

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 20th OF JUNE, 2023

WRIT PETITION No. 24881 of 2021

BETWEEN:-

**PRAHLAD SONDHIA S/O LATE SHRI
BHAGWANDAS SONDHIA, AGED
ABOUT 36 YEARS, OCCUPATION:
UNEMPLOYED NEAR GARH P.S. GRAM
POST GARH DIST. REWA (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI MANOJ CHANDURKAR - ADVCOATE)

AND

- 1. MADHYANCHAL GRAMIN BANK
THR. ITS PRESIDENT HEAD
OFFICE PODDAR COLONY IN
FRONT OF WOMENS
POLYTECHNIC COLLEGE HOSTEL
SAGAR (MADHYA PRADESH)**
- 2. MANAGER (ADMINISTRATION)
MADHYANCHAL GRAMIN BANK
REGIONAL OFFICE MARTAND
COMPLEX PEELI KOTHI, REWA
(MADHYA PRADESH)**
- 3. BRANCH MANAGER
MADHYANCHAL GRAMIN BANK
BRANCH GARH DISTT. REWA
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ASHISH SHROTI - ADVOCATE)

.....

This petition coming on for admission this day, the court passed the following:

ORDER

This petition, under Article 226 of the Constitution of India, has been filed against the order dated 04.08.2021 passed by Manager (Administration) Madhyanchal Gramin Bank, Regional Office, Rewa, by which the application of the petitioner for grant of appointment on compassionate ground has been rejected on the ground that his father had expired after the age of 55 years and as per the policy dated 06.09.2019 the petitioner is not entitled for appointment on compassionate ground.

2. Challenging the order passed by the respondent no.2, it is submitted by the counsel for the petitioner that as per Clause 1.1 of the guidelines dated 06.09.2019 the appointment on compassionate ground can be granted to the dependent of a permanent employee who dies in harness or who has retired prior to attaining the age of 55 years on the ground of medically unfit. Thus, the rejection of the application is on erroneous ground.

3. Per contra, it is submitted by the counsel for the respondents that as per Clause 1.2 of the Policy dated 06.09.2019 the bar of 55 years is applicable in the case of pre-mature retirement on account of medical unfitness as well as in case of death of employee. Since the father of the petitioner had expired after attaining the age of 55 years, therefore, he was rightly denied the appointment on compassionate ground.

4. Heard the learned counsel for the parties.
5. Clause 1.1 and 1.2 of the Policy dated 06.09.2019 reads as under :-

1. “योजना का प्रसार (Coverage)-
- 1.1 मध्यांचल ग्रामीण बैंक के ऐसे स्थायी कर्मचारियों के आश्रित परिवार के सदस्य, जो कर्मचारी –
- a) सेवाकाल के दौरान मृत्यु (आत्महत्या से मृत्यु सहित)
- b) अक्षमता के कारण चिकित्सा प्रमाण पत्र के आधार पर 55 वर्ष के पूर्व सेवानिवृत्त हो जाते हैं।
(शासकीय मेडीकल कॉलेज/शासकीय जिला अस्पताल/इस प्रयोजन के लिए बैंक द्वारा नामित डॉक्टरों का पैनल द्वारा जारी अक्षमता प्रमाण पत्र)
- 1.2 इस योजना में “कर्मचारी” से तात्पर्य ऐसे कर्मचारियों से है, जो बैंक सेवा में नियमित रूप से हों अथवा जिनकी सेवायें बैंक में पूर्णकालिक/अंशकालिक के रूप में नियमित वेतन पर हों।
ऐसे कर्मचारी की मृत्यु अथवा सेवानिवृत्ति जो कि चिकित्सा प्रमाण पत्र के आधार पर दी गई हो, जबकि कर्मचारी की आयु 55 वर्ष से कम हो।

एजेन्सी के माध्यम से/अस्थयी सेवा/आकस्मिक रूप से रखे गये व्यक्ति जिनका भुगतान एजेन्सी के माध्यम से किया जाता है, इस योजना में शामिल होंगे।”

6. From the plain reading of Clause 1.1 of the policy, it is clear that the said clause has been further divided into two sub-clauses :-

- (a) Death during the service period including suicide.
- (b) Pre-mature retirement prior to age of 55 years on the ground of medical unfitness.

It is clear from Clause 1.1 that the bar of 55 years has not been made applicable to the case where the employee dies in harness.

7. Clause 1.2 defines the word “employee”. However, the respondents by taking the assistance of first part of Clause 1.2 of the Policy, has rejected the application of the petitioner.

