
(2003) 06 MP CK 0019

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2410 of 2001

Akeel Ahmed Khan

APPELLANT

Vs

General Manager, State Bank of India and Others

RESPONDENT

Date of Decision : 23-06-2003

Acts Referred:

Citation : (2003) 4 MPHT 167

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Rohit Arya, for the Appellant; Ashish Shroti, for the Respondent

Final Decision : Allowed

Judgement

K.K. Lahoti, J.—The object of compassionate appointment is to enable the family of deceased employee to tide over sudden financial crisis due to death of bread earner who left the family in penury and without means of livelihood. As a rule, appointment in the public service may be made strictly on the basis of open invitation of applications through Employment Exchange from the open market on merits. No other mode of appointment nor any consideration is ordinarily permissible. Neither the Govt. nor the public authorities are at liberty to follow any other procedure or relax the qualification laid down by the Rules for the post. However, to this general rule, there are some exceptions carved out in the interest of justice, or in public interest and to meet out certain contingency. One such exception is in favour of 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 considerations unless some source of livelihood is provided, the family would not be able to meet both the ends. The whole object of granting compassionate appointment is to enable the family to tide over sudden financial crisis resulting due to death of bread earner.

2. Petitioner Akeel Ahmed Khan has filed this petition seeking direction against the respondents to provide compassionate appointment. Petitioner's father late

Ali Ahmed Khan, was an employee of respondents and at the time of death, he was working as Deputy Head Cashier. He died because of cancer on 27-4-2000. The petitioner, who is a literate person, after death of his father on 27-4-2000, filed an application for compassionate appointment to respondents. The aforesaid application was rejected vide Annexure P-7, dated 27-12-2000 on the ground that the petitioner did not fulfil the requisite criteria for compassionate appointment and after the death of father of petitioner, the family was paid sufficient amount by way of PF, gratuity etc., and the family is also getting monthly pension from the respondents.

3. Respondents contested the petition on the ground that father of the petitioner was Deputy Head Cashier and lastly posted at Sehora Branch of the respondents Bank. Family of deceased was ascertained retiral benefits to the tune of Rs. 6,98,826/-. The liability of deceased amounting to Rs. 1,66,397 deducted and remaining amount was paid to the family of the deceased. The deceased family is also getting family pension at the rate of Rs. 6,100/- p.m. The aforesaid amount will meet the requirement of family. In fact, the family is not in harness and the petitioner is not entitled for compassionate appointment. In this regard, the respondents have relied upon judgments of Apex Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, , Managing Director, MMTC Ltd., New Delhi v. Pramoda Dei alias Nayak, (1997) 11 SCC 390 , Aruna Singh v. State of Bank of India 2002 Lab.IC 860. Relying on aforesaid, the learned Counsel for respondents contends that the family of petitioner possesses sufficient assets and receiving pension. So, no case is made out for appointment of petitioner on compassionate ground.

4. In reply to this, petitioner contends that the father of the petitioner died of cancer and family has suffered huge financial loss because of his long treatment and after death, last ceremonies. The amount received against gratuity and provident fund has been utilised to meet out the aforesaid liabilities. The family has to pay other loans. The pension amount is meagre which is unable to meet out the needs of family. At presently, the condition of family is critical and if the compassionate appointment is not provided the family will not be able to meet out the financial crisis. The entire object of compassionate appointment is to enable the family of the deceased to tide over the sudden crisis due to death of bread winner. The respondents have wrongly denied compassionate appointment on untenable ground. In each case of death, the aforesaid amount is payable. If such amount is taken into consideration, then the entire purpose of compassionate appointment will frustrate.

5. Considering rival contentions of the parties, it is not in dispute that the father of the petitioner was suffering from cancer since 23-10-1974. The petitioner has placed various documents showing huge expenditure in the treatment of the petitioner's father. The person who is suffering from cancer since near about 25 years has to invest huge amount in his treatment and apart from this, the family also suffered mental agony and financial crisis. Apart from medical expenses, the

family has to bear other expenses like food, travelling and others. The other family members remain busy in the treatment of ailing person. In the circumstances, if after the death of petitioner's father some amount has been paid by way of gratuity and provident fund, it will not be sufficient to meet out the aforesaid exigency arising after death of petitioner's father. The respondents have framed policy (Annexures P-6 and P-7) for providing compassionate appointment. The aforesaid policy has been made to provide compassionate appointment because of sudden death and crisis arose in the family due to death of bread winner. If such appointment is refused merely on the ground that some amount towards gratuity and provident fund was paid to the deceased's family will frustrate the entire purpose of compassionate appointment.

