

21. 26.7.2014

In this writ petition, the petitioner has made prayer to declare the action of the opposite parties who represent State Bank of India in rejecting the petitioner's claim for extending the benefit of ex-gratia compensation to be illegal, arbitrary, *mala fide* and contrary to the provisions of the relevant scheme; and to direct the opposite parties to pay ex-gratia amount immediately.

Petitioner's husband late Purna Chandra Patnaik while working as Senior Assistant in the State Bank of India, Koraput Branch died in harness on 25.1.2004 leaving behind his wife-the petitioner, and two daughters. In accordance with the provisions of the scheme prevailing during that period, the petitioner filed application dated 14.6.2004 for compassionate appointment.

Petitioner's case is that when the application for compassionate appointment was still pending consideration, State Bank of India introduced a new scheme in the name and style of 'The Scheme for Payment of Ex-Gratia Lump sum Amount in lieu of appointment on Compassionate Grounds in State Bank of India' with effect from 4.8.2005 under Circular Letter of the Bank dated 9.8.2005 at Annexure-4. In accordance with the provision in the Circular to the effect that applications pending under the Compassionate Appointment Scheme as on 4.8.2005 would be dealt with in accordance with the new scheme for payment of ex-gratia lump sum amount, petitioner's application was duly forwarded to the Regional Manager by letter dated 30.1.2006 at Annexure-5 to the rejoinder filed by the petitioner to the counter affidavit filed on behalf of the

opposite parties. Having not received any communication from the Bank, the petitioner submitted representation on 17.10.2007. Thereafter, the petitioner received letter dated 10.1.2008 at Annexure-1 which reads as follows:

"State Bank of India  
 Xx xx                      xx xx                      xx xx  
 Xx xx                      xx xx                      xx xx  
 H.R./No.6574                      Date 10 Jan 2008  
 Madam,  
YOUR          REPRESENTATION          DATED  
17.10.2007  
REGARDING          APPOINTMENT          ON  
COMPASSIONATE GROUND

With reference to your representation dated 17.10.2007 addressed to our Chairman, a copy of which was endorsed to the CGM at this office, we advise that your proposal for compassionate appointment was already declined by the appropriate authority, as the monthly income of your family from all sources after the death of your husband was not considered penurious and was found sufficient for the sustenance of the family consisting of three members (one adult and two children).

2. Further, your request for compensation i.e. exgratia lump sum amount in lieu of compassionate appointment can not be considered, as the proposal for compassionate appointment in your case was already declined.

3. We are, therefore, unable to consider your request.

Yours faithfully,

Sd/-

DGM & CIRCLE DEVELOPMENT OFFICER"

On receipt of letter at Annexure-1 the petitioner again filed a representation dated 20.2.2008 at Annexure-2 for reconsideration of her application, in response to which, she received letter dated 7.4.2008 at Anneuxre-3 which reads as follows:

"State Bank of India  
 Xx xx                      xx xx                      xx xx  
 Xx xx                      xx xx                      xx xx  
 H.R./No.212                      Date- 7 APR 2008  
 Madam,  
YOUR REPRESENTATION DATED  
17.10.2007  
REGARDING APPOINTMENT ON  
COMPASSIONATE GROUND  
 With reference to your representation dated 20.2.2008 regarding compassionate appointment or payment of exgratia lump sum amount in lieu thereof, we advise that as proposal for compassionate appointment has already been declined by the Bank, we are unable to reconsider your request either for compassionate appointment or payment of ex-gratia lump sum amount.  
 2. This has a reference to our letter No.HR/6574 dated 10.1.2008.  
 Yours faithfully,  
 Sd/-  
 ASST. GENERAL MANAGER (HR)"

A counter affidavit was filed by the opposite parties in which a stand has been taken that the petitioner's application for compassionate appointment having been rejected on 28.2.2005, the petitioner was not entitled to file application for award ex-gratia lump sum amount under the new scheme. It is averred in the counter affidavit that the new scheme for payment of ex-gratia lump sum amount in lieu of appointment on compassionate ground came into force w.e.f. 4.8.2005. Applications pending under the compassionate appointment scheme as on 4.8.2005 were to be dealt with in accordance with the new scheme for payment of ex-gratia lump sum amount provided they fulfilled all the terms and conditions. It is contended that the application of the petitioner for compassionate appointment having been considered and declined by the

competent authority on 28.2.2005, the application could not be said to be pending as on 4.8.2005 for which the new scheme for payment of ex-gratia lump sum amount was not applicable to the petitioner. In defence of rejection of application for compassionate appointment it is pleaded at paragraph 8 of the counter affidavit as follows:

“That in reply to paragraph 3 of the writ petition, it is humbly submitted that the husband of the petitioner, who was working as Sr. Asst. at Koraput branch died on 25.1.04. On the said demise of the husband of the petitioner, the petitioner applied to the Bank on 14.6.04 for compassionate appointment. The proposal for compassionate appointment was considered by the competent authority and the same was declined on 28.2.05 as the condition of the family was found to be not penurious. The monthly income of the family from all sources after the death of the deceased employee was Rs.5,636/- which was found sufficient for subsistence of the family consisting of three members (one adult and two children). Moreover, the writ petitioner was not eligible for payment of ex-gratia lump sum amount as the scheme was introduced on 4.8.05 and as per the scheme her application for compassionate appointment was not pending on the material date i.e. 4.8.05, the petitioner was not entitled for such ex-gratia payment. The representation dated 17.10.07 of the petitioner was considered and duly replied by the respondent Bank vide its letter No.HR/6574 dt.10.1.08 copy of which has been filed by the petitioner as Annexure-1 to the petition.”

