

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 1 :-

Shri Anand Agrawal, learned counsel for the Petitioner.

Shri R.C. Sinhal, learned counsel for the Respondents .

Heard the learned counsel for the parties through video conferencing.

ORDER

(26/07/2021)

The petitioner has filed the present petition seeking quashment of Annexure P/1 and P/2 whereby she has been denied for compassionate appointment as well as ex-gratia /compensation by the respondents. The petitioner is also claiming gratuity and pension w.e.f. 1998.

(2) Facts of the case in short are as under:

(a). The husband of the petitioner, Shri Ashok Dhaigude left the house on 19.12.1998 to go to bank but he went missing. In the year 1998 he was working as peon in the State Bank of Indore, which latter on merged into State Bank of India. The petitioner gave information about his missing to the Police as well as bank. When he did not return, after seven years, the petitioner submitted an application for compassionate appointment and payment of all retiral dues. Vide letter dated 12.01.2006, the Head office of the Bank has treated Ashok Dhaigude voluntarily retired w.e.f. 20.10.1998 on account of his missing and directed Regional Office, Indore of SBI to complete necessary formalities for settlement of terminal dues in favour of the petitioner being a nominee viz payment of provident fund, gratuity and ex-gratia compensation. A

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 2 :-

declaration or indemnity bond was also directed to be obtained from petitioner in case Ashok Dhaigude joins the duties and claims the provident fund then entire amount would be recovered from her or said amount would be adjusted in the retiral benefit granted to the petitioner. According to the petitioner the respondents /bank have calculated and paid all benefit like gratuity, EPF treating her husband to be dead on 21.10.2005 whereas, he had been treated voluntarily retired from services 21.10.1998.

(b). The petitioner has been denied for compassionate appointment because the new policy came into force w.e.f. 10.01.2006 and in which there is provision of ex-gratia payment in lieu of compassionate appointment. According to the petitioner since her husband had been treated dead in the year 2005 and retiral benefit were paid, then the policy came into 2006 would not apply in her case. The petitioner submitted representation for compassionate appointment on 06.06.2008, which was replied by the respondent vide letter dated 19.09.2008 that arrears of family pension from 22.10.2005 to 31.08.2008 Rs.1,47,9221.80/- deposited in the account.

(c). The petitioner submitted an affidavit that her husband went missing on 21.10.1998 and he had been treated to be dead w.e.f. 20.10.2005, she has not remarried so far. She again submitted a representation on 05.12.2008 claiming arrears of pension from 21.10.1998 till 21.10.2005 followed by

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 3 :-

representation by representation dated 15.12.2010. When no action was taken, then petitioner filed present petition before this Court.

(d). After notice, the respondents have filed reply mentioning the undisputed facts of the petition in para, which are reproduced below:

2. That, the undisputed facts of this petition are as under:

(i). That, the said Shri Ashok Dhaigude (**the said ex-employee**) absented from the duties in the erstwhile bank from 20.10.1998 and as such, the erstwhile bank treated him to have voluntarily retired from service w.e.f. 20.10.2005, in terms of the relevant provisions of the Bipartite Settlement applicable to him.

(ii). That, having treated the said ex-employee as 'voluntarily retired' the erstwhile bank has paid his gratuity/PF to the petitioner against indemnity bond, copies placed as the **Annexure R/1 and R/2**.

(iii). That, the petitioner applied for family pension after 7 years from missing of the said ex-employee and as such she is also being paid family pension with effect from 2005 (page 17 and 18 of Annexure P/4).

(iv). That, the petitioner has been declined compassionate appointment on the ground that the scheme of compassionate appointment was discontinued in the erstwhile bank with effect from 10.01.2006 whereas the petitioner applied for the said appointment to the erstwhile bank on 30.09.2007 i.e. after the said scheme was discontinued/abolished.

(v). That, the petitioner's demand for payment of family pension from 20.10.1998 (i.e. from the date of disappearance of her husband), instead from 21.10.2005 (i.e. the date when 7 years of his disappearance were completed), has also been declined.

(e). In para 3 the respondents have given pointwise reply about denial of compassionate appointment, payment of ex-

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 4 :-

gratia and denial of payment gratuity and pension from 1998, which are produced below:

3. That, the disputes involved in the present petition are:

A. Dispute regarding compassionate appointment

(i) That, the petitioner has impugned the bank's decision of refusing to give her compassionate appointment. The petitioner's contention is that she was eligible for compassionate appointment on 21.10.2005 i.e. the date when 7 years of missing of her husband were over and as the scheme for compassionate appointment was discontinued with effect from 10.01.2006, she should be given the said appointment irrespective of the fact as to when she applied.

