(2015) 06 KL CK 0058

In the High Court Of Kerala

Case No : W.P(C). No. 38363 of 2003 (P)

Ajithkumar G.K. APPELLANT

Vs

Canara Bank and Others RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Citation : (2015) 3 KHC 512 : (2015) 3 KLJ 35

Hon'ble Judges : S.P. Chaly, J

Bench : Single Bench

Advocate : H.B. Shenoy, B. Ashok Shenoy, Lakshmi B. Shenoy, Anil Kurian Thomas, Sobhan George and Abu Mathew, for the Appellant; M.C. Sen, Sr. Adv., M.P. Sreekrishnan and Shahna Karthikeyan, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.P. Chaly, J.—The petitioner in the writ petition is the son of one V.C. Gopalakrishna Pillai, who was employed as a Clerk in the services of the 1st Respondent Bank. While serving the Bank, Sri. Gopalakrishna Pillai died on 20.12.2001, leaving behind his wife, petitioner and three daughters. The subject matter of the lis started with Ext. P1 application submitted by the petitioner before the competent authority of the Bank in order to consider him for compassionate appointment in accordance with Ext. P7 Scheme launched by the Bank. In Ext. P1 application, petitioner has also sought to relax age qualification since he has exceeded the age as prescribed under Ext. P7 Scheme. By Ext. P2 order, the Bank has rejected the request of the petitioner by stating that the deceased had only a short period of service, family pension is paid and that he was over aged. Thereupon, the petitioner has submitted another application dated 07.01.2003 before the Deputy General Manager of the Bank, which is Ext. P3. As revealed from Ext. P3, he has requested to re-consider the whole issue on the basis of Ext. P1 application submitted by him and further that he has only exceeded one year in age against the age prescribed under Ext. P7. The said request made by the petitioner to re-consider the matter was also declined by the Bank by issuing Ext. P4 dated 20.01.2003, reiterating the very same reasons as stated in Ext. P2.

2. Having failed to secure the required results from the application and re-consideration application submitted by the petitioner, the wife of the deceased employee has filed Ext. P5 application before the Executive Director of the Bank, Bangalore dated 04.02.2003, in which she has requested to have maximum leniency in the matter of employment request of the petitioner, since after the death of the deceased employee, the family is put to several difficulties including the difficulties faced by the married daughters. Anyhow, the Respondent Bank by Ext. P6 order dated 18.02.2003 has declined the relief sought for without assigning much reasons, but stating that the same was considered sympathetically.

3. Having confronted with such a situation, petitioner has approached this Court by this writ petition. The Bank has filed a Counter Affidavit as well as additional Counter Affidavit mainly contending that the subject matter of appointment in accordance with Ext. P7 Scheme, is the sole discretion of the Bank and when the Bank declined relief, the petitioner cannot compel the Bank to take a decision in a particular manner.

4. Heard the learned counsel for the petitioner as well as the learned Standing Counsel for the Bank.

5. It is worthwhile to note the relevant provision of Ext. P7 Scheme regarding the age limit prescribed before proceeding further, so as to consider the whole issue raised by the petitioner in this writ petition. The maximum age limit prescribed as per the notification is 26 years in both Clerical Posts and Sub-staff category and the minimum age prescribed is 18 years, apart from the age relaxation provided to the reserved category candidates. Paragraph 5.1 of the Scheme empowers the competent authority of the Bank to relax the age of general candidates by five years but on condition that there are no dependents of the deceased employee within the prescribed age limit available for employment. So, the leverage granted to the Bank to exercise its discretion for relaxation of age is the presence or absence of another dependent candidate within the age limit prescribed under Ext. P7 alone.

6. The learned counsel for the petitioner submits that when there is power conferred on the competent authority to relax the age on the condition prescribed under Ext. P7, the Bank is not at liberty to reject an application with a request to relax the age limit at its sweet will and pleasure, but its discretion is confined only to one circumstance mentioned under Ext. P7 Scheme. On the other hand, the learned Standing Counsel for the Bank submits that the Bank has already considered the application, reconsidered it and further re-considered it on the basis of the application submitted by the wife of the deceased employee. She reiterates the contention that the petitioner who seeks compassionate employment cannot make any compulsion to the Bank, as per the

relevant Scheme, to accept or reject, and also taking into account the circumstances leading to the request for relaxation of the age.