In view of conflicting stand taken by the petitioner and the opposite parties with regard to communication of the order of rejection of application for compassionate appointment, this Court passed the order dated 11.8.2010 which reads as follows:

“It is stated in the counter affidavit that the application filed by the petitioner for compassionate appointment had been rejected by the Bank on 28.02.2005. Copy of the said letter has not been annexed to the counter affidavit. Learned counsel for the petitioner also submits that copy of no such order had ever been served on the petitioner by the Bank.

We, therefore, call upon the opposite party-Bank to produce said letter dated 28.02.2005 rejecting the prayer of the petitioner for compassionate appointment and also to establish by way of evidence that it was served on the petitioner.

Put up this matter after two weeks.

Copy of this order be handed over to Mr. R.K. Mohapatra, learned senior counsel appearing for the Bank.”

Pursuant to the above order of this Court, an additional affidavit was filed on behalf of the opposite parties. Paragraphs 2 to 5 of the additional affidavit read as follows:

“2. That, it is humbly submitted that the application of the petitioner for appointment on compassionate ground was declined vide order dt.28.2.2005 of Chief General Manager, SBI, Local Head Office, BBSR who is the appropriate authority.

Copy thereof is filed herewith as Annexure-A for kind perusal and consideration of Hon’ble Court.

3. That, it is humbly submitted that Deputy General Manager and Circle Development Officer vide letter dtd.15.3.2005 informed the State Bank of India, Zonal Office, Berhampur about declining of proposal of compassionate appointment of Smt. Jyoti Pattnaik, petitioner copy of letter dtd. 15.3.2005 is filed herewith as Annexure-B for kind perusal and consideration of Hon’ble Court.

4. That, it is humbly submitted that vide letter dtd. 04.04.2008, purportedly issued by Regional

Manager, Regional Business Office, Jeypore, the petitioner was intimated that her application for compassionate appointment was declined by the appropriate authority, as the proposal did not satisfy the laid down norms.

Copy of letter dt.04.04.2008 is filed herewith as Annexure-C for kind perusal and consideration of Hon'ble Court.

5. That, it is humbly submitted that the aforesaid letter was sent to the petitioner by registered post without acknowledgement due.

Copies of postal receipt and extract of Dispatch Register are filed herewith as Annexure-D series for kind perusal and consideration of Hon'ble Court."

It is noted that Annexure-A is a note sheet submitted by the Assistant General Manager (PER & HRD) dated 26.2.2005 recommending rejection of the petitioner's application for compassionate appointment in which at the top there is an endorsement dated 28.2.2005 to the effect that "the request for compassionate appointment is not acceded to" purported to have been made by the Chief General Manager. Annexure-B is admittedly an official communication from the DGM & Circle Development Officer to the Deputy General Manager, State Bank of India, Zonal Office. Letter under Annexure-C advising the petitioner that her application has been declined by the appropriate authority is dated 4.4.2008.

Learned counsel for the petitioner contended that Annexure-A to the additional affidavit filed by the opposite parties containing the endorsement purported to have been made by the Chief General Manager on 28.2.2005 never saw the light of the day till the date of filing of additional affidavit

on 11.3.2014. Initially the opposite parties vaguely stated in the counter-affidavit that petitioner's application for compassionate appointment was declined by the Bank vide decision dated 28.2.2005. No decision declining petitioner's appointment on compassionate ground was ever communicated to the petitioner till the year 2008. This is evident from the fact that petitioner's application for payment of ex-gratia lump sum amount as provided under the Scheme at Annexure-4 was duly forwarded by the Regional Manager, State Bank of India, Regional Business Office, Region-I, Jeypore under letter dated 30.1.2006 at Annexure-5. Had the petitioner's application for compassionate appointment been rejected prior to coming into force the new Scheme on 4.8.2005, petitioner's application for payment of ex-gratia lump sum amount on compassionate ground would not have been duly forwarded. Stand of the Bank that petitioner's application for compassionate appointment was rejected on 28.2.2005 is not acceptable. The order having never been communicated to the petitioner till 2008 the petitioner is entitled to be considered for grant of ex-gratia lump sum amount in lieu of compassionate appointment. Delay in communication of the order rejecting petitioner's application for compassionate appointment till 2008 has deprived the petitioner of the opportunity to seek further remedy expeditiously. The opposite parties cannot take benefit of their own fault in denying benefit to the petitioner which she is entitled to. It is categorically submitted that petitioner fulfils all the requirements as laid down under the 2005 Scheme,

