
(2016) 06 KL CK 0027
In the High Court Of Kerala
Case No : W.P.(C). No. 16592 of 2016 (Y)

Ajithkumar G.K.

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 09-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 ILRKerala 378 : (2016) 3 KerLJ 52 : (2016) 3 KHC 307 :
(2016) 2 KLT 914 : (2017) 1 LLN 164 : (2016) 4 SCT 145

Hon'ble Judges : V. Chitambaresh, J.

Bench : Single Bench

Advocate : Sri. B. Ashok Shenoy, Sri. K.V. George, Sri. P.N. Rajagopalan Nair,
Sri. P.S. Gireesh and Sri. Riyal Devassy, Advocates, for the Appellant; Sri. P.
Gopinath Menon, SC and Dr. Thushara James, SC, for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.—Mr. V.C. Gopalakrishna Pillai while working as a clerk in the services of the respondent Bank died in harness on 20.12.2001 leaving behind his widow, three daughters and a son (who is the petitioner). The daughters were married at that time and hence the petitioner filed Ext.P1 application dated 15.1.2002 for compassionate employment in the Bank. The petitioner had failed in his SSLC Examination and could be accommodated in the sub-staff cadre only as per Ext.P9 scheme of employment on compassionate grounds. But the Bank by Ext.P2 order dated 30.10.2002 rejected the application on the ground that the deceased employee had only a short period of service left. The fact that the family of the deceased employee is in receipt of family pension and that the petitioner is over aged for the post are the other reasons stated. The petitioner thereupon filed Ext.P3 petition dated 7.1.2003 reiterating his claim and sought for reconsideration of Ext.P2 order of rejection. The Bank by Ext.P4 order dated 20.1.2003 informed the petitioner about its inability to reconsider its decision on the plea that no fresh grounds have been stated.

2. The mother of the petitioner later submitted Ext.P5 petition dated 4.2.2003 to the Bank highlighting the pitiable condition in which the family is placed and seeking their indulgence. The Bank by Ext.P6 order dated 18.2.2003 turned down the request on the ground that the application put in by the petitioner had been considered in detail. The orders rejecting the claim for compassionate employment by the Bank were challenged by the petitioner in W.P.(C) No. 38363/2003 on the file of this Court. This Court by Ext.P7 judgment dated 16.6.2015 castigated the stand of the Bank and directed reconsideration of the issue after quashing the impugned orders. The Bank by Ext.P8 order dated 16.6.2015 again rejected the claim on the ground that the family is not in indigent circumstances since it is in receipt of terminal benefits. Ext.P8 order negating the claim for compassionate employment is impugned in this writ petition with a further prayer for immediate appointment in the Bank.

4. The Bank has filed a counter affidavit pointing out that the father of the petitioner had only four months of service left when he died in harness on 20.12.2001. The father would have supported his family with his pension (approximately worked at Rs. 6398/- per mensem) had he retired from the services of the Bank in the normal course. The Bank contended that the widow of the deceased employee has been sanctioned a family pension of Rs. 4637.92 per mensem in addition to the terminal benefits to the tune of Rs. 3.09 lakhs. The Bank asserted that the objective underlying Ext.P9 Scheme is to help the dependants of the employee to tide over the immediate financial crisis on account of his death. It is the case of the Bank that mere eligibility of the petitioner will not clothe him with a right to claim employment under Ext.P9 Scheme. The Bank reiterated that the family of the deceased employee was not in indigent circumstances necessitating employment to one of his dependants in the instant case. The question of relaxation of age to put in a claim does not arise since the petitioner for reasons afore stated is not otherwise eligible for compassionate employment.

5. I heard Mr. Ashok Shenoy, Advocate on behalf of the petitioner and Mr. P. Gopinath Menon, Advocate as well as Dr. Thushara James, Advocate on behalf of the Bank.