7. On a reading of paragraph 5.1 of the Scheme, it is very clear that the flexibility granted for exercising the discretion of the competent officer is only to the extent of the availability of a suitable person within the prescribed age limit and nothing more. When the flexibility of the competent officer is limited to a particular point, then the competent officer is not expected to exceed the flexibility given to him as per the Scheme. Therefore, definitely, there should have been a finding as to whether there was any competent person as provided under paragraph 5.1 of the Scheme to overlook the request of the petitioner for age relaxation in order to secure a compassionate appointment.

8. Having considered the rival contentions raised by the parties and on perusal of the relevant orders passed by the Bank, I find that the Bank has refused to relax the age mainly for the reason that family pension is paid by the Bank to the family of the deceased and therefore, there is no justification for the petitioner to seek compassionate employment. When a request is made by the petitioner in his application to relax the age, the Bank basically should look into the Scheme and then consider the same in accordance with the stipulations contained in the Scheme and not otherwise. So also, the reasons spelt out in the Scheme for rejecting the request for age relaxation should be spelt out in the order but from Exts. P2, P4 and P6 orders, I do not find any such reason stated by the Bank in order to reject the application submitted by the petitioner.

9. The learned counsel for the petitioner has brought to my notice the decision rendered by the Hon''ble Supreme Court in ''Canara Bank and Another v. M. Mahesh Kumar'' [Civil Appeal No. 260/2008] and other connected cases and canvassed for the proposition that the payment of terminal benefits has nothing to do with seeking appointment as per the Scheme provided by the Bank for compassionate appointments. The learned counsel has also brought to my attention the decisions taken into consideration by the Hon''ble Apex Court in the decision cited supra, and contended that the petitioner is entitled to get the benefit of the principles laid down in those judgments. He has also brought to my notice the decision reported in General Manager, Personnel Wing, Canara Bank and Others Vs. Priya Jayarajan P.P., (2001) 1 ILR (Ker) 496 : (2002) 2 LLJ 1026 , wherein also the case concerning the compassionate appointment as per the Scheme of the very same Bank was considered by the Court and held in paragraph 5 of the said judgment that the plea that on the death of the deceased, the legal heir was given terminal benefits is not a ground to non-suit her while she seeks compassionate appointment as per the Scheme launched by the Bank.

10. On the other hand, the learned Standing Counsel for the Bank has brought to my notice a decision of the Hon''ble Supreme Court in ''State Bank of India and Another v. Somvir Singh'' [Civil Appeal No. 743/2007] and contended that compassionate appointments are solely within the discretionary realm of the

Bank and the person who seeks compassionate employment cannot compel the Bank to make appointment, nor the Courts can interfere with the discretionary power vested with the Bank and direct to appoint a person by invoking the compassionate scheme.

11. As I have already stated, since the reasons given by the Bank in the order impugned are not at all in terms with Ext. P7 Scheme launched by the Bank, I am of the opinion that while the application and re-consideration application submitted by the petitioner were considered by the Bank, the Bank did not advert properly to the laudable object of the Scheme, especially its power to relax the age as provided under paragraph 5.1 of the Scheme. Therefore, in my view, the orders impugned Exts. P2, P4 and P6 are liable to be quashed and further direct the Bank to reconsider the issues raised by the petitioner taking into account the Scheme of the Bank and also the principles laid down by the Hon''ble Apex Court in the decisions cited supra and any other relevant decision that is pointed out by the petitioner. The statutory and administrative authorities are also bound to follow the principles laid down in judgments rendered in rem by the superior Courts like the Hon''ble Apex Court as well as the High Courts. When such principles laid down by the Courts are followed by the administrative authorities, they can exercise their power conferred on them confidently and with precision and if such a course of action is adopted by the administrative authorities, that will prevent to a certain extent the docket explosion in Constitutional Courts. The administrative authorities are also bound to follow the principles laid down in the judgments of the Hon''ble Apex Court as well as the jurisdictional High Courts. Accordingly, Exts. P2, P4 and P6 orders are quashed and the following directions are issued.

12. Since the writ petition is of the year 2003, it is only proper that the petitioner is directed to produce a copy of this judgment along with copy of Ext. P1 application and subsequent representations and the other documents produced in the writ petition before the competent authority of the Bank, within a period of one month from the date of receipt of a copy of this judgment. There will be a further direction to the Bank to take a decision in the matter, as directed above, within a period of 45 days thereafter.

Writ petition is allowed as above and in the facts and circumstances of the case, without any order as to costs.