8. It is the case of the petitioner that since the first part of Clause 1.1 has been divided into 2 sub-clauses, therefore, the bar of 55 years would not be applicable to a case where the employee has died in harness.

9. It is well established principle of law that any interpretation of statute, which results in head-on-clash between 2 provisions of law, should be avoided and a statute must be read as a whole and one provision must be construed with reference to other provisions so as to make a consistent enactment. Thus, inconsistency or repugnancy should always be avoided.

10. The Supreme Court in the case of ***Commissioner of Income Tax Vs. Hindustan Bulk Carriers***, reported in **(2003) 3 SCC 57** has held as under :-

“14. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim ut res magis valeat quam pereat i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. [See Broom's Legal Maxims (10th Edn.), p. 361, Craies on Statutes (7th Edn.), p. 95 and Maxwell on Statutes (11th Edn.), p. 221.]

15. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. (See Whitney v. IRC [1926 AC 37 : 10 Tax Cas 88 : 95 LJKB 165 : 134 LT 98 (HL)], AC at p. 52 referred to in CIT v. S. Teja Singh [AIR 1959 SC 352 : (1959) 35 ITR 408] and

Gursahai Saigal v. CIT [AIR 1963 SC 1062 : (1963) 48 ITR 1] .)

16. The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See Salmon v. Duncombe [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p. 634, Curtis v. Stovin [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in S. Teja Singh case [AIR 1959 SC 352 : (1959) 35 ITR 408] .)

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes v. Doncaster Amalgamated Collieries [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LJKB 865 : 163 LT 343 (HL)] referred to in Pye v. Minister for Lands for NSW [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) The principles indicated in the said cases were reiterated by this Court in Mohan Kumar Singhania v. Union of India [1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455 : (1992) 19 ATC 881 : AIR 1992 SC 1] .

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a

construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)

11. Thus, any construction, which gives a narrower meaning to the statute resulting in failure to achieve the purpose, should always be avoided. If the interpretation suggested by Shri Ashish Shroti that the age bar of 55 years would apply even in the cases of death of employee in harness, then there would be a direct conflict with Clause 1.1 of the Policy dated 06.09.2019. If the intention of the framers of this policy was to apply the bar of 55 years even in the case of death in harness, then they would not have bifurcated Clause 1.1 into two different sub-clauses.

12. The counsel for the respondents could not point out as to when bar of 55 years has not been mentioned in Clause 1.1 (a), then how the bar as contained in Clause 1.1(b) can be read in the context of 1.1 (a) also?

13. It is submitted by the counsel for the respondents that since Clause 1.1 of the Policy is clarified by the provisions of Clause 1.2 of the Policy, therefore, the bar of 55 years is to be made applicable even in the case of death.

14. Considered the submissions made by the counsel for the respondents.

15. The substantive provision for grant of appointment on compassionate ground is Clause 1.1; whereas Clause 1.2 merely defines the word “employee”.

16. Under these circumstances, this Court is of the considered opinion that Clause 1.2 would not govern the Clause 1.1 but Clause 1.1 would prevail under Clause 1.2 being a substantive provision.

17. Furthermore, Clause 1.2 has used the disjunctive word “or”. The injunctive word “and” has not been used. The word “and” can be read as “or” or vice versa only if literal reading of the word produces an unintelligible or absurd result.

18. However, in the present case, the use of word “or” cannot be read as “and” because it would result in head-on-clash with Clause 1.1. On the contrary, the use of word “or” clearly clarifies that the bar as contained in second part of this clause is confined to premature retirement on the ground of medical unfitness only and not in the case of death of an employee.

19. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that the rejection of the application for grant of appointment on compassionate ground on the basis of first part of Clause 1.2 was bad in law and accordingly, the order dated 04.08.2021 passed by Manager (Administration) Madhyanchal Gramin Bank, Regional Office, Rewa is hereby **set aside**.

20. The respondents are directed to reconsider the application of the petitioner for his appointment on compassionate ground. It is

made clear that the application shall be considered strictly in accordance with the policy, which was in force on the date of death of the father of the petitioner.

21. However, it is made clear that the application should not be rejected on the ground that since the father of the petitioner had expired after 55 years, therefore, he is not entitled for the compassionate appointment. The entitlement of the petitioner on other grounds has not been considered by this Court and, therefore, his case should be considered independently without getting prejudiced by the order of this Court.

22. Accordingly, the petition succeeds and is hereby **allowed**.

(G.S.AHLUWALIA)
JUDGE

TG/-