended that compassionate employment cannot be claimed at this point of time and that too after the change in the scheme."

13. After so holding and by applying the various decisions of the Hon'ble Supreme Court, the learned Judge ultimately directed the respondents to provide compassionate appointment to the son of the deceased and the respondents also complied with the said direction. Therefore, the respondent cannot apply a different yardstick to the case of the petitioner whose case mutatis mutandis is similar and identical in all respects to the case of the one covered by the earlier order dated 28.09.1999 in W.P.No.8284 of 1995.

14. As far as the allegation of laches put against the petitioner is concerned, the same cannot also be accepted since I find that initially the petitioner made a claim for compassionate appointment on 04.09.1991 while her husband died on 20.06.1991. Thereafter, as soon as her son became major on 09.04.1994, the petitioner revived her claim by her letter dated 15.04.1994. The petitioner's son also made a request on 30.05.1994. When the respondents wanted the claim to be made in the prescribed Proforma, that was also submitted on 10.05.1994. Thereafter, the bank took more than a year and a month that is on 20.06.1995 to inform the petitioner that her claim for compassionate appointment for her son cannot be considered. But the petitioner was relentlessly and repeatedly insisting for the compassionate appointment for her son by applying the Rule which was existing as on the date of the death of her husband. Such repeated requests were being made as could be seen from the communications of the petitioner dated 03.02.1997, respondents reply dated 16.04.1997, petitioner's subsequent letter dated 03.04.2000, respondents reply dated 08.06.2000, petitioner's further communication dated 15.09.2000 and the respondents reply dated 19.09.2000. In fact in none of the replies, the respondent took the stand that the claim of the petitioner cannot be considered or that the claim became stale. On the other hand, the respondents were only stating that the petitioner will only be offered the lumpsum payment and not compassionate appointment.

15. The word laches has got different shades of meaning and as per P.Ramanatha Aiyer's 'Law Lexicon', the word 'Laches' has been defined to mean as under:-

"Laches: Laches, or lasches, is an old French word for slackness or negligence, or not doing"

"LACHES" in law is a neglect to do something which by law a man is obliged to do. In a general sense it means a neglect to do what in the law should have been done for an unreasonable or unexplained length of time under circumstances permitting diligence.

Laziness or lack of promptitude in pursuing a legal remedy.
<https://hcservices.ecourts.gov.in/hcservices/>

Laches to bar the plaintiff's right must amount to waiver, abandonment, or acquiescence and to raise a presumption of any of these, the evidence of conduct must be plain and unambiguous.

What would be laches in one case might not constitute such in another. The question is one addressed to the sound discretion of the court, depending upon all the facts of the particular case." (emphasis is mine)

16. When the above principles stated in regard to the expression 'laches' is applied to the facts on hand, I am unable to hold that the petitioner either neglected to do what in law she was expected to perform or was the period between 1991 and 2001 was unexplained. The period between 20.06.1991 and June 1995 is concerned, the respondents themselves advised the petitioner to revive her claim after her son became major. Therefore, when for the first time the respondents in their communication dated 20.06.1995 informed the petitioner that her claim for compassionate appointment for her son would not be considered, the said period namely 1991 to 1995 cannot be put against the petitioner. After 1995, till the filing of the writ petition, it cannot be said that the petitioner simply slept over the matter and came forward with the writ petition in the year 2001.

17. On the other hand, the petitioner was never tempted to accept a fair sum of Rs.75,740/- offered by the respondent bank, but was repeatedly insisting for employment for her son in order to have a sustained income for her family which consisted of herself, as a widow with a daughter and her mother-in-law to be supported. In any case, it will cause grave injustice if it were to be held that the petitioner waived her right or abandoned it by not making any claim. Therefore, analysing the various factors involved in this case, the claim of this nature by the petitioner cannot be thrown on the ground of laches. Therefore, the said stand of the respondents also does not merit any consideration by using the discretion of this Court on the ground of laches.

