

A STATE BANK OF INDIA & ORS.

v.

SHEO SHANKAR TEWARI

(Special Leave Petition (Civil) No. 30335 of 2017)

B FEBRUARY 08, 2019

[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

- C *Service Law – Compassionate appointment – Substitution of original scheme under which appointment on compassionate grounds could be made, by a scheme under which only ex gratia payment to be made over to the dependents – The decisions of Supreme Court, relied upon by the petitioner proceeded on the premise that there was no vested right to have the matter considered under the former scheme and the governing scheme would be one which was in force when the applications came up for consideration*
- D *– The decision relied upon by the respondent proceeded on a different principle and stipulated that the governing scheme would be the former scheme and any subsequent that came into force after the claim was raised would not be applicable – The principles emanating from these two lines of decisions were not consistent and did not reconcile – Therefore, matter required consideration by a larger Bench – The Registry directed to place the papers of this case before the Chief Justice of India for constituting a Bench of appropriate strength to dispose of the petition – Reference to larger bench.*
- E *State Bank of India and another v. Raj Kumar (2010) 11 SCC 661; MGB Gramin Bank v. Chakrawarti Singh (2014) 13 SCC 583 : [2013] 10 SCR 1; Canara Bank and another v. M. Mahesh Kumar (2015) 7 SCC 412 : [2015] 9 SCR 724; SBI v. Jaspal Kaur case (2007) 9 SCC 571 : [2007] 2 SCR 101 – referred to.*

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Case Law Reference

(2010) 11 SCC 661	referred to	Para 4
[2013] 10 SCR 1	referred to	Para 5
[2015] 9 SCR 724	referred to	Para 6
H [2007] 2 SCR 101	referred to	Para 8

CIVIL APPELLATE JURISDICTION: Special Leave Petition A
(Civil) No. 30335 of 2017.

From the Judgment and Order dated 28.08.2017 of the High Court of Judicature at Allahabad, Bench at Lucknow in Special Appeal No. 363 of 2017.

Sanjay Kapur, Bharath Gangadharan, Ms. Megha Karnwal, Ms. Mansi Kapur, Advs. for the Petitioners. B

Satish Pandey, Sanjay Kumar Visen, Santosh Kumar Tripathi, Rajesh Maurya, Ms. Ritu Rastogi, Advs. for the Respondent.

The Order of the Court was passed by C

UDAY UMESH LALIT, J. 1. The father of the respondent was working with the petitioner-bank and while in service died on 11.11.2004. A request was made for appointment on compassionate grounds by the respondent on 03.03.2005. As on that date, compassionate appointment could be granted to the dependents of employees dying in harness. However, instructions were issued by the Government of India, Ministry of Finance on 14.07.2004 to frame an appropriate scheme for payment of monetary assistance in lieu of compassionate appointment. Vide its communication dated 31.07.2004 the IBA¹ had advised the banks to frame their own schemes based on said model. D

2. Before the application of the respondent could be considered, the petitioner-bank formally approved a scheme for payment of ex-gratia lumpsum amount in lieu of compassionate appointment vide its scheme circulated on 04.08.2005. The relevant clause namely Clause 15(vi) provided:- E

“With effect from the date the “SBI Scheme for payment of ex-gratia lumpsum amount” comes into force the bank’s scheme of compassionate appointments shall be deemed abolished/withdrawn and no request for compassionate appointment shall be entertained or considered by the bank under any circumstance.” F

3. According to the petitioner-bank, the application of the respondent for compassionate appointment could not therefore be considered. The challenge to the action on part of the bank by way of Writ Petition was accepted by the Single Judge and the Division Bench of the High Court which decisions are presently in appeal. G

¹ Indian Banks’ Association H

- A 4. The learned counsel for the petitioner-bank relied upon the decision of this Court in *State Bank of India and another vs. Raj Kumar*² and particularly paragraphs 2, 8, 12 and 13 which are to the following effect:-
- B “**2.** The respondent’s father employed as a Messenger in the appellant Bank, died on 1-10-2004. The respondent’s mother made applications dated 6-6-2005 and 14-6-2005 requesting for his appointment on compassionate grounds. When the applications were being processed and verified, the Compassionate Appointment Scheme was substituted by the “SBI Scheme for payment of ex gratia lump sum amount” with effect from 4-8-2005. The new Scheme abolished the old Scheme for compassionate appointments and instead provided for payment of an ex gratia lump sum amount as per its terms.
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- C **8.** It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/ withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.
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- E **12.** Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances

H ²(2010) 11 SCC 661

having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable.

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13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.”

