



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.3512 OF 2022

Ashwin Gourishankar Kokodde,
Aged about 28 years, Occup.Nil,
R/o Plot No.126-C, Dube Nagar,
Hudkeshwar Road, Nagpur-
440034.

Petitioner

-Vs.-

1. Union of India, through its Secretary, Finance Department, Vitta Mantralaya, Jeevan Deep Building, Sansad Marg, New Delhi-110 001.
2. Chairman-Cum-Managing Director Canara Bank, 112, J C Road, Bangaluru-560002 (Karnataka)
3. Deputy General Manager, Canara Bank, Personnel Management Section Human Resources Wing, Head Office, 112, JC Road, Bangaluru- 560002 (Karnataka).
4. Assistant General Manager, Canara Bank, HRM Section, Circle Office Shivaji Road, Near Mangala Talkies, Shivaji Nagar, Pune 411005.
5. Senior Branch Manager, Canara Bank (earlier as Syndicate Bank), Gandhibagh Branch, Nagpur.

Respondents

Mr.M.V. Samarth,Sr.Adv. with Mr.V.P. Ingle, Mr.R.M.Fating
counsel for the petitioner.

Ms.Neerja G.Chaubey, counsel for respondent 1.

Mr.M.Y.Wadodkar, counsel for respondent 5.

**CORAM: ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 26th APRIL, 2023

ORAL JUDGMENT (Per : Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally
by consent of the learned counsel appearing for the parties.

3. The grievance of the petitioner is that he is refused
appointment on compassionate grounds.

4. The father of the petitioner Mr.Gaurishankar Domaji
Kokade was a Class IV employee of respondent 5-Syndicate
Bank and he died in harness on 04.03.2019.

5. It is not in dispute that the petitioner submitted an application dated 18.08.2019, to the Branch Manager seeking appointment on compassionate grounds. The said application was forwarded by the Branch Manager to the Regional Manager with positive recommendation, vide communication dated 19.08.2019.

6. It appears that the Syndicate Bank kept the application in cold storage. The Syndicate Bank merged with Canara Bank with effect from 01.04.2020.

7. At this stage, we may note the policy of the Syndicate Bank which governed the appointment on compassionate grounds.

8. As on death of the petitioner's father, the extant scheme for compassionate appointment of the Syndicate Bank provided the eligibility criteria vide Clause-6 which reads thus:

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6. Eligibility Criteria:

“a. The family is indigent and deserves immediate assistance for relief from financial destitution. Accordingly, appointment on compassionate grounds will be granted to deserving cases where the total income of the family from all source is below Rs.35,000/-per month.

B. Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules”.

9. Plain reading of Clause-6 would suggest that while the eligibility is that the family of the deceased employee shall be indigent, the concept of “indigent” is clearly spelt-out and it is provided that appointment on compassionate grounds shall be granted if the total income of the family from all sources is below Rs.35,000/-(Rs.Thirty five thousand only) per month. Significantly, in contradistinction with the provisions of certain other schemes, the element of discretion is reduced, if not obliterated, inasmuch as Clause-6 clearly provides that a family having monthly income of not more

than 35,000/- (Thirty five thousand only) shall be deemed indigent.

10. It is equally significant to note that, the Syndicate Bank did not inform the petitioner, nor is there any material on record to suggest, that the Syndicate Bank came to a conclusion that the family income of the petitioner is more than Rs.35,000/- (Rs.Thirty five thousand only). It would be safe to proceed on the premise, that the petitioner was eligible to be appointed on compassionate grounds in view of the provisions of Clause-6 of the scheme of the Syndicate Bank.

11. The rejection of the application preferred by the petitioner seeking the appointment on compassionate grounds is by the successor Bank-Canara Bank. Perusal of the communications impugned would indicate that the Canara Bank concluded that there were no indigent circumstances and the case of the petitioner did not fall within the parameters of the policy.

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12. We have perused the affidavit-in-response dated 09.01.2023 filed on behalf of the respondents 2 to 5.

13. It is submitted in the affidavit-in-response that after the amalgamation of the Syndicate Bank and the Canara Bank, unified policy for compassionate appointment was formulated on 18.04.2020.

14. We may note the provisions of the unified policy in the interest of clarity. Clause-6 which prescribes the eligibility criteria provides that family must be indigent, and must deserve immediate assistance for relief from financial destitution and the applicant should be otherwise eligible and suitable for the post. The only significant difference in the policy of the Syndicate Bank which was holding the field as on the death of the father of the petitioner, and the unified policy of the Canara Bank appears to be that the latter policy omits the reference to the limit of Rs.35,000/- (Rs.Thirty five thousand only) as regards the monthly income.

