

(2001) 04 PAT CK 0059

In the Patna High Court

Case No : Letters Patent Appeal No. 312 of 2001

Ajay Kumar

APPELLANT

Vs

Canara Bank and Others

RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

Citation : (2001) 04 PAT CK 0059

Final Decision : Dismissed

Judgement

1. This appeal is directed against the order dated 8.3.2001, passed by a learned Single Judge in C.W.J.C. No. 918 of 2001, rejecting the claim of the Appellant for appointment on compassionate ground.

2. Two writ applications being C.W.J.C. No. 13522 of 2000 and C.W.J.C. No. 918 of 2001 Sanjeev Kumar Sinha, etc. Vs. State Bank of India and Others etc. were filed for appointment on compassionate ground. The former was filed by one Sanjeev Kumar Sinha against the State Bank of India, whereas the latter was filed by Appellant-Ajay Kumar against the Canara Bank. Both the writ applications were heard together and disposed of by a common order dated 8.3.2001 by the learned Single Judge, whereby he allowed the claim of Sanjeev Kumar Sinha C.W.J.C. No. 13522/2000) Sanjeev Kumar Sinha, etc. Vs. State Bank of India and Others etc. but rejected the claim of the Appellant in C.W.J.C. No. 918/2001 for his appointment on compassionate ground. The Appellant is aggrieved by the order rejecting his claim for appointment on compassionate ground.

3. The admitted fact is that the father of the Appellant, namely, late Shiboo Sharma, was working as a Clerk in the Respondent-Canara Bank and died on 11.12.1999 while working in the Gandhi Maidan Branch of the said Bank just before twenty days of his due date of retirement, on 31.12.1999. The Appellant applied for appointment on compassionate ground on 18.1.2000 so that the family might meet the sudden economic crisis created due to the death of his father. When no steps were taken by the Bank, the Appellant came to this Court

in C.W.J.C. No. 7263 of 2000 for a direction to the Respondent-Bank to appoint him on compassionate ground. This Court disposed of the said writ application by order dated 25.9.2000 and directed the Respondent-Bank to consider the claim of the Appellant for his appointment on compassionate ground within two weeks of the receipt/production of a copy of the order. Thereafter, the Divisional Manager communicated by letter dated 16.12.2000 that the Appellant cannot be appointed on compassionate ground as no circumstances exist for appointment on the said ground. A copy of the said order was appended as Annexure 4 to the writ petition. The competent authority of the Head Office of the Canara Bank at Bangalore declined by order dated 14.12.2000 to consider the employment to the Appellant on compassionate ground and rejected his prayer on the ground of the financial position of the dependent family is satisfactory as family has got 3.70 lacs as terminal benefits. The spouse of the deceased employee is eligible for pensionary benefits either from the Bank or from military authorities as the deceased was an ex-service man. The spouse has to opt for either of the pensions. The family has two residential houses, one at Patna and the another at its native place Begusarai. The dependent family consists of two family members and the deceased had 20 days service left at the time of his death. The terminal benefits of the deceased employee settled to the dependents is more or less the same, the ex-employee would have received had he survived till the date of his retirement. A copy of the said order was appended as Annexure 5 to the writ petition. The Appellant challenged the decisions taken in the aforesaid two letters (Annexure 4 and 5).

4. The case of the Respondent-Bank is that it has formulated a scheme of employment on compassionate grounds With a view to help the dependent of the deceased employee, who dies in harness and to overcome the, immediate financial difficulties on account of sudden stoppage of main source of income. The Ministry of finance is the nodal agency for the Respondent-Bank and the guidelines issued by the Ministry of Finance from time to time are being followed. In the light of the guidelines issued by the Ministry of Finance, Respondent-Bank has issued a circular dated 8.8.1993 governing employment on compassionate ground. Thereafter, again the Ministry of Finance has directed the Respondent-Bank to consider the question of compassionate appointment, keeping in view the observation of the Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, The father of the Appellant died just 20 days before his due date of retirement. His death before the retirement has not changed the financial position of the family since his family has been given all the eligible terminal benefits and the spouse is also entitled to pension and his other properties were detailed in the order. The competent authority considered the case of the Appellant for compassionate appointment on the basis of the said circular and in the light of the observation made by the Supreme Court in the aforesaid case and found that there was no indigent circumstances necessitating employment to the Appellant for the reasons mentioned in the order.

5. The learned Single Judge after having, accepted the stand taken by the

Respondent-Bank has dismissed the writ application of the Appellant for compassionate appointment.

