K. Usha Vs. Indian Bank Represented by Its Chairman and Managing Director and anr.

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Court : Chennai

Decided On : Mar-19-1992

Reported in : (1992)2MLJ366

Appellant : K. Usha

Respondent : Indian Bank Represented by Its Chairman and Managing Director and anr.

Judgement :
ORDER

K.S. Bakthavatsalam, J.

1. The prayer in the writ petition is as follows :.to issue appropriate writs, orders or directions and in particular issue a writ in the nature of a mandamus directing the first respondent-Bank to provide the petitioner forthwith compassionate appointment on account of the demise of her husband....

2. The petitioner's husband one Balakrishnan was working as a clerk in the Head Office of the Bank of Thanjavur Ltd., Thanjavur and unfortunately he died on 25.3.1989 after having put in 20 years of service in that Bank leaving behind him, the petitioner, (his wife) and a daughter. The Bank of Thanjavur got amalgamated with the first respondent-Bank. In the erstwhile Bank of Thanjavur Limited

employment was given to the dependant of an employee who died in harness. Accordingly, the petitioner made an application on 12.4.1989 for appointment on compassionate grounds to the Chairman of the Bank of Thanjavur Limited even before the amalgamation. Having passed S.S.L.C. Examination, the petitioner was 40 years old at that time. When the application was pending, the Bank of Thanjavur Limited got amalgamated with the first respondent on 20.2.1990. Hence, the petitioner renewed her request with the first respondent-Bank by a letter dated 7.6.1990 and the first respondent by a reply dated 10.4.1991 rejected the request of the petitioner on the ground that the husband of the petitioner expired long before the amalgamation of the erstwhile Bank of Thanjavur Ltd., with the first respondent-Bank and as such, the petitioner is not eligible for appointment on compassionate grounds. However, the petitioner sent a reminder on 19.4.1991 followed by a notice of the counsel dated 27.4.1991; but the first respondent sent a reply dated 7.5.1991 rejecting her request on the ground that her husband died while he was employed in the erstwhile Bank of Thanjavur Limited. At this stage, the petitioner has come up before this Court with the above said prayer.

3. The petitioner alleges in the affidavit filed in support of the writ petition that under the Banking Regulation Act, 1949, the Bank of Thanjavur Limited got amalgamated with the first respondent-Bank and under Section 45 of the said Act, a scheme of amalgamation has been framed. The petitioner relies upon Clauses (2) and (10) of the Scheme which state that the assets and liabilities of the Bank of Thanjavur Limited will become the assets and liabilities of the first respondent-Bank and all the employees of the Bank of Thanjavur Limited will continue in the service of the first respondent-Bank and be deemed to have been appointed by the transferee Bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees before the close of business on 19.8.1989. It is alleged in the affidavit that a conjoint reading of those two provisions in the Scheme shows that the liability of the transferor Bank to provide appointment on compassionate ground to the dependant of an employee who dies in harness devolves on the transferee Bank. It is also stated that the liability to provide employment to the dependant of the deceased employee of the transferor Bank is a responsibility of the transferee Bank. It is alleged that but for the amalgamation of the Bank of Thanjavur Limited with the first respondent-Bank,

the petitioner would have got an appointment on compassionate grounds, in the erstwhile Bank of Thanjavur Limited. Reference to decisions reported in Smt. Sushma Gosain v. Union of India : (1990)ILLJ169SC and Smt. Phoolwali v. Union of India and Ors. A.I.R. 1991 S.C. 419 were made to show that there should not be any delay in making appointments on compassionate grounds as they are intended to mitigate the hardships due to death and redeem the family in distress. It is further alleged that the attitude of the first respondent is highly legalistic and shows want of compassion.

4. Originally only the Indian Bank alone was the respondent and when the matter came up for admission, the petitioner was directed to take notice to Indian Bank and-it was adjourned by one week to implead the Reserve Bank of India, Bombay. Accordingly, in W.M.P. No. 14135 of 1991, the Reserve Bank of India, Bombay has been impleaded and ranked as the second respondent in the proceedings.

