(2008) 05 P&H CK 0141

In the Punjab And Haryana At Chandigarh

Birbati Rani APPELLANT

Vs

State Bank of Patiala and Others RESPONDENT

Date of Decision : 12-05-2008

Acts Referred:

Citation : (2008) 119 FLR 1013 : (2008) 152 PLR 289 : (2009) 5 SLR 104

Hon'ble Judges : Mohinder Pal, J;Hemant Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mohinder Pal, J.—Husband of Birbati Rani (petitioner), namely, Vinod Kumar was working as a Peon-cum-Frash in the State Bank of Patiala, SSI branch, Sector 24, Faridabad-respondent No. 3 (hereinafter referred to as ''the respondent-Bank''). Unfortunately, Vinod Kumar died on October 17, 2004. After his death, Birbati Rani (petitioner), who has to support three minor children besides mother-in-law and two sister-in-law requested the respondent-Bank to give her suitable appointment. She has studied upto the 8th Standard. Application dated December 03, 2004 (Annexure P-3) was submitted by her in this regard to the respondent-Bank. However, her prayer for compassionate appointment was not accepted, which was conveyed to the petitioner vide letter dated September 14, 2005 (Annexure P-7). She thereafter submitted representation to the respondent-Bank. Her representation was forwarded by the Chief Manager of the respondent-Bank to the Assistant General Manager, State Bank of Patiala, Region-II, New Delhi, for favourable consideration vide letter dated November 14, 2005 (Annexure P-8). When the petitioner failed to get the desired relief, she filed the present writ petition.

2. Upon notice of motion, written statement on behalf of the respondents has been filed by the Chief Manager of the respondent-Bank. It has been pleaded that the dependent of an employee after his death cannot seek the appointment on compassionate grounds as a matter of right. It has been stated that the total compensatory benefits accrued to the petitioner after the death of her husband

were Rs. 3,37,000/- (i.e. Rs. 28,028/- as provident fund Rs. 18,825/- as gratuity, Rs. 1,00,000/- out of welfare fund, Rs. 8,332.8) on account of leave encashment and Rs. 2,00,000/- under Group State Bank of Patiala Staff minus Rs. 18,000/- which were recoverable from the husband of the petitioner on account of loan advance to him. On this amount of Rs. 3,37,000/- the petitioner is getting monthly interest of Rs. 1,825/-. She is also getting family pension of Rs. 1,627/- per month. The petitioner also mentioned in her application for compassionate appointment that she is earning Rs. 900/- per month on account of sale of milk. She is, thus, having an monthly income of Rs. 4,352/-. According to the respondents, considering the financial position of the petitioner, her case for compassionate appointment was declined.

3. In the replication filed on behalf of the petitioner to the written statement of the respondents, it has been pleaded that the amount of Rs. 2,00,000/- received by the petitioner under Group State Bank of India Life Insurance Scheme for State Bank of Patiala staff cannot be taken into consideration for determining the family income. Moreover, this amount of Rs. 2,00,000/- was received by the petitioner on November 05, 2007, whereas her request for compassionate appointment was rejected on September 6, 2005; meaning thereby this amount could not be taken into consideration at that time, as alleged by the respondents in their written statement.

4. We have heard Mr. R.S. Sihota, Senior Advocate assisted by Mr. H.P.S. Ishar, Advocate, appearing for the petitioner and Mr. H.S. Mehtani, Advocate, appearing for the respondents and have gone through the records of the case.

5. Learned Counsel for the petitioner has argued that the petitioner has three minor children, namely Komal (daughter) aged about seven and a half years, Mayank (son) aged about five and a half years and Kundal (son) aged about four years and four months besides old mother-in-law Smt. Savitri Devi and two sister-in-law, namely, Jay-anti and Sadhna to support from the income as all the aforesaid members were dependent upon her husband Vinod Kumar. The respondent-Bank has not considered the case of the petitioner for compassionate appointment keeping in view the size of the family and liabilities of the deceased employee. The petitioner has studied upto 8th Standard and is eligible for being appointment on compassionate grounds to a subordinate cadre post either as Peon or Frash or any other similar post as per the ''Scheme for Appointment of Dependents of Deceased Employees On Compassionate Grounds'', (for short ''the Scheme'') annexed with the petition as Annexure P-5.