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5. He also relied upon the decision of this Court in ***MGB Gramin Bank vs. Chakrawarti Singh***³. Paragraphs 2, 15 and 16 of said decision are as under:

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“**2.** The facts and circumstances giving rise to this appeal are that: the father of the respondent who was working as a Class III employee with the appellant Bank died on 19-4-2006 while in harness. The respondent applied for compassionate appointment on 12-5-2006. During the pendency of the application filed by the respondent, a new scheme dated 12-6-2006 came into force with effect from 6-10-2006. Clause 14 thereof provides that all applications pending on the date of commencement of the scheme shall be considered for grant of ex gratia payment to the family instead of compassionate appointment.

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15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc. the application has to be considered in accordance with the scheme. In case the scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the scheme existing on the date

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³ (2014) 13 SCC 583

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- A the cause of action had arisen i.e. death of the incumbent on the post. In *SBI vs. Raj Kumar*², this Court held that in such a situation, the case under the new scheme has to be considered.
- B **16.** In view of the above position, the reasoning given by the learned Single Judge⁴ as well as by the Division Bench⁵ is not sustainable in the eye of the law. The appeal is allowed and the impugned judgments^{4 & 5} of the High Court are set aside.”
- C 6. On the other hand, reliance was placed by the learned counsel appearing for the respondent on the decision in *Canara Bank and another vs. M. Mahesh Kumar*⁶. Paragraphs 11, 12, 17 and 22 of this decision are:-
- D “**11.** During the pendency of the matter before the Division Bench, Indian Banks Association (for short “IBA”) formulated a scheme based on the guidelines issued by the Government of India. As per the said Scheme, the banks have scrapped the scheme of compassionate appointment and introduced the new scheme of ex gratia payment in lieu of compassionate appointment by HO Circular No. 35 of 2005 dated 14-2-2005. According to appellant Bank, as on date of consideration of the application for compassionate appointment, there was no policy to provide compassionate appointment under “Dying in Harness Scheme”. E It is therefore the contention of the Bank that the new 2005 Scheme applies to all pending applications for appointment on compassionate ground, the respondent’s case could not be considered and as per the new Scheme, they are only entitled to ex gratia payment in lieu of compassionate appointment.
- F **12.** The main question falling for consideration is whether the Scheme passed in 2005 providing for ex gratia payment or the Scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent.
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- H **17.** Applying these principles to the case in hand, as discussed earlier, the respondent’s father died on 10-10-1998 while he was

⁴ Chakrawarti Singh vs. Marwar Ganganagar Bikaner Gramin Bank, Civil Writ Petition No. 7869 of 2008, decided on 27.7.2009 (Raj.)

⁵ MGB Gramin Bank vs. Chakrawarti Singh, Civil Special Appeal (W)No.798 of 2009, decided on 27.1.2010 (Raj.)

⁶ (2015) 7 SCC 412

serving as a clerk in the appellant Bank and the respondent applied timely for compassionate appointment as per the scheme “Dying in Harness Scheme” dated 8-5-1993 which was in force at that time. The appellant Bank rejected the respondent’s claim on 30-6-1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7-11-2001, the appellant Bank sought for particulars in connection with the issue of the respondent’s employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when Circular No. 154 of 1993 dated 8-5-1993 was in force. Thus, as per the judgment referred in *SBI vs. Jaspal Kaur case*⁷, the claim cannot be decided as per 2005 Scheme providing for ex gratia payment. The Circular dated 14-2-2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per Circular of 1993.

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22. Considering the scope of the scheme “Dying in Harness Scheme 1993” then in force and the facts and circumstances of the case, the High Court rightly directed the appellant Bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference.”

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7. In these decisions, the original scheme under which appointment on compassionate grounds could be made, was substituted by one under which only *ex gratia* payment would be made over to the dependants. The decisions relied upon by the petitioner proceed on the premise that there is no vested right to have the matter considered under the former scheme and the governing scheme would be one which was in force when the applications came up for consideration. On the other hand, the decision relied upon by the respondent proceeds on a different principle and stipulates that the governing scheme would be the former scheme and any subsequent that came into force after the claim was raised would not be applicable. The decision of this Court in *Canara Bank*⁶ did notice the earlier two decisions in *State Bank of India*² and *MGB Gramin Bank*³.

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A 8. All the aforesaid three decisions as well as one in *Jaspal Kaur*⁷ were rendered by Benches of two Hon'ble Judges of this Court.

B 9. The principles emanating from these two lines of decisions, in our considered view are not consistent and do not reconcile. The matter therefore requires consideration by a larger Bench of at least three Hon'ble Judges of this Court.

C 10. We, therefore, request the Registry to place the papers of this case before the Hon'ble the Chief Justice of India for constituting a Bench of appropriate strength to dispose of the present petition.

11. Ordered accordingly.

Devika Gujral

Matter referred to larger Bench.

⁷ (2007) 9 SCC 571