5. By consent of parties, the writ petition has been taken up for final hearing and disposal.

6. The first respondent/Indian Bank has filed a counter affidavit contending that the writ petition is not maintainable in law as the petitioner cannot claim appointment on compassionate ground as a matter of right. It is stated that it is true that in the case of employees of the first respondent-Bank dying in harness, the first respondent-Bank considers the requests for appointment on compassionate grounds subject to the surviving widow/children conforming to the norms prescribed in the scheme evolved therefor. It is also stated in the counter affidavit that the petitioner's husband died on 25.3.1989 while he was in the service of the erstwhile Bank of Thanjavur, and the petitioner had made a request for appointment on compassionate ground to the management of the Bank of Thanjavur Limited, on 12.4.1989. It is also seen from the counter affidavit that though there was a private settlement between the Bank of Thanjavur Employees' Union and the Management of the erstwhile Bank of Thanjavur Limited in 1982 in this regard, the same was not given effect to and there were 14 cases pending right from 1980 and the previous Bank did not give any such appointment. The erstwhile Bank of Thanjavur got amalgamated with the first respondent on

20.2.1990 pursuant to the notification of the Government of India dated 19.2.1990 and all the assets and liabilities of the erstwhile Bank of Thanjavur were taken over by the first respondent only with effect from 20.2.1990 long after the death of the husband of the petitioner; and thus there is no right available to the petitioner to claim appointment on compassionate grounds. It is stated that though it is admitted that the petitioner made a request to the first respondent on 7.6.1990, it is only a fresh request and the same was considered duly on merits and a reply was sent on 10.4.1991 stating that the husband of the petitioner had expired long before the amalgamation of the erstwhile Bank of Thanjavur Limited, with the first respondent-Bank and therefore she was not eligible for compassionate appointment. It is also stated in the counter affidavit that the Provident Fund account of the deceased husband of the petitioner was settled by the erstwhile Bank of Thanjavur Limited on 30.5.1989 and by the time the gratuity could be paid, the Bank was placed on moratorium on 19.8.1989 and as soon as the erstwhile Bank of Thanjavur Limited was amalgamated with the first respondent-Bank on 20.2.1990, the gratuity part of terminal benefits were paid on 3.4.1990 to the petitioner and the petitioner could not claim to have acquired any right for seeking appointment on compassionate grounds merely because the terminal benefits were settled by the first respondent as transferee Bank. It is further stated in the counter affidavit that there are applications pending from legal heirs of the employees who died as far back as 15.12.1980 and that there are 14 such cases ranging from 1980-1989, and if the application of the petitioner is considered, many more applications under the above category may come and it would not therefore be possible for the first respondent-Bank to consider the applications from all such persons. It is claimed in the counter affidavit that the petitioner is not at all eligible for the appointment on compassionate ground as the petitioner's spouse expired when the Bank was under the control and management of erstwhile Bank of Thanjavur and either Clause (2) or Clause (10) of the Scheme of amalgamation will not apply to the case of the petitioner. It is also stated in the counter affidavit that the assets and liabilities mentioned in the Scheme refer only to the assets and liabilities which could be computed in terms of money alone had devolved on the first respondent-Bank and there is no liability at all to give appointment on compassionate grounds in respect of the employees of the erstwhile Bank of Thanjavur Limited who died when the Bank was under the management of the erstwhile Bank of Thanjavur Limited.

7. The second respondent has filed a counter affidavit wherein it is stated that the Bank of Thanjavur Limited got amalgamated with the first respondent on 20.2.1990 and that the petitioner is not entitled to claim appointment on compassionate grounds on the ground that the first respondent-Bank is obliged to give her such appointment due to the first respondent-Bank taking over all the assets and liabilities of the Bank of Thanjavur Limited. It is stated in the counter affidavit that as per Clause (16) of the Scheme of Amalgamation, any doubt arising in interpreting any of the provisions of the Scheme, it should be referred to the second respondent and its opinion shall be conclusive and binding on the transferor and the transferee Banks and the petitioner never referred the dispute to the second respondent and the dispute between the petitioner and the first respondent should have been referred to the second respondent. It is submitted in the counter affidavit that the writ petition is premature and that the second respondent is not a necessary party.

8. Mr. N.G.R. Prasad, learned Counsel appearing for the petitioner, refers to Section 45 of the Banking Regulation Act, 1949 (hereinafter referred to as the 'Act'), as well as the scheme of amalgamation of the Bank of Thanjavur Limited, Thanjavur and contends that the 'liability' includes the liability of the transferee Bank to give appointments on compassionate grounds to the legal heirs of the deceased employees of the erstwhile Bank of Thanjavur Limited and that since there was a settlement under Section 18(1) of the Industrial Disputes Act, 1947 in 1982 providing employment for the legal heirs of the deceased employees of the Bank of Thanjavur Limited, on compassionate grounds, the transferee Bank should also be held to be bound by that settlement and as such, the petitioner is entitled to the appointment on compassionate grounds in the transferee Bank, i.e., the Indian Bank, the first respondent herein. Learned Counsel relies upon the judgments reported in Smt. Sushma Gosain and Ors. v. Union of India and Ors. : (1990)ILLJ169SC and Smt Phoolwati v. Union of India and Ors. : AIR 1991 SC469 for the proposition that whenever appointments are to be made on compassionate grounds, there should not be any delay in making such appointments. Learned