6. On the other hand, learned Counsel appearing for the respondents, has argued that the provisions of the Scheme viz. compassionate appointment, apply only in cases where the deceased employee has left the family in penury and without any means of livelihood. He further argued that the payment of terminal benefits to the family are an integral part of the financial security made available to the family of the deceased. The payment of terminal benefits is an important factor and cannot be left out while considering the financial condition of the

family.

7. When petitioner''s case for compassionate appointment was rejected, she submitted a representation to the respondent-Bank. Her representation was forwarded to the headquarters of the respondent-Bank by its Chief Manager vide letter dated November 14, 2005 (Annexure P-8) by stating thus:

Please refer to your letter No. AGM/II/D/Staff/10369, dated 6.9.2005 vide which request of Smt. Birbati Rani has been declined by the Bank.

2. We have again received a representation from Smt. Birbati Rani (copy enclosed) stating therein that she is having no source of income to support her 3 children, two sister-in-law and mother-in-law. As requested by her she is having only one house valuing Rs. 47,000/- and one buffalo and she is earning Rs. 900/- per month by sale of milk. There is no male member in the family to look after small children and other family members.

3. In view of her family''s circumstances, we request that her representation for appointment in the Bank of compassionate grounds may be considered favourably.

8. As noticed above, the Chief Manager of the respondent-Bank, considering the financial position of the family of the petitioner, recommended her case for compassionate appointment. However, while filing written statement in this Court, the Chief Manager has stated thus:

11. x x x x In the present case keeping in view the financial benefits accrued to the family and the interest to be earned on payments of provident fund, gratuity, leave encashment, welfare fund amount, insurance also family pension and personal income of the petitioner, the respondent-Bank rightly came to the conclusion that the financial position of the family after the death of late Shri Vinod Kumar is good and accordingly rejected the application of the petitioner compassionate appointment. It is submitted that family of the deceased cannot be said to be without sufficient funds of livelihood under the scheme.

Once the respondent-Bank having accepted that the circumstances of the family of the petitioner required consideration of her case for compassionate appointment, now it cannot be permitted to retrace its steps. No doubt, compassionate appointment cannot be claimed as a matter of right, but it cannot be ignored that discretion for appointment under the scheme of compassionate appointment has to be exercised by the competent authority keeping in view the scheme and the rationale behind it. Clause 5 of the Scheme deals with method of appointment and reads as under:

5. Method of appointment:

(i) Request for appointment under the Scheme be received by the Bank within one year from the date of death of the employee. In case the dependent is a minor or does not possess suitable minimum qualifications his/her case can be considered within four years of the death of the employee to enable him/her to so qualify in terms of age and/or qualification provided that the dependent has made a request to the Bank within a year of the death of the employee.

(ii) xxxx

(iii) The minimum age limit in all cases will be 18 years. The upper age limit will be as per the practice from time to time for general candidates. Where no dependent of the deceased employee within the prescribed age limit is available for appointment, the Managing Director, in his discretion, relax the upper age limit upto a maximum of 5 years, provided, however, that in the case of widow of the deceased employee, there will be no age limit.

(iv) Qualifications: To qualify for appointment in the clerical or allied cadre, a dependent should have passed S.S.C/S.S.L.C/Matriculation or its equivalent examination provided that in the case of a widow of a deceased employee, the minimum qualification would be a pass in the 8th standard x x x x x

9. The petitioner having studied upto 8th Standard is eligible for being appointed on compassionate grounds to a subordinate cadre post either as Peon or Frash or any other similar post under the Scheme. It is not disputed by the respondent-Bank that the petitioner is not eligible for a class IV post. However, their case is that the petitioner is not entitled to be appointed on compassionate grounds. As discussed above, the financial position of the petitioner and the liabilities left by her deceased husband, entitle the petitioner for compassionate appointment under the scheme.

10. For the aforesaid reasons, this writ petition is allowed, the order declining compassionate appointment to the petitioner is set aside and the respondent-Bank is directed to give suitable appointment to the petitioner forthwith-on compassionate grounds.