(ii) That, the bank's contention is that since the relative scheme was discontinued from 10.01.2006 and she had applied for the said appointment for the first time through her advocate's notice dated 03.09.2007, copy placed as the **Annexure P/3**, she is not eligible for the said compassionate appointment. The petitioner has therefore impugned the bank's relative communication to her which are placed at the Annexure P/1 and P/2.

(iii) That, in support of its foregoing contention, the bank relies on the case reported at 2010 (3) MPLJ 213 (Bank of Maharashtra Vs Manoj Kumar Dehariya) wherein this Hon'ble Court has held that compassionate appointment is not a vested right and when grant of such appointment is governed by the Rules and Policies prevailing in an establishment, then consideration as per Rules is required to be made and consideration on the basis of a policy which has been given up by the employer and which has no application at that point of time, cannot be insisted upon.

(iv) That, in the light of the aforesaid judgment of this Hon'ble Court, it is obvious that the petitioner is not entitled for compassionate appointment and as such she has rightly been declined the said appointment on the ground that when she applied therefore, the relative scheme in the erstwhile bank had been abolished/discontinued.

B. Dispute regarding payment of Ex-gratia amount in lieu of Compassionate Appointment.

(i). That, the petitioner has although never made any application for payment of 'Ex-gratia Lumpsum Amount in lieu of Compassionate Appointment' (**hereinafter referred to as**

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 5 :-

the “ ex-gratia payment”), she has falsely alleged in the petition that the bank's decision for not paying the said ex-gratia payment/compensation to her, is illegal. As she has never applied for the said ex-gratia payment, there is no question of declining the same and as such, the aforesaid allegation made in the petition is absolutely false.

(ii). That, the bank also submits that the petitioner cannot make two demands simultaneously. Either she should ask for compassionate appointment or for ex-gratia lumpsum amount in lieu of compassionate appointment. However, a bare reading of the erstwhile bank's scheme for the said ex-gratia payment, placed as Annexure P/6, would reveal that (a) as per its clause No. 15(v), the said scheme is not applicable to the families of missing persons and only the Board of Directors of the erstwhile bank was entrusted to consider such cases (b) the said clause 15(v) also stipulates that the Bank's Board of Directors can consider such a case if the employees missing for more than 7 years, has been declared 'dead' by the Court (c) as per clause 11 of the said Scheme, the time limit for submitting the relative application was only 6 months of the date of death.

(iii). That, in this case, since 21.10.2005, the 7 years of missing of the petitioner's husband (the said ex-employee) were over and he was presumed as 'dead' as on 21.10.2005, the petitioner is now not entitled to make an application for payment of the said ex-gratia amount in view of the said clause 11 of the said Scheme. It is also noteworthy that the erstwhile bank is no more in existence.

In view of the foregoing, at the outset, the petitioner is not eligible for the said ex-gratia payment also.

C. Disputes regarding payment of Gratuity and Pension from 1998.

(i). That, the petitioner has also prayed for a relief that the respondent bank should be directed to pay the gratuity and pension from the year 1998. To substantiate, the petitioner has averred that since her husband (the said ex-employee) has been treated to have retired with effect from 21.10.1998, she is eligible for benefits of gratuity and pension from 21.10.1998 instead from 21.10.2005 when 7 years of missing of her husband (the said ex-employee) were over and he was presumed to be 'dead'.

(ii). That, the bank submits that the petitioner is getting family pension for which she became eligible only after her husband (the said ex-employee) was presumed to be 'dead'. As the said presumption could be made only on 21.10.2005 when

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 6 :-

the period of 7years of missing of her husband (the said ex-employee) was completed, it is obvious that the petitioner's demand that she should be paid the said pension from the date of treating her husband as 'voluntarily retired' and not from the date when he was presumed as 'dead', does not have any merit.

(iii). That, so far as payment of gratuity from the date the said ex-employee has been treated to have 'voluntarily retired' is concerned, it is submitted that the said erstwhile bank had "**State Bank of Indore (Payment of Gratuity to Employees) Regulations, 1975**. In its Rule 13 read with Rule 12(1) (V), the method of calculation of the amount of gratuity inter-alia to an employee voluntarily retired after completion of 10 years service, has been given. As the petitioner has been paid the amount of gratuity of the said ex-employee from the year 2005 instead from the year 1998. The excerpt of the said Rule 13 and Rule 12 of the said Regulations are placed as the **Annexure P/4**. It is also submitted that the said Regulations being legal fiction, have got the binding effect.