18. As far as the merits of the case is concerned as stated by me earlier, the decision rendered in W.P.No.8284 of 1995 dated 28.09.1999 squarely applies to the case on hand. That apart as rightly contended by the learned counsel for the petitioner when the claim was initially dealt with by the respondents in their letter dated 07.09.1991, it would only state that the said letter cannot be taken to have made any commitment for giving compassionate appointment on a future date and that it would be considered as per the provisions that would be in prevalence at the future point of time. Subsequently, when the petitioner revived her claim after her son became major on 09.04.1994 through her letter dated 15.04.1994, the respondents in their letter dated 28.04.1994 called upon the petitioner to furnish the particulars as per the prescribed Proforma. For better appreciation, the said letter needs extraction:

1995, we advise you to furnish the particulars as required in the enclosed proforma at an early date to enable us to take necessary action in the matter." (emphasis added)

19. The Proforma was duly resubmitted by the petitioner along with her letter dated 10.05.1994. In the respondents letter dated 28.04.1994 in the subject column, the respondents have consciously referred to the claim for compassionate appointment to Class IV Service in the Staff Category. Reading the said letter dated 28.04.1994 and the Proforma together it can only be held that the respondent bank though initially stated that it did not commit itself to provide any compassionate appointment, was inclined to consider the claim for compassionate appointment to petitioner's son by calling for all the particulars including the particulars relating to the petitioner's son, his educational qualification and other family details. If the respondents were not inclined to consider compassionate appointment for petitioner's son, the question of furnishing the Proforma to be filled in and resubmitted by the petitioner would not have arisen at all.

20. That apart either in the initial letter dated 07.09.1991 of the respondents or subsequent letter dated 28.04.1994, the respondents never stated that they will not consider the claim for compassionate appointment for the petitioner's son. The advise that was given to the petitioner on 07.09.1991 was to revive her claim after her son attains majority. Later, after her son attained majority when the claim was revived, the respondents did not say that the claim will not be considered, but persuaded the petitioner to move one step forward to furnish the particulars in the prescribed Proforma. All the above developments (i.e.) from the initial application of the petitioner dated 04.09.1991 till the revived applications made on 10.05.1994 and 30.05.1994, the petitioner as well as the respondents were proceeding on the footing that her claim for compassionate appointment for her son would be considered after her son attained majority. With that factual position in mind when the subsequent circular dated 28.10.1994 is applied, I find that the claim of the petitioner for compassionate appointment for her son deserves to be allowed without any hesitation. The penultimate paragraph of the circular dated 28.10.1994, reads as under:

"3. As you are also aware, the applications received from the bereaved families of the employees who died in harness from 1st January 1992 onwards for compassionate appointments were kept pending at Central Office. There may be also few cases where the requests for appointment from the family members of such deceased employees were turned down. A list of such employees pertaining to your office is given in Annexure - VI. You may deal with their cases in accordance with the above guidelines."

21. Significantly in Annexure VI, the case of the petitioner (i.e.) her husband's name does not find a place. Therefore, it was

not a case where the claim was turned down. As far as the revised scheme is concerned, it is found in Annexure I to the said circular. Paragraph 7 of Annexure I reads as under:

"7. There will be no deferment of employment on any ground. However, old cases where deferment was granted for employment of a ward will be treated as exception and dealt with as per the Bank's advice then given."

22. A careful consideration of the above paragraph makes it clear that wherever old cases were deferred for grant of employment to a ward, the same should be treated as a exception and dealt with as per the banks advice then given. As stated by me earlier, the claim of the petitioner for compassionate appointment for her son was never turned down by the respondent bank. None of the communications which were exchanged between the petitioner and the respondents between 1991 and June 1995 state that the claim was turned down. On the other hand as pointed out by me, the relevant communications namely 07.09.1991 of the bank, 15.04.1994 of the petitioner, 28.04.1994 of the respondents and 10.05.1994 and 30.05.1994 of the petitioner goes to show that the claim of the petitioner was deferred and the respondent was more inclined to provide employment to the petitioner's son in Class IV service of Staff Category. Therefore, the petitioner's case is fully governed by Paragraph 7 of Annexure I, whereby it was a old case which was deferred for grant of employment to a ward and which is to be treated as an exception. Unfortunately, the respondents instead of properly appreciating their own stand have been thoroughly misled to reject the claim of the petitioner in an unjustifiable manner.