6. It is beyond dispute that Ext.P9 Scheme of employment on compassionate grounds formulated by the Bank was in force when the father of the petitioner died in harness on 20.12.2001. The objectives of Ext.P9 Scheme as stated therein is as follows:-

Objectives : The "Scheme" of employment on compassionate grounds (hereinafter called "Scheme") has been evolved to help dependents of our employees who die or become totally and permanently disabled while in harness and to overcome the immediate financial difficulties on account of sudden stoppage of the main source of income.

The employment under the "Scheme" will be considered only if there are

indigent circumstances necessitating employment to one of the dependents and the deceased employee's service record is unblemished. Mere eligibility will not vest a right for claiming employment. The Bank reserves the right to reject the application received under this "Scheme".

There is no case for the Bank that the service record of the deceased employee is blemished or that his family has other source of income to pull along after his death. The petitioner had specifically stated in Ext.P1 application for employment under compassionate grounds that the family is entirely dependent on the family pension yet to be sanctioned then. That the financial position of the family is pitiable has been restated in Ext.P5 representation put in by the mother of the petitioner in support of the claim. It transpires from the pleadings that the only asset devolved on the legal heirs of the deceased employee is the house wherein the petitioner resides. The petitioner adds that a major portion of the terminal benefits has been applied to discharge the loan availed for the marriage expenses of his sisters. What then is there to show that the family of the deceased employee is not in an indigent position in order to disentitle the petitioner for compassionate employment?

7. The Bank has in Ext.P8 order observed as follows:-

"In the present case, there were no minor dependent children or unmarried daughter in the family for whom future financial assistance was required. The daughters of the deceased employee were already married and settled at the time of his demise. The other dependents are his spouse and his son Sri. Ajith Kumar who was then aged 26 years & 8 months. The family was residing in their own house. The last drawn net salary of Sri. V.C. Gopalakrishna Pillai as on 2001 was Rs. 9,772/- and had he survived for another 4 months he would have otherwise supported his family with the pension he would have received from the Bank (in normal course approximately Rs. 6,398/- only). After the demise of the employee, his spouse Smt. Omana Amma was sanctioned with a family pension of Rs. 4637.92 then and which is present Rs. 5825/- p.m. That apart Net terminal benefits to the extent of Rs. 3.09 lacs (after closure of liability of Rs. 13,942/-) as on 2002 which were available to dependents.

Taking all the factors into consideration, the family circumstances prevailing then I am of the considered view that there never existed any indigent circumstances for the dependent family of Late Sri. V.C. Gopalakrishna Pillai to say that the family was in such crisis which would not have been able to overcome without job being offered under Compassionate Appointment."

Thus the only reason to hold that the family of the deceased employee was not in indigent circumstances is that they were in receipt of family pension in addition to the terminal benefits.

8. This Court in *Canara Bank v. Priya Jayarajan* [ILR 2001 (1) Kerala 496 (DB)] has held that grant of terminal benefits is of no consequence in considering the claim for compassionate employment. The Supreme Court has reaffirmed this

principle in *Canara Bank & another v. M. Mahesh Kumar* [(2015) 7 SCC 412] and has observed as follows as regards the compassionate employment:

"19. Insofar as the contention of the appellant Bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of the 1993 Scheme says that in case of the dependant of the deceased employee to be offered appointment is a minor, the Bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the Bank would keep the appointment open till the minor attains majority."

The Bank was alerted of the above dictum of the Apex Court even in Ext.P7 judgment in the earlier round of litigation where under the claim for compassionate employment was directed to be considered anew. A clause similar to the one referred to in Mahesh Kumar's case (*supra*) can be found in Ext.P9 Scheme of employment on compassionate grounds as well. It reads:-

"32. In case the dependant of deceased employee to be offered appointment is a minor, the Bank may keep the offer of appointment open till the minor attains the age of majority provided a request is made to the bank by the family of the deceased employee and the same may be considered subject to rules prevailing at the time of consideration."

There can therefore be no quarrel to the proposition that receipt of family pension or terminal benefits is not a disabling factor for the dependant family member to claim compassionate employment.