(3). I have heard learned counsel for the parties and perused the record.

(4). As per the undisputed facts of this case, the husband of the petitioner Shri Ashok Dhaigude remained absent in the erstwhile bank from 20.10.1998 , hence a notice was issued to him to join the duties. The petitioner and respondents have accepted that he did not return to home or bank therefore he has been treated as a dead person w.e.f. 20.10.2005. According to the respondents , the petitioner applied for grant of family pension after seven years of the missing of her husband, therefore, they have paid the pension and other admissible benefits to her from the year 2005. The petitioner has been denied compassionate appointment in view of the scheme came into force w.e.f. 10.01.2006 as she applied for a compassionate appointment on 03.09.2007. Despite the denial of the

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 7 :-

compassionate appointment, respondents have also denied the ex-gratia compensation by placing reliance clause No.15(v) of the scheme because the same does not apply to the family of missing person and the time limit for submitting the relative application was only 6 months of the date of death. Since the seven years of missing of petitioner's husband had been passed on 21.10.2005 and he was presumed as dead as on 21.10.2005 hence, the petitioner is not entitled to the ex-gratia compensation in view of clause 11 of the scheme.

(5). According to respondents since the petitioner's husband was presumed to be dead on 21.10.2005 i.e. after seven years of the missing there she became entitled to payment of pension and gratuity from the said date. It is further submitted by the respondent that the petitioner has been paid gratuity amount by adopting the method of calculation provided under rule 12 (1) (v) and read with Rule 13 of State Bank of Indore (Payment of Gratuity to Employees), Regulations, 1975 w.e.f. 2005.

(6). The petitioner is a widow of a class IV employee, and she has somehow survived with two minor children after her husband left them at the mercy of God. She has submitted the representation that she be provided with a temporary job or engaged as a daily wager so that she could maintain her children. I have never come across any such case in which, such a harsh approach has been adopted by an employer like respondents. That thousands of employees work in such a big

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 8 :-

organization like SBI and it is least expected from them to have behaved like the model employer.

(7). That husband of the petitioner went missing 19.12.1998, when he did not join the duties from 20.10.1998, the Branch Manager sent a letter to the house of the petitioner on 21.01.1999 calling upon him to join the duties within 30 days from the date of receipt of notice failing which he would be treated as voluntarily retired from the services. The petitioner submitted a reply that since 21.10.1998 she has no information about her husband as he has left the house without leaving any note. She gave information to the police about missing and requested respondents for not taking any action. She submitted a representation on 17.05.1999 that it is becoming very difficult for her to survive with two minor sons aged about 14 years and 12 years, her husband had served the bank for 22 years, therefore she may be engaged temporary or daily wages in place of her husband so that she would maintain her family but no heed was given to the aforesaid representation. Vide letter dated 11.11.2005, the Superintendent of Police Indore informed the petitioner that they could not find her husband and as per law since seven years had been over hence he was treated as dead. That on 06.06.2008 the petitioner submitted a representation that her husband be now treated dead on 20.10.2005, hence, her claim for compassionate appointment be reconsidered. The

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 9 :-

respondents have settled her pension payable from 20.10.2005 and paid the gratuity amount to her.

(8). The respondents have wrongly denied the compassionate appointment to the petitioner on the ground that, the new policy has come into force w.e.f. 01.01.2006. As per clause 3 of the policy this scheme will replace all existing compassionate appointment schemes and no request for compassionate appointment shall be entertained or considered by the bank under any circumstances with effect from 10.01.2006. Clause 4 provides the payment of ex-gratia lumpsum amount in case of an employee dying in harness and employees seeking premature retirement due to incapacitation before reaching the age of 55 years. The Apex Court in the case of *Canara Bank & another Vs. M. Mahesh Kumar reported in 2015 (7) SCC 412* has held that an application for compassionate appointment should be considered as per the policy prevailing at the time of death of the employee. Admittedly, in this case, the husband of the petitioner was treated to be dead w.e.f. 20.10.2005 and the new policy came into force w.e.f. 10.01.2006, hence, the respondents ought to have considered the claim of the petitioner for compassionate appointment policy prevailing prior to 10.01.2006 or at the time of death. Hence, respondents are directed to consider the claim of the petitioner for a compassionate appointment. Now due to the passage of time her sons have become major now hence if she submits an affidavit

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 10 :-

to the effect then a claim of compassionate appointment be considered for her any of the sons .

