

Court No. - 21

Case :- SPECIAL APPEAL No. - 541 of 2023

Appellant :- Authorized Officer, Prathama U P Bank

Respondent :- Smt. Manjeet Kaur

Counsel for Appellant :- Sachin Mishra

Counsel for Respondent :- Ajay Kumar Mishra

WITH

Case :- SPECIAL APPEAL No. - 410 of 2023

Appellant :- Chief Manager, Baroda Uttar Pradesh Gramin Bank And 2 Others

Respondent :- Kamal Deep And Another

Counsel for Appellant :- Ajal Krishna

Counsel for Respondent :- A.S.G.I.,Alok Tiwari,Sunil Sharma

WITH

Case :- SPECIAL APPEAL DEFECTIVE No. - 536 of 2023

Appellant :- Canara Bank And 2 Others

Respondent :- Mohammad Rizwan

Counsel for Appellant :- Krishna Mohan Asthana

Counsel for Respondent :- Rakesh Kumar Mishra

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Donadi Ramesh, ,J.

1. The present batch of special appeals is against orders of different dates passed by learned Single Judges directing the appellant-Banks to consider the application of the contesting respondents for appointment under the Dying-in-Harness Scheme dated 10.5.2019.

2. All the appeals involve interpretation of certain Clauses of the Scheme so as to find out whether applications filed for compassionate appointment by dependents of a deceased employee of the Bank within a timespan of five years prior to the date of enforcement of the Scheme, would be covered under the Scheme or not. Consequently, all the appeals were heard together. However, for sake of convenience, the facts in Special Appeal (Defective) No. 468 of 2023 (Regular Number 541 of 2023) are being taken note of in the instant order. These are as follows: -

(i) The husband of the respondent died on 19.1.2018 while in harness. At the relevant time, there was no scheme for appointment on compassionate grounds. The Scheme came into force on 1.3.2019.

(ii) The Bank vide a Communication dated 7.12.2021 informed the respondent that it would not be possible to consider her request for compassionate appointment as her husband had died before the commencement of the Scheme on 1.3.2019.

(iii) The respondent challenged the said order in the writ petition which has been allowed by the order impugned herein.

(iv) Learned Single Judge has taken the view that under Clause 8 of the Scheme, application for compassionate appointment could be filed within five years of death of an employee and therefore even if death had taken place before commencement of the Scheme, but application was filed within

five years from the date of death, it would be covered under the Scheme.

3. Before we proceed further, it would be useful to note the relevant Clauses of the Scheme. The Scheme is known as “Scheme for Appointment on Compassionate ground/Payment of Ex gratia”. The Government of India letter dated 31.12.2018 stipulated that “the Scheme shall be effective from the date on which the Board of RRB adopts the same”. Accordingly, NABARD advised the individual banks to adopt the same. Board of different RRB's adopted the scheme on different dates. In case of the appellant bank, it became effective from 01.03.2019.

4. Under Clause 1, the persons covered under the Scheme are mentioned, which is as follows: -

“1. Coverage :

1.1 To a dependent family member of permanent employee of the Bank who :

(a) Dies while in service (including death by suicide).

(b) Is retired on medical grounds due to incapacitation before reaching the age of 55 years.

(Incapacitation is to be certified by a duly appointed Medical Board in a Government Medical College/Government District Head Quarters Hospitals/Panel of Doctors nominated by the Bank for the purpose).

1.2. For the purpose of Scheme "employee" would mean and include only a confirmed regular employee who was serving full time or part time on scale wages, at the time of death OR retirement on medical grounds, before reaching age of 55 years and does not include any one engaged on contract/ temporary/ casual or any person who is paid on commission basis."

5. Clause 8 of the Scheme stipulates the time limit for considering the applications and it runs as follows: -

"8. Time Limit for Considering Applications.

8.1 Application for employment under the Scheme from eligible dependent should normally be considered upto five years from the date of death or retirement on medical grounds and decision to be taken on merit in each case.

8.2 However, Bank can consider request for compassionate appointment even when the death or retirement on medical grounds of the employee took place long back, even five years ago. While considering such belated request, it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the employee in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such case would call for a great deal of circumspection. The decision to take appointment on compassionate grounds in such cases may, therefore, be taken only at the Board level."