particularly in respect of ceiling of income specified for grant of ex-gratia lump sum amount. It was contended that the opposite parties admitted in the counter-affidavit that income of the family of the petitioner from all sources is Rs.5636/-. Drawing attention of the Court to the Bank's certificate for TDS of petitioner's husband's salary for the assessment year 2003-04 it was submitted that petitioner's deceased-husband's gross total income was Rs.1,96,442/- during the assessment year 2003-04 and taxable income was Rs.1,55,270/-. If 60% of the monthly gross salary last drawn by the husband of the petitioner is calculated, the same is more than petitioner's family income.

Learned counsel for the opposite parties, reiterating the contentions raised in the counter-affidavit and additional affidavit, submitted that the petitioner's application for compassionate appointment under the old scheme having been rejected by order dated 28.2.2005 at Annexure-A to the additional affidavit, her application for payment of ex-gratia lump sum amount in lieu of compassionate appointment under the new scheme, which came into effect from 4.8.2005, was incompetent. As is evident from the note-sheet at Annexure-A petitioner was not found to be entitled to compassionate appointment as the income of her family from all sources was found to be sufficient for the family consisting of three members and financial conditions of the family was considered to be not penurious. Fact of rejection of petitioner's application for compassionate appointment was communicated to the Zonal Office by letter dated 15.3.2005 under Annexure-B. Under the old scheme



compassionate appointment could be given only in favour of the dependants of employees dying in harness and leaving their family in penury and without any means of livelihood. As, on calculation, it was found that the petitioner and two daughters had not been left behind in penury, petitioner's applications for compassionate appointment as well as for payment of ex-gratia lump sum amount in lieu of compassionate appointment under the new scheme were rightly rejected.

From the rival contentions it is evident that petitioner had filed application for compassionate appointment within a reasonable period after death of her husband. In spite of specific directions of this Court by order dated 11.8.2010 to produce letter dated 28.2.2005 rejecting prayer of the petitioner for compassionate appointment and also to establish by way of evidence that it was served on the petitioner, no material has been placed by the opposite parties to indicate that order dated 28.2.2005 rejecting petitioner's application for compassionate appointment was ever communicated to the petitioner prior to letter dated 10.1.2008 at Annexure-1. Letter of the Bank dated 15.3.2005 at Annexure-B to the Zonal Office by itself is not a piece of evidence to indicate that order of rejection was communicated to the petitioner. On the contrary, opposite parties do not indicate the circumstance under which petitioner's application dated 20.1.2006 for payment of ex-gratia lump sum amount on compassionate ground was forwarded from the office of the Regional Manager, Regional Business office, Region-I, Jeypore for consideration

under letter dated 30.1.2006 at Annexure-5. Forwarding of application itself is a circumstance which indicates that not only the petitioner but even the Regional Business of the Bank at Jeypore were not aware of the fate of application for compassionate appointment under the old scheme. Non-communication of the order rejecting petitioner's application for compassionate appointment till 2008 and the circumstance of forwarding of the application for payment of ex-gratia lump sum amount, keeping the petitioner in dark till the year 2008, have certainly caused great prejudice to the members of the family of the deceased employee. Non-communication of the fact of rejection to the petitioner within a reasonable period renders the order meaningless and incapable of being acted upon. Had the order been communicated in time petitioner could have availed opportunity to agitate the matter in order to overcome financial distress caused soon after death of her husband. Therefore, the opposite parties are obliged to consider petitioner's application for payment of ex-gratia lump sum amount treating her application for compassionate appointment to have been pending on 4.8.2005.

Note sheet at Annexure-A to the additional affidavit filed by the Bank itself shows that initially petitioner's application for compassionate appointment had been approved. However, at a subsequent stage the same was reconsidered and revoked on the basis of finding that financial condition of the deceased's family was not considered to be penurious. This is another circumstance which indicates that the petitioner has not been afforded

opportunity to establish the penurious financial condition of her family. Rather, from the rejoinder affidavit of the petitioner to the counter-affidavit filed by the opposite parties and copy of the certificate issued by the Income Tax Department showing details of total income of husband of the petitioner for the assessment year 2003-04 it appears that petitioner's family income was less than 60% of the last drawn gross-salary of the deceased employee. Therefore, financial condition of the family of the deceased employee fulfils the criteria as laid down under Clause-8 of the new scheme for payment of ex-gratia lump sum.

In view of the above discussions, the writ petition is allowed. Opposite parties are directed to consider petitioner's application for payment of ex-gratia lump sum amount under the new scheme and pass necessary orders for disbursement of the amount within a period of three months hence.

Urgent certified copy of the order be granted on proper application.

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**B.K. Patel, J.**