Counsel further refers to a decision of the Supreme Court, reported in K.I. Shephard andothersetc. v. Union of India and Ors. : (1988)ILLJ162SC , for the petitioner that even the excluded employees have a right to be heard. According to Mr. N.G.R. Prasad, learned Counsel appearing for the petitioner, the approach of the first respondent is highly legalistic and there is no compassionate approach while considering the appointments to be made on compassionate grounds. Learned Counsel also relies upon the judgment reported in Shri Bhagwan Doss Chopra v. United Bank of India and Ors. : (1988)ILLJ427SC , wherein it has been held that a proceeding which had taken place on the date of the merger is binding on the transferee Bank and the transferee Bank can continue the proceedings thereafter. Reliance is also placed by Mr. N.G.R. Prasad, learned Counsel, upon another judgment of the Supreme Court reported in Bihar State Road Transport Corporation v. State of Bihar and Ors. 40 F.J.R. 571, wherein the right of the employee for reinstatement with back-wages with the undertaking which has been taken over by a Corporation has been upheld. Learned Counsel appearing for the petitioner further relied on a judgment of a Division Bench of this Court reported in K.P. Marimuthu (since deceased) Ramayee and Ors. v. The Superintendent of Police, Dharmapuri and Ors. : (1986)ILLJ229Mad , which it has been held that the doctrine of personal action dies with the person in the case of relief of reinstatement but with regard to other reliefs such as salary that would have been earned and the benefits which would have accrued, cannot be said to be abated on the ground that these are all personal actions.

9. Per contra, Mr. Venkataraman, for M/s. Aiyar and Dolia, learned Counsel appearing for the first respondent, contends that if there is any settlement under Section 18(1) of the Industrial Disputes Act, it will bind the parties to the settlement, only and it is a private settlement and as such, the petitioner cannot claim any right under the said settlement. Further, learned Counsel, submits that it is doubtful whether the deceased husband of the petitioner was a member of the Union which entered into the private settlement with the erstwhile Bank of Thanjavur Limited, Thanjavur, and hence it will not bind the first respondent-Bank. Mr. Venkataraman, learned Counsel further contends that the husband of the petitioner did not work under the first respondent-Bank and that though there is a scheme in the Indian Bank/the first respondent herein to give appointments on

compassionate grounds, the petitioner has no right to claim that appointment since the deceased husband of the petitioner was not in the service of the erstwhile Bank of Thanjavur Limited, Thanjavur when it got merged with the Indian Bank and states that the term 'liability' which occurs in the scheme of amalgamation will not take on the right to get an appointment on compassionate ground and hence it cannot be stated as a liability at all.

10. The short point for consideration in this case is whether the petitioner, as the wife of the deceased employee of the Bank of Thanjavur Limited, Thanjavur, which has got amalgamated with the first respondent-Bank, is entitled to get an appointment on compassionate grounds.

11. The facts are not in dispute. When the second respondent took over the Bank of Thanjavur Limited, Thanjavur under the provisions of the Act, the husband of the petitioner was not in the service of the Bank of Thanjavur Limited, Thanjavur and he had already expired. Under Section 45(5) of the Act, a scheme of amalgamation has been framed with regard to certain matters. Section 45(5)(a) of the Act reads as follows:

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities, privileges, the liabilities, duties and obligations of the banking company on its reconstruction or, as the case may be, of the transferee bank....

Section 45(5)(i) of the Act reads thus :

(i) the continuance of the service of all the employees of the banking company (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 are specifically mentioned in the Scheme) in the banking company itself on its reconstruction or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting or as the case may be, by which they were being governed, immediately before the date of the order of moratorium; Provided that the Scheme shall contain a provision that--

(i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government, to the said employees the same remuneration and the same terms and conditions of service (as are, at the time of such payment or grant, applicable) to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Reserve Bank (whose determination in this respect shall be final); (ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service (as are, at the time of such payment or grant, applicable) to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank; provided further that if any case under Clause (ii) of the first proviso any doubt or difference arises as to whether the qualifications and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank, (the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause) to the Reserve Bank whose decision thereon shall be final.