6. Article 14 of the Constitution guarantees equality before law and Article 16 thereof is one of the facets of the basic concept of equality contained in Article 14. It guarantees equal opportunities to all the citizens in the matter of employment to the offices in the State. However/Article 16 contains an enabling provision to make provision of reservation for Backward classes by the Government. Opportunity of employment has to be given to all the citizens in the public offices on the basis of open invitation and on the basis of merit. The other mode of appointment is violative of Articles 14 and 16 of the Constitution. However, in a case of sudden death of a Government employee, provisions have been made to provide employment to the family to meet the immediate financial crisis. The appointment is not to be made on the ground of descent to give a member of the said family a post much less a post for the post held by the deceased employee. The appointment on compassionate ground is an exception to the general rule and the main consideration for appointment on such ground is the financial crunch due to untimely death of the bread-earner. If the family has financial resources to (sic) then compassionate appointment is not to be made as in such a situation, it will become an appointment on the ground of descent. The Apex Court in the case of Umesh Kumar Nagpal (supra) at paragraph No. 2 considered the question of compassionate appointment, which is reproduced below:

2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public service should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post; much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied,

that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Class III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatments given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment, which are suddenly upturned.

7. The same view has been reiterated by the Apex Court in the case of Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, wherein it was held as follows:

The object underlying a provision for grant of compassionate employment is to enable the family of deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions of making appointment by following prescribed procedure. It is the nature of an exception to the general provisions. An exception cannot subsume the main provision and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does, not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee.

8. Recently in the case of Sanjay Kumar Vs. The State of Bihar and Others, the Apex Court has held that the compassionate appointment is intended "to enable the family of the deceased employee to tide over the sudden crisis resulting due to the death of the bread-earner, who had left the family in penury and without any means of livelihood."

9. The question of compassionate appointment was also considered by a Division Bench of this Court, to which one of us (Nagendra Rai, J.) is a party, in the case of Ashok Kumar Choudhary Vs. The State of Bihar and Others, and in paragraphs No. 8 and 9, it was held as follows:

8. Employment is a national property and is to be shared by all on the basis of their merit and qualification. No one should be discriminated on irrational ground. Public office should be filled up by open invitation and on the basis of merit. In law there is no other mode of appointment in Government service. The constitutional mandate does not permit entry through backdoor or preference on the ground of caste, creed or being a dependent of the Government employee. The Constitution prohibits giving preference in the matter of employment on the ground of descent, and that would violate the equality clause.

9. The experience showed that in many cases on the death of a Government employee the family is in a financial distress and needs immediate financial help. Taking into consideration this aspect of the matter purely on humanitarian ground to tide over the financial crisis due to the death of the bread-earner, provisions have been made by the Central Government, State Government and other Corporations to provide employment on compassionate ground to the dependants on the death of a Government employee in Class III and IV posts (non-manual and manual). The Apex Court has upheld the said provisions on the ground that the object of compassionate appointment is to enable the family to tide over the sudden crisis and the object is not to give a member of the family a post on the ground of descent.

10. Learned Counsel for the Appellant" relied upon a judgment of the Supreme Court in the case of Balbir Kaur v. Steel Authority of India reported in AIR 2000 S.C. 1596 and on the basis of the same submitted that even if the family of a deceased employee has other sources of income, the compassionate appointment cannot be denied. It appears that the Steel Authority of India Ltd. introduced a Family Benefit Scheme in terms of NJSC Tripartite Agreement of 1989 providing regular monthly income to the dependent of the deceased employee. The stand of the Steel Authority of India Ltd. was that in view of the introduction of the aforesaid Scheme, the scheme for compassionate appointment, has come to an end. The Apex Court, taking into consideration the facts of that particular case, held that the compassionate appointment cannot be refused since the Tripartite Agreement expressly preserves the earlier circular to the effect that any benefit-conferred by the earlier circular shall continue to be effective and the earlier rules as a matter of fact were not prohibitive of such compassionate appointments but lend affirmation to such appointments.

11. As the said decision in the case of Balbir Kaur (supra) is not an authority on the point that even if the family of the deceased employee is financially sound and has other sources of income, the compassionate appointment is to be given to the dependent of the deceased employee on his death, the same, in our view, is not applicable to the case of the Appellant.

12. Thus, it is well-settled that the compassionate appointment is to be made only in a case of sudden financial crisis and if there is no financial crisis due to untimely death of the deceased employee, the compassionate appointment cannot be given only on the ground that the dependent is the son of the deceased employee.

13. In the present case, the admitted fact is that the father of the Appellant died just twenty days before his due date of retirement, so the family was aware of the fact that the deceased was to retire soon. The benefits, which would have accrued to the deceased employee after his retirement, have been made available to the family. The family has also other resources such as houses etc. It has also got retiral benefits and pension of more than Rs. 1,800/- per month. Thus, it cannot be said that the family is in financial crisis due to untimely death of the deceased employee.

14. For-the aforementioned reasons, we do not find arty merit in this appeal and it is, accordingly dismissed.