

GAHC010000862023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/163/2023

SUSHIL PAWAR

S/O- LT. SHYAMLAL PAWAR, R/O- A K DEV ROAD, NEAR MASJID GALI,
KATAHBARI, P.O. AND P.S. GARCHUK, GHY, ASSAM, PIN- 781035

VERSUS

CANARA BANK AND 4 ORS

REP. BY CHAIRMAN AND MANAGING DIRECTOR, HAVING ITS HEAD
OFFICE AT BANGALORE 112, J.C.ROAD, BANGALORE, KARNATAKA, PIN-
560002

2:GENERAL MANAGER
HUMAN RESOURCES WING
PERSONNEL MANAGEMENT SECTION
H.O. BANGALORE 112
J.C. ROAD
BANGALORE
KARNATAKA
PIN- 560002

3:THE SENIOR GENERAL MANAGER
CANARA BANK
HRM SECTION
GUWAHATI CIRCLE OFFICE
DEE BEE
GRANDE
PANJABARI ROAD
SIX MILES
GHY-22

4:ASSTT. GENERAL MANAGER
HRM SECTION

GUWAHATI CIRCLE OFFICE
DEE BEE
GRANDE
PANJABARI ROAD
SIX MILES
GHY-22

5:MANAGER
CANARA BANK
SIKH TEMPLE BRANCH
SC GOSWAMI ROAD
PANBAZAR
GHY-0

Advocate for the Petitioner : DR G J SHARMA

Advocate for the Respondent : MS S CHAKRABORTY

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

06.05.2024

Heard Dr. G. J. Sharma, learned counsel for the petitioner. Also heard Ms. S. Chakraborty learned counsel for the respondents.

2. The case of the petitioner is that his father has died-in-harness on 12.10.2016 while he was working in Canara Bank, Sikh Temple Branch. At the time of death, he left behind the petitioner, his married daughter and his mother. The application for appointment on compassionate ground was made by the petitioner on 21.01.2019 but his case has been rejected by an impugned communication dated 16.12.2022 on the ground that there were no mitigating factors or any conditions to be considered which deserve immediate assistance for relief by providing compassionate appointment. The said communication is under challenge

in this present writ petition filed under Article 226 of the Constitution of India.

3. By opposing this writ petition, the learned counsel for the respondents has submitted that the petitioner did not approach this Court with clean hands because the petitioner had not disclosed the documents relating to his caste, which was submitted later on, and therefore, on earlier occasions the application of the petitioner could not be considered due to lack of documents. It is also projected that at the time of submission of application, the petitioner was 27 years of age whereas the limitation of age requirement was 26 years as prescribed for eligibility for sub-staff recruitment under the General category. Accordingly, it is submitted that the petitioner has suppressed material facts and did not come up with clean hands.

4. It is also submitted that she has received verbal communication from the respondents that the petitioner has applied for a loan of Rs. 20.00 lakh and therefore in order to obtain such loan, the petitioner had submitted income tax records which includes income tax returns and that the loan was sanctioned and released on 26.08.2022. She has also submitted that the petitioner has a good net-worth as stated in the CIBIL Report. It is also submitted that the petitioner has obtained 5 loans under 5 different accounts heads.

5. It is noted that the petitioner is relying on the scheme of compassionate appointment of Canara Bank issued vide circular no. HO CIR 143/2015 dated 20.03.2015. In their affidavit-in-opposition, the respondents have not disowned the said document which is annexed to

the writ petition as Annexure-5. They are not denying that the said circular no. HO CIR 143/2015 is in force and that a stand has been taken in para 5 of the affidavit-in-opposition that the scheme of compassionate appointment, as prevalent at the time of death of the employee, was framed as per the IBA guidelines. Unfortunately, the said guidelines has not been brought on record and the respondents have also not denied the existence of the scheme for compassionate appointment vide circular no. HO CIR 143/2015 dated 20.03.2015. Therefore, for all intents and purposes, as the existence of the said circular no. HO CIR 143/2015 is not being denied, the same shall prevail for the issue raised by the petitioner in this writ petition.

6. The learned counsel for the respondents is not being able to point out from the said circular no. HO CIR 143/2015 that there is a age limit prescribed for appointment on compassionate ground. Therefore, notwithstanding that whether the age of the petitioner is 30 years only at the time of filing of this writ petition. In the absence of any cap of age after which the appointment on compassionate ground cannot be made, the stand taken by the respondents regarding the age of the petitioner does not hold good.