23. Under such circumstances, the writ petition is allowed; the impugned proceedings of the second respondent dated 19.09.2000 is set aside and the respondents are directed to provide compassionate appointment to the petitioner's son Mr.N.Kuppuswamy as Class IV employee in the Staff category within one month from the date of receipt of a copy of this order. In the facts and circumstances of the case, I am not inclined to award any costs. All M.Ps. closed.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

svki/kk

To

1.The Manager,
Reserve Bank of India,
Fort Glacis, Rajaji Salai
Chennai 600 001.

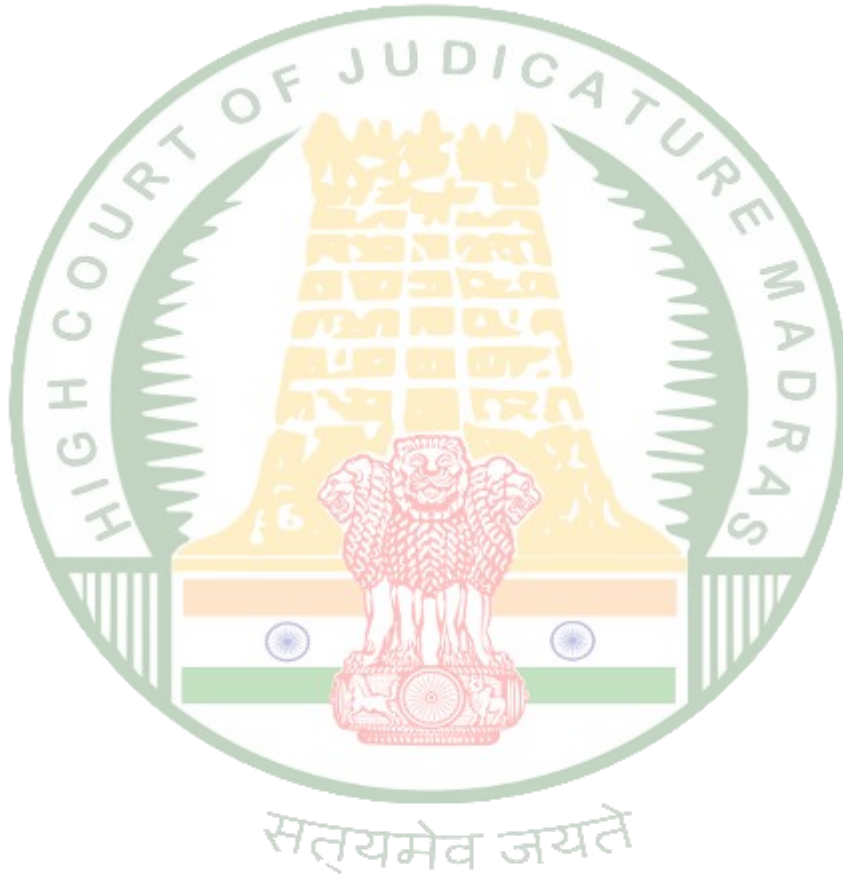
2.The Assistant General Manager (P)
Reserve Bank of India
Fort Glacis, Rajaji Salai,
Chennai 600 001.

+ 1 CC to Mr.T.Poornam,Advocate,SR.7105

+ 2 CC to Mr.Ashok Menon,Advocate,SR.7104

W.P.No.5957 of 2001

SV(CO)
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