9. It may at once be noticed that the very same Bank was a party in *Priya Jayarajan's* case (*supra*) as well as in *Mahesh Kumar's* case (*supra*) wherein the law has been settled. It has been categorically laid down therein that grant of family pension or the payment of terminal benefits cannot be treated as a substitute for providing compassionate employment. The Bank was given an opportunity to make amends by alerting it of the law even while remitting the case for fresh consideration in Ext.P7 judgment. The Bank has now in Ext.P8 order has come up with the same plea that compassionate employment cannot be given since the family is not in indigent circumstances. The reason to hold that the family of the deceased employee is not in indigent circumstances is the fact that they are in receipt of family pension and terminal benefits I can only view the stand of the Bank as absolute audacity with scant regard for the law laid down by this Court and the Apex Court. No purpose would be served in directing a reconsideration of the issue by the Bank as the same would be an exercise in futility and the petitioner is in tenterhooks for long. I am fortified in this view by *K.G.A. Hotels and Resorts Pvt. Ltd. v. State of Kerala* [2015 (2) KLT 683] of course rendered under the Municipality Act.

10. The father of the petitioner died on 20.12.2001 and Ext.P1 application for

employment under compassionate grounds was submitted on 15.1.2002 within a period of one month. The petitioner was on the date of Ext.P1 application aged 26 years and 8 months and the maximum age for both clerical post and sub-staff category in Ext.P9 Scheme is 26 years. But Ext.P9 Scheme itself provides that the Bank may at its discretion relax the upper age limit upto a maximum limit of 5 years. This is of course subject to the condition that no other dependant of the deceased employee is available within prescribed age limit for compassionate employment. There is no case for the Bank that any other dependant in the family of the deceased employee within the prescribed age limit is available for compassionate employment. The Bank in Ext.P8 order has refused to consider the question of relaxation of age on the ground that the petitioner is not entitled for compassionate employment. Such disentitlement was found solely on the basis that the family of the petitioner is not in indigent circumstances due to reasons already mentioned. Ext.P9 Scheme contains special provisions which indicate that the Bank is not averse to give appointment even if the applicant is employed elsewhere. It reads:

"10. Special Provisions

If the applicant is employed elsewhere, and if the job in our Bank is going to help him/her financially, such requests may also be entertained as per norms.

If (any member) of the family is already employed with us we may consider giving employment to another member of the family depending on the merits of individual cases."

I fail to understand as to why the petitioner should be deprived of the benefit of the compassionate employment as per Ext.P9 Scheme after relaxing the upper age limit by a short period of about 8 months.

11. The minimum requirement for appointment in the sub-staff cadre of the Bank is simple knowledge of reading and/or writing english or the regional language as per Ext.P9 Scheme. The entitlement of the petitioner for appointment in the sub-staff cadre under Ext.P9 Scheme of employment on compassionate grounds is beyond any pale of doubt. The Bank has of course reserved its right to reject any application received under Ext.P9 Scheme which could only be on reasonable and just grounds. I find that the Bank has rejected Ext.P1 application for compassionate employment put in by the petitioner on totally unreasonable and arbitrary grounds. A nationalised Bank which is a State under Article 12 of the Constitution of India has unjustifiably denied the petitioner of an eligible post for 14 long years for which he has to be compensated. The petitioner is now aged 40 years and the agony which he and his mother underwent knocking the doors of the Bank for compassionate employment envisaged under Ext.P9 Scheme cannot be described in words. This is a fit case where the Bank should be directed to pay an exemplary costs of Rs. 5 lakhs to the petitioner for loss of pay and allowances for these 14 years.

12. I quash Ext.P8 order and direct the Bank to consider the petitioner for

appointment under Ext.P9 Scheme of employment on compassionate grounds in the sub-staff cadre within two months. The Bank shall in addition pay a sum of Rs. 5 lakhs to the petitioner as compensation for the reluctance shown in giving compassionate employment in time.

13. The Writ Petition is allowed. No costs.