7. As per the issue raised by the respondents that the petitioner has applied and got as many as 5 loans and in one of the loan granted to the petitioner is to the extent of Rs 20.00 lakh, the Court finds that the respondents are silent regarding that aspect of the matter in their affidavit-in-opposition. Therefore, any submissions made by the learned advocate for the respondents in the course of adjudication of the writ petition which has not supported the stand taken in their affidavit-in-

opposition and therefore cannot be taken into account.

8. On the point of delay in filing the application for appointment on compassionate ground, the learned counsel for the petitioner has successfully demonstrated that as per clause 9.1 of the circular no. HO CIR 143/2015, it is provided that the application for employment under the scheme from eligible dependant will normally be considered up to 5 years from the date of death or retirement on medical grounds and the decision required to be taken on merit in each case. The learned counsel for the petitioner has also demonstrated from Clause 19(2) of the said circular no. HO CIR 143/2015, that an application for appointment on compassionate ground is required to be considered by a Committee of Officers as given below :-

“An application for appointment on compassionate ground shall be considered by the Committee of officers consisting of three officials; one Chairman and two members in the rank of Deputy General Manager/ Assistant General Managers i.e, Deputy General Manager, HR wing (Chairman) and one Executive each from Recovery Wing and GA Wing. Assistant General Manager/ Divisional Manager- HR wing- shall be the convener.”

9. From the contents of the impugned letter dated 16.12.2022, it is not clear as to whether the Committee as envisaged in Clause 19(2) of the Circular no. 143/2015 had considered the claim of the writ petitioner on compassionate ground. The contents of the said impugned letter dated 16.12.2022, is quoted below :-

*“In this regard, we would like to inform that the matter was placed before the Competent Authority at Head Office for kind consideration and the following is observed as under.
The policy of Compassionate Appointment/ Payment of Ex- Gratia is well defined in our bank and the same is in accordance with the guidelines issued by Indian Banks’ Association/ Ministry of Finance.
The Object of Compassionate Appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting*

due to death of the bread earner who had left the family in penury and without any means of livelihood. Bank has well defined policy for identification of penurious situation.

We are now informed by Head Office that on perusal / processing of the request / representation and the connected papers submitted by the applicant, it is found that there were no mitigating factors / conditions to be considered which deserved immediate assistance for relief by providing Compassionate Appointment. As such, the request does not warrant for favourable consideration.

Please inform the applicant accordingly.”

10. As the said impugned order does not reflect the specific reasons to support the statement that there are no mitigating factors and conditions to be considered. By an order dated 02.02.2024, this Court has directed the respondent authorities to produce the relevant minutes of the Committee which was constituted under the policy for consideration of the case of the petitioner on compassionate appointment. Although the respondent nos. 1 to 5 have filed their affidavit on 05.04.2024, the order of this Court has not been complied with and thus the proceedings of such Committee has been withhold from the Court. The only stand taken in the said affidavit-in-opposition filed on 06.04.2024 is that the dependants of the deceased are in receipt of terminal benefits to the extent of Rs. 6.72 lakh and as the father of the petitioner had expired in the year 2016 and the family has been able to manage all these 6 years, it should normally be taken as a legitimate proof that the family had a dependable means of subsistence. A further stand has been taken that the daughter of the deceased employee is married and staying separately with her family.

11. In this regard, the scheme of compassionate appointment of the respondents mandate that the application can be considered upto 5 years and it is not in dispute that the petitioner did not apply within the said

time and the rejection of the candidature of the petitioner by the impugned communication does not disclose the reasons for which the case of the petitioner was rejected and nothing is brought on record to show that the Committee which considered the application of the petitioner was duly constituted, the said communication cannot stand the judicial scrutiny of the Court and therefore the Court has no hesitation for setting aside and to quash the letter of the Assistant General Manager of the Canara Bank bearing reference no. GCO:HRM:COMP:APPOINT:67671:239:2022 dated 16.12.2022.

12. The matter is now remanded to the Canara Bank, Sikh Temple Branch to reconsider the claim of the petitioner on compassionate ground strictly in terms of the scheme of compassionate appointment vide circular no. HO CIR 143/2015 dated 20.03.2015.

13. As the application of the petitioner is found to have been submitted within the time prescribed, vide the said circular no. HO CIR 143/2015 in clause 9.1, the application of the petitioner shall not be rejected on the ground of delay in consideration and fresh decision by the respondents shall be taken within an outer period of 3 months from the date of receipt of the certified copy of this order.

14. It would be open to the respondents to examine the financial position of the petitioner while taking the decision.

15. It is needless to say that whatever order that may be passed, shall be duly communicated to the petitioner.

16. Accordingly, this writ petition stands disposed of..

JUDGE

Comparing Assistant