A scheme of amalgamation of the erstwhile Bank of Thanjavur Limited, Thanjavur with Indian Bank has been framed by the Central Government on 19.2.1990 under Section 45(7) of the Act. Clause (2) of the Scheme reads as follows:

2. As from the date which the Central Government may specify for this purpose under Sub-section (7) of Section 45 of the said Act, (hereinaf ter referred to as the prescribed date) all rights, powers, claims, demands, interests, authorities, privileges, benefits, assets and properties of the transferor bank, movable and immovable, including premises subject to ail incidents of tenure and to the rents and other sums of money and covenants reserved by or contained in the leases or agreements under which they are held, all office furniture, loose equipment, plant apparatus and appliances, books papers stocks of stationery, other stocks and stores, all investments in stocks, shares and securities, all bills receivable in hand and in transit, all cash in hand and on current or deposit account (including money

at all or short notice) with banks bullion, all book'debts, mortgage debts and other debts with the benefit of securities, or any guarantee therefor, all other if any, property rights and assets benefit of all guarantees in connection with the business of the transferor bank shall, subject to the other provisions of this scheme, stand transferred to, and become the properties and assets of the transferee bank; and as from the prescribed date all the liabilities, duties and obligations of the transferor bank shall be and shall become the liabilities duties and obligations of the transferee bank to the extent and in the matter provided hereinafter.' Clause (1) of the Scheme provides for the protection of the employees of the transferor Bank which is to the following effect; '(10) All the employees of the transferor bank shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 19th August, 1989. Provided that the employees of the transferor bank who have, by notice in writing given to the transferor or the transferee bank at any time before the expiry of one month next following the date on which this scheme has been sanctioned by the Central Government, intimated their intention of not becoming employees of the transferee bank, shall be entitled to the payment of such compensation, if any, under the provisions of the Industrial Disputes Act, 1947 and such pension, gratuity, provident fund and other retirement benefits as may be ordinarily admissible under the rules of authorisations of the transferor bank immediately before the close of business on 19th August, 1989. Provided further that the transferee bank shall in respect of the employees of the transferor bank who are deemed to have been appointed as employees of the transferee bank be deemed also to have taken over the liability for them of retrenchment compensation in the event of their being retrenched while in the service of the transferee bank on the basis that their service had been continuous and has not been interrupted by their transfer to the transferee bank.

If any doubt in interpreting the provisions of the Scheme arises, Clause (16) of the Scheme provides the remedy as follows:

(16) If any doubt arises in interpreting any of the provisions of this Scheme, the matter shall be referred to the Reserve Bank of India and its opinion shall be

conclusive and binding on both the transferee and transferor banks, and also on all the members, depositors and other creditors and employees of each of these banks and on any other person having any rights or liability in relation to any of these banks.' It is not in dispute that there is a scheme with the first respondent for providing employment for the dependants of the deceased employees on compassionate grounds. The Supreme Court has also repeatedly held that the purpose of providing appointment on compassionate ground is to mitigate the hardship caused due to death of the bread earner in the family and as such, the appointment should, therefore, be provided immediately to redeem the family in distress. But, on the facts and circumstances of the instant case, whether the petitioner is entitled to get an appointment on compassionate grounds is the question. The answer to this question depends upon the construction of the scheme of Amalgamation framed under the Act. Clauses (2) and (10) of the Scheme have been extracted above. Mr. N.G.R. Prasad, learned Counsel appearing for the petitioner, relied upon a judgment of the Supreme Court reported in K.L. Shephard and Ors. etc. v. Union of India and Ors. : (1988)ILLJ162SC and contends that the principles laid down by the apex Court will apply to the facts of this case. I do not think that that case has any relevance to the subject matter of this case. That was a case where some of the employees of the banking company were intended to be excluded, and the Supreme Court held that the employees to be excluded have to be specifically mentioned in the draft scheme since the Banking Company and the transferee Bank are entitled to object the scheme prepared by the Reserve Bank of India and make suggestions. Under Section 18(1) of the Industrial Disputes Act, it is well settled that a settlement entered into under the said section is binding upon the Parties to the settlement only. On the ground that the first respondent-Bank is not a party to the earlier settlement under Section 18(1) of the Industrial Disputes Act, 1947, Mr.Venkataraman, learned Counsel appearing for the first respondent, contends that the said settlement is not binding on the first respondent-Bank. In my view, though the said settlement binds only the parties to the settlement, it cannot be disputed that the deceased husband of the petitioner was a party to the settlement arrived at between the union and the Management of the Bank of Thanjavur Limited, Thanjavur. Though the husband of the petitioner had expired, she had made an application to the Bank of Thanjavur