6. It is noteworthy that the same Scheme was subject matter of consideration by a Co-ordinate Bench in **Special Appeal No. 270 of 2023, Chairman, Baroda U.P. Bank (Erstwhile Baroda U.P. Gramin Bank), Gorakhpur and Others vs. Jitendra and Others**. In the said decision also, the same view has been taken. It has been held that a conjoint reading of Clauses 8.1 and 8.2 of the Scheme leads to the conclusion that even if the employee had died “five years ago”, discretion has been given to the Bank to consider such applicants for compassionate appointment. It has also been held that Clause 8.2 of the Scheme was incorporated with an intention to give it a retrospective effect. Para 19 of the said judgment wherefrom the reasoning behind the view taken is discernable, is quoted below: -

(19) Considering the aforesaid facts and circumstances of the case coupled with the fact that it is not a case where retrospective/prospective application of the revised Model Scheme 2019 is in issue and also considering Clause 8.1 and Clause 8.2 of the revised Model Scheme of compassionate appointment, as being a beneficial subordinate legislation, this Court is of the view that since Scheme, 2019 as applicable to the appellants/Bank, itself specifically provides for encompassing all those cases for consideration, wherein the deceased employee would had died five years ago, which appears to be incorporated with an intention to give it a retrospective effect, therefore, the learned Single Judge has rightly come to the conclusion that the factum of the deceased

employee (father of the respondent no.1) having died on 12.08.2014 obviously falls within the purview of Clause-8 of the revised Model Scheme, 2019 and as such the case of the respondent no.1/writ petitioner deserved to be considered for compassionate appointment.

7. Learned counsel for the appellant-Banks vehemently contended that the impugned judgment of learned Single Judge as well as the judgment of Co-ordinate Bench in Special Appeal No. 270 of 2023 which also places reliance on the impugned judgment, do not take into consideration the judgments of the Supreme Court wherein it has been held that the crucial date for determining right to compassionate appointment is the date of death of the employee and if on that date, there was no such scheme, he could not be given benefit of a subsequent scheme, unless the Scheme itself makes provision therefor. In support of the submission, reliance is placed on the judgments of the Supreme Court in **Canara Bank vs. M. Mahesh Kumar**¹; **State Bank of India and Others vs. Jaspal Kaur**²; **Indian Bank and Others vs. Promila and Another**³; **N. C. Santosh vs. State of Karnataka and Others**⁴ **State of Madhya Pradesh and others vs. Ashish Awasthi**⁵.

1 (2015) 7 SCC 412

2 (2007) 9 SCC 571

3 (2020) 2 SCC 729

4 (2020) 7 SCC 617

5 2022(2) SCC 157

8. On the other hand, counsel for the respondents relied on (I) **State Bank of India vs. Raj Kumar**⁶, (ii) **MGB Gramin Bank vs. Chakrawarti Singh**⁷

9. The anchor sheet of the case of the appellants is the judgment of Supreme Court in **Secretary to Government Department of Education (Primary) and Others vs. Bheemesh alias Bheemappa**⁸. In the said judgment, the Supreme Court has in great detail noted an apparent conflict between two lines of decisions, one taking the view favouring the appellant-Banks and another supporting the case of the respondents. The Supreme Court also noted the fact that in **State Bank of India and others vs. Sheo Shankar Tewari**⁹, a Two Member Bench of the Supreme Court referred the matter to a Larger Bench. However, the reference has not been answered so far. It has also been noticed that since the reference was made, the Supreme Court had decided four more cases dealing with the same issue. These cases are (i) **Indian Bank vs. Promila**; (ii) **N.C. Santosh vs. State of Karnataka**; (iii) **State of Madhya Pradesh vs. Amit Shrivastava**; and (iv) **State of Madhya Pradesh vs. Ashish Awasthi**.

6 (2008) 15 SCC,

7 (2014) 13 SC 583

8 (2022) AIR SC 402

9 (2019) 5 SCC 600

10. It has also been noted that out of these four decisions, the judgment in **N.C. Santosh** (supra) was by a Three Member Bench and it took note of the reference pending before the Larger Bench. The judgment thereafter makes a critical analysis of the two lines of judgments and takes note of the fundamental difference between the two views. It has been held that where the benefit under the existing Scheme was taken away or substituted with a lesser benefit, judicial opinion was in favour of applying the new Scheme, but in cases where the benefits under an existing Scheme were enlarged by a modified Scheme after the death of the employee, the Scheme applicable on the date of death of the employee was applied. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and looked down upon with lesser compassion for the individual and greater concern for the rule of law. Paragraph nos. 17 and 18 from the said judgment which throws light on the aforesaid fundamental difference in interpreting the applicability of the Scheme are extracted below: -

17. Keeping the above in mind, if we critically analyse the way in which this Court has proceeded to interpret the applicability of a new or modified Scheme that comes into force after the death of the employee, we may notice an interesting feature. In cases where the benefit under the existing Scheme was taken

away or substituted with a lesser benefit, this Court directed the application of the new Scheme. But in cases where the benefits under an existing Scheme were enlarged by a modified Scheme after the death of the employee, this Court applied only the Scheme that was in force on the date of death of the employee. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law.

18. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions. Wherever the modified Schemes diluted

the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable.

11. The judgment also notices that the cleavage of opinion revolves around two dates, namely the date of death of the employee and date of consideration of the application of the dependent. It has been held that out of these two dates, only one, namely the date of death alone, is a fixed factor and does not change. It has been observed that a rule of interpretation which produces different results, dependent upon what individuals do or do not do, is inconceivable. It has been held that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor like date of filing of the application or date of its consideration.

12. Reverting to the facts of the instant case, indisputably, on the date of death of the employee, there was no Scheme in force for appointment of the dependent family member on compassionate basis. The Scheme for compassionate appointment came into effect from 1.3.2019. As the Scheme confers right to be considered for compassionate appointment for the first time after it was enforced, it definitely confers new and better rights than what were available at

the time of death of the employee. Applying the legal principles in **Bheemesh** (supra), the Scheme perhaps would not apply. However, in the impugned order as well as the judgment of the Co-ordinate Bench, as already noted, the view taken is that by virtue of Clause 8.1 and 8.2, the Scheme would have retrospective operation.

13. Compassionate appointment is never a part of service condition of any employee or a vested right. It cannot be given in absence of rules or regulations issued in this behalf. The right comes into existence for the first time upon death of the employee in harness. If there is no scheme for compassionate appointment applicable on date of death, then no such right accrues except in cases where a future scheme unequivocally declares that it would apply retrospectively.

14. One of the factors which weighed with the Co-ordinate Bench in **Jitendra** (supra) is that the Scheme was a piece of beneficial subordinate legislation. Therefore, a wider interpretation relating to its applicability was given. However, the consistent judicial opinion is that appointment on compassionate basis being an exception should be strictly construed. (See **Bhawani Prasad Sarkar vs. Union of India, (2022) 4 SCC 209; Umesh Kumar Nagpal vs. State of Haryana (1994) 4 SCC 138**).

15. Clause 8 relates to time limit for considering the applications. Thus, it provides for limitation in which a claim covered by the Scheme is to be made. It is five years from the date of death, but in exceptional circumstances, a claim beyond period of five years could also be considered after thorough scrutiny and only at the level of Board. The question of reckoning the limitation would arise only when the case of any of the applicant is covered under the substantive part of the Scheme. Had there been any intention to make the Scheme applicable even to cases where death had taken place in preceding five years, it could have been stated expressly as in **Raj Kumar** (supra) and **MGB Gramin Bank** (supra). This very Scheme was considered in **Bechan Giri vs. Union of India** by a learned Single Judge and it is held that Clause 8.1 and 8.2 of the Scheme “do not envisage cognizance of cases of dependants, where death of an employee in harness has taken place before the Scheme was enforced in the Bank. The employment of the expression in Clause 8.1 “normally be considered upto five years from the date of death” refers to the period of five years of death on a date when the Scheme was already in force in the Bank; not five years or a little short of that time antedating the introduction of the Scheme.” However, it seems that the judgement of this Court in **Bechan Giri** (supra) was not cited before the Division Bench in **Jitendra** (supra).

16. With due deference, we are unable to agree to the view taken in **Jitendra** (supra). As the said judgment is by Co-ordinate Bench of equal strength, judicial propriety demand that the question be settled by a Larger Bench. Accordingly, we refer the following question for being answered by a Larger Bench: -

*“Whether the interpretation given to Clause 8 of the Scheme dated 10.5.2019 in **Chairman, Baroda U.P. Bank (Erstwhile Baroda U.P. Gramin Bank), Gorakhpur and Others vs. Jitendra and Others** and analogous Schemes, is sustainable in law, in view of judgment of Supreme Court in **Secretary to Government Department of Education (Primary) and Others vs. Bheemesh alias Bheemappa and other judgments?**”*

17. Let the papers of the instant batch of appeals be placed before Hon’ble the Chief Justice for constituting a Larger Bench.

Order Date :- 17.11.2023

Jaideep/-

(Donadi Ramesh,J.) (Manoj Kumar Gupta,J.)