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15. In paragraph 11 of the affidavit-in-response an attempt is made to demonstrate that considering the financial benefits received by the family of the deceased, the family is not indigent. The affidavit-in-response notes the following circumstances as suggesting that the family of the petitioner is not indigent.

“ a. That the dependents of deceased Gaurishankar Domaji Kokode are staying in their own house.

b. The ex-employee, at the time of his death was over 59 years old and had left over service of only 4 months.

C. The petitioner son, who has been nominated for appointment on compassionate grounds, was 26-years old at the time of application and is capable of earning his livelihood.

d. That there are no minor dependent children.

e. The dependents had received net terminal benefits amounting to Rs.11.68 Lakhs. The monthly income available to dependent family at the time of death of ex-employee was Rs.22.213/- including family pension of Rs. 14, 331/- which is now revised to Rs. 24, 728/-”.

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16. We are not required to delve deeper in the process of reasoning adopted by the Canara Bank to deny compassionate appointment. The fact that the retiral benefits are paid to the family of the deceased may not be decisive, nor would be the fact that there is no minor in the family. Inferential and sanctimonious observation that the petitioner was 26 years old and capable of earning the livelihood, with due respect to the author of the affidavit-in-response, plainly ignores the ground realities. Be that as it may, in our considered view, the pivotal issue would be, whether the claim to compassionate appointment is required to be addressed on the basis of the policy of the Syndicate Bank which was holding the field when the father of the petitioner died in harness or the policy of the Canara Bank which was formulated much after the death, albeit, the latter policy purports to come into effect retrospectively from 05.08.2014. We need not dilate on the purported retrospective effect to the unified policy of the Canara Bank given the fact that the father of the petitioner was not an employee of the Canara Bank, he was an employee of the Syndicate Bank and while

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the application seeking compassionate appointment was recommended by the Branch Manager, the Syndicate Bank sat tight over the matter, and the claim came to be rejected by the Canara Bank on the premise that the parameters of the unified policy are not satisfied.

17. The learned Senior counsel Mr.M.V.Samarth would emphasise that apart from the fact that the relevant date is the date of the death, the conditions subject to which the Syndicate Bank amalgamated into the Canara Bank protect the service conditions of the employees of the erstwhile Syndicate Bank. The extension of the submission is, that protection of the service conditions of the employees of the erstwhile Syndicate Bank *ipso facto* renders the stand of the Canara Bank, particularly the reliance on the unified policy of the Canara Bank, untenable in law.

18. While we find formidable substance in the submission canvassed by the learned senior counsel appearing for the petitioner, in our considered view, the

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petition must succeed on the short ground that the petitioner was entitled to compassionate appointment on the touchstone of Clause-6 of the policy of the Syndicate Bank which was holding the field as on the date of death of his father.

19. The relevant date and event for the application of such and similar schemes fell for consideration in plethora of decisions of the Apex Court. The Benches of equal strength of the Apex Court spoke in different voices. The cleavage of opinion appears to have been addressed by the three Bench decision of the Apex Court in **N.C.Santosh Vs. State of Karnataka (2020) 7 SCC 617** which held that the consideration of the claim shall be on the basis of the norms prevailing as on the date of death of the employee. **N.C.Santosh** (supra) is considered in a relatively recent decision of the Apex Court in **Secretary To Govt. Department of Education (Primary) and ors. Vs. Bheemesh Alias Bheemappa 2021 SCC OnLine SC 1264**.

20. In our considered view, the claim of the petitioner ought to have been considered on the touchstone of the policy which prevailed as on the date of the death of the petitioner's father.

21. Having so observed, we further find that it is not even the case of the respondents that the petitioner was not eligible in terms of Clause-6 of the policy of the Syndicate Bank which held the field as on the date of the death of the petitioner's father. In this view of the matter, it would not be necessary to remit the matter to the respondents for revisiting the issue particularly since the three judge decision in **N.C.Santosh** (supra) has resolved the conundrum. We quash the communications impugned.

22. We further direct that the claim for compassionate appointment shall be considered on the touchstone of Clause-6 of the unified policy and unless the petitioner is otherwise ineligible, to hold the post, the appointment order shall be issued within the next eight weeks.

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23. Writ petition is allowed in the aforestated terms.

24. Rule is made absolute in the above terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(ROHIT B. DEO)