(9). So far payment of gratuity and passionary benefits are concerned same are liable to be released after the death of an employee or attaining the age of superannuation or voluntarily resigning from the services of the bank after 10 years completed from the service. Since the husband of the petitioner was treated to be dead on 20.10.2005 and held that the petitioner is entitled to get a compassionate appointment on a policy prevailing on 20.10.2005, therefore, all the benefits are liable to be paid treating the petitioner's husband dead on 20.10.2005.

(10). There is no such order has been placed on record by respondents by which husband of the petitioner has been treated as voluntarily retired on 20.10.1998. That only in the letter dated 12.01.2006, Head Office of SBI has directed Regional Office to annex the order treating the petitioner's husband voluntarily retired on 20.10.1998 for submitting the claim of provident fund and ex-gratia payment, therefore there is no such order on record, hence, all the claims of the petitioner are liable to be considered treating him dead w.e.f. 20.10.2005 and accordingly, all the retiral benefits are liable to be calculated and be paid to her.

(11). So far as payment of ex-gratia compensation is concerned, the bank has rejected the claim of the petitioner on the ground of delay in view of policy dated 24.01.2006 which came into

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 11 :-

force w.e.f.10.01.2006 but it has been held in the above paras that new policy will not apply in case of the petitioner, therefore, the question of ex-gratia compensation is not liable to be considered. However, it is observed that there was no delay in submission of application for ex-gratia compensation because the husband of the petitioner was treated dead on 21.10.2005 and policy came into force w.e.f. 10.01.2006 and representations submitted by the petitioner were already pending for grant of compassionate appointment.

(12). In my considered opinion it is a fit case in which exemplary cost should be imposed on the respondents for their inhuman approach. The way Respondents has dealt with the issue of the widow and children of class IV employee it is liable to denounce with the strong words deprecated. The husband of the petitioner was a class-IV employee before he went missing he had served 22 years with the respondents. It is equivalent to the case of dying in harshness for the family. The petitioner had to work as a domestic maid in the house of others to survive herself as well as her sons. She requested respondents to provide the temporary appointment or daily wager so that she could maintain the family. It is not a case of the petitioner that she was not qualified for an appointment for a class IV employee or as a daily wager. If an employee went missing and not coming for duties months together then it is the case dying in harshness. The respondents have treated him voluntarily

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 12 :-

retired w.e.f. 20.10.1998 then they ought to have started paying pension from 1998 to the petitioner and other retiral benefits to ensure their survival. They kept the matter pending for seven years to get a declaration that her husband is no more without considering that how the family of the petitioner would survive for seven years. An equally facet of right to life is the *right to livelihood* because no person can live without the means of living, that is the means of livelihood. The right to live a dignified life has been taken by the respondents in this case. Respondents could have paid her some monthly amount like half of the salary payable to her missing husband because they were in control of all retiral dues of her husband with them, therefore, the approach of bank was inhuman towards the family of class-IV employee.

(13). This petition is pending since 2012 before this Court. The petitioner has also drawn attention to this Court towards the bank statements which reflects that w.e.f.12.10.2012 the pension has been reduced from Rs.6499/- and Rs. 6869/- to Rs. 3583/- and Rs. 3969/- and there is no reply to the said reduction in this petition. There is no reason as to why her pension has been reduced and since 2012 her family is surviving with only Rs. 3500/- per month. This petition deserves to be allowed and is accordingly allowed with costs of **Rs. 2,00,000/- (Rupees Two Lac only)** payable to the petitioner.

The petitioner is entitled for the following reliefs :-

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

W.P. No. 7249/2012

Smt. Meena Dhaigude V/s. Maha Pravandhak State Bank of India.

-: 13 :-

- (i) Respondents are directed to consider the claim of the petitioner for compassionate appointment under the policy prevailing at the time of death of husband of the petitioner. In alternate, if she submits an affidavit in favour of her sons then the claim of compassionate appointment be considered for any of her sons;
- (ii) All the benefits admissible under rules after the death of petitioner's husband are liable to be paid treating him dead on 20.10.2005;
- (iii) Respondents are directed to examine as how the family pension payable to the petitioner has been reduced. The family pension admissible to the petitioner as per rules be paid forthwith;
- (iv) Respondents are directed to pay costs of Rs. **2,00,000/- (Rupees Two Lakhs only)** to the petitioner forthwith.

Certified copy as per Rules.

**(VIVEK RUSIA)
JUDGE**

praveen