6. The decisions relied upon by the learned Counsel for respondents in the cases of Umesh Kumar Nagpal and Pramoda Dei (supra) are not applicable in the present case. The factual position in the aforesaid cases is entirely different. The Apex Court in Umesh Kumar Nagpal's case (supra) in Para 2 held :--

"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 services 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 dependants 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 must 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 Classes 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 treatment given to such dependant 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."

The Apex Court declined the compassionate appointment on the ground of delay. The Apex Court further held :--

6. For these very reasons, the compassionate employment can not be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole bread winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

In the present case, the situation is entirely different. The application for compassionate appointment was made immediately on 1-9-2000 after the death of the petitioners' father, who died on 27-4-2000. The application was rejected on 27-12-2000 (Annexure (P-2) within seven month from the death of petitioner's father. The factual circumstances in the case of Nagpal (supra) were different and do not exist in the present case. The respondents can not deny compassionate appointment to the petitioner on those grounds. The facts were entirely different in Pramoda Dei's case (supra). In that case, the lady who was seeking compassionate appointment was living separately from her husband and was paid by the employee a sum of Rs. 200/- p.m. towards maintenance. After the death of her husband, she filed an application for compassionate appointment. The Apex Court considering the aforesaid circumstances directed appellant to make an ex gratia payment of Rs. 25,000/- to Pramoda Dei to enable her to maintain herself after the death of her husband. The third case which have been relied upon by the learned Counsel for respondents is of Patna High Court. In that case, the Patna High Court considering the emoluments paid to the employee and the pension found that it was sufficient for refusing compassionate appointment. In that case, the deceased was not died because of long ailment of cancer and the factual position of that case was entirely different.

6-A. The learned Counsel for petitioner relied upon Apex Court judgment in Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , wherein the Apex Court held :--

"8. The object underlying a provision for grant of compassionate employment is

to enable the family of the 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 dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception can not subsume the main provision to which it is an exception 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 dependant of a deceased employee. In *Umesh Kumar Nagpal v. State of Haryana*, this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that 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. In that case the Court was considering the question whether appointment on compassionate grounds could be made against posts higher than posts in Classes III and IV. It was held that such appointment could only be made against the lowest posts in non-manual categories. It was observed (SCC p. 140, para 2) :

"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 treatment given to such dependant 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."

9. In the said case, this Court has considered the earlier judgment in *Sushma Gosain v. Union of India*. It has been observed that the said judgment "has been misinterpreted to the point of distortion" and that it does not justify

compassionate employment as a matter of course."

7. In *Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others*, , the Apex Court considering the payment of gratuity and family benefit scheme held :--

"13.....

The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family-- this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation."

and in Para 16 the Apex Court further held :--

"16. Adverting to the provident fund, be it noted that the same is payable to an employee under the provisions of a statute and this statutory obligation can not possibly be deferred in the event of an untimely death of a worker or an employee. As noticed above, the family needs the money in lump-sum and availability of this amount is the only insulating factor to such a grief-stricken family. The amount is payable in one lump-sum and as a matter of fact it acts as a buffer to the retirement of or on the death of an employee. Situations are not difficult to conceive when the family needs some lump-sum amount but in the event of deposit of the same with the employer, the heirs of the deceased employee could be put into the same problems of realities of life, even though, if this money would have been made available to them the situation could have been otherwise."

8. In view of the aforesaid, the Apex Court found that the case was wrongly rejected by the respondent and directed Steel Authority of India to consider the case for compassionate appointment. In view of the aforesaid settled position of law by the Apex Court, the facts of the present case can be seen. The father of the petitioner died because of long ailment of cancer which he was suffering since 1974 and ultimately died on 27-4-2000. It is a matter of common knowledge that in the ailment of cancer, the entire family suffers mental agony and financial loss. To survive the member of family, mere payment of some amount towards gratuity and pension will not be sufficient to meet out the crisis. The petitioner made an application for compassionate appointment placing all the material facts before the respondents, but the respondents have not properly considered the case of the petitioner and have declined merely on the ground that some amount was paid to the petitioner and the family is getting pension. The aforesaid is not sufficient to deny the compassionate appointment. The policy of the respondents provides compassionate appointment and until and

unless the respondents are satisfied that the family is in a position to meet the aforesaid crisis only in that circumstances, the compassionate appointment may be refused, but the circumstance of the present case do not satisfy aforesaid requirement and the petitioner is entitled for compassionate appointment.

9. In view of the aforesaid, the order (Annexure P-7) rejecting the application for compassionate appointment of the petitioner is hereby quashed. The respondents are directed to reconsider the matter in view of the directions issued hereinabove and decide the application of the petitioner for compassionate appointment afresh within a period of three months from the date of communication of this order to the authority.

10. With the aforesaid, this petition is allowed with costs which is quantified Rs. 1,000/-.