
(2005) 11 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 477 of 2000

Devender Singh

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 21-11-2005

Acts Referred:

Constitution of India, 1950 — Article 10, 14, 16

Citation : (2006) 109 FLR 1114 : (2006) 1 ShimLC 236

Hon'ble Judges : K.C. Sood, J

Bench : Single Bench

Advocate : Rajiv Sharma and Surinder Sharma, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Sood, J.—Anant Ram, the father of the petitioner, was employed as Messenger in the State Bank of India at its Sawra Branch in District Shimla. By a letter dated December 12, 1998, he sought retirement