Limited, Thanjavur as alleged in the affidavit and it is binding on the first respondent-Bank when the Bank of Thanjavur Limited, Thanjavur got amalgamated with the first respondent-Bank. For all practical purposes, it has to be viewed that the application for appointment on compassionate ground submitted by the petitioner was pending with the Transferor Bank, of course, with certain other applications. Before the application of the petitioner was to be considered by the Transferor Bank, the amalgamation had taken place under the Act so as to impose liability on the transferee Bank to give an appointment to the persons like the petitioner on compassionate grounds. The purpose of providing such an employment has been succinctly stated by the Supreme Court in Smt. Sushma Gosain and Ors. v. Union of India and Ors. : (1990)ILLJ169SC as follows :9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. It there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

I am of the view that the attitude of the first respondent-Bank should be in consonance with the views expressed above by the Supreme Court with regard to such appointments on compassionate grounds. I am n6t at all satisfied with the attitude taken by the first respondent-Bank legalistically, as has been contended by the learned Counsel for the petitioner, that the deceased husband of the petitioner was not in service when the Bank of Thanjavur Limited, Thanjavur got amalgamated with the first respondent-Bank. If the deceased husband of the petitioner had been alive, Clause (10) of the Scheme of amalgamation would have come into operation, Clause (10) of the Scheme will apply to the employees who are alive and in service when the amalgamation took place. The case before me is entirely different The scheme cannot be expected to foresee all the contingencies and that is why, the words'...., the liabilities, duties and obligations of the transferor bank shall be and shall become the liabilities, duties and obligations of the transferee bank....' have been used in a very wide manner in Clause (2) of the

Scheme. That apart, the transferee Bank is deemed to be a party for all contracts, deeds bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting. So, in my view, the wording of Clause (2) of the Scheme are couched in such a way to include such a liability of the transferee Bank to provide appointments on compassionate grounds for the dependants of the deceased employees of the erstwhile Bank of Thanjavur Ltd., Thanjavur. On the facts and circumstances of the case, there is no doubt that the petitioner has already made an application to the Bank of Thanjavur Limited, Thanjavur and has repeated it by another application to the transferee Bank, the first respondent herein. I am not able to accept the stand taken by the first respondent-Bank that the application of the petitioner is considered and she is given appointment on compassionate grounds, it will amount to opening of the flood gates. But in the counter-affidavit of the first respondent it is admitted that there are only 14 such cases, where the employees died on various dates ranging from 1980-1989. I think it is relevant to refer to the judgment of a Division Bench of this Court reported in K.P. Marimuthu (since deceased) and Ors. v. The Superintendent of Police Dharmapuri and Ors. : (1986)ILLJ229Mad . That was a case of a Head Constable who died during the pendency of the writ petition and his legal representatives filed a petition for bringing them on record in the place of the deceased writ petitioner and it was dismissed on the ground that the relief sought for in the writ petition was purely personal and aggrieved by the order of dismissal, writ appeal was filed and allowed. A defence was raised on behalf of the State that the legal representatives cannot pursue the remedy as the relief asked for was purely personal so far as the deceased Government servant was concerned. The Division Bench held at page 234 as under:.A relief of reinstatement undoubtedly cannot be granted after the death of a Government servant because if it is granted, it would be nugatory because the person who is reinstated in service is no more alive. Therefore, while it could be said that the doctrine that a personal action dies with the person is true in the case of relief of reinstatement, in the case of other reliefs such as salary that would have been earned and the benefits which would have accrued if the order of dismissal would not have been made, they cannot be said to abate on the ground that these are personal actions....

I am of the view that the very same principle has to be applied to the facts of this case and though the petitioner's husband was not in service when the Bank of Thanjavur Ltd., Thanjavur got amalgamated with the first respondent-Bank, the petitioner has a subsisting right under the settlement to get an appointment on compassionate grounds. When such a scheme is also in vogue with the first respondent-Bank, I do not see why the petitioner should be deprived of an appointment on compassionate grounds. Had the Bank of Thanjavur Ltd., Thanjavur, not been amalgamated with the first respondent under the provisions of the Act, the petitioner would have certainly been considered and given an appointment in the erstwhile Bank of Thanjavur Ltd., Thanjavur itself. There is neither justice nor grace in the first respondent putting forth the objection that the deceased husband of the petitioner was not alive when the erstwhile Bank of Thanjavur Limited, Thanjavur got amalgamated with the first respondent-Batik and hence the petitioner is not eligible for appointment on compassionate grounds. On the facts and circumstances of the case and for the foregoing reasons, the petitioner has to be considered for an appointment on compassionate grounds by the first respondent-Bank. In view of this, I direct the first respondent-Bank to take immediate steps for employing the petitioner in a suitable post commensurate with her educational qualifications within a period of six months from the date of this order. The writ petition will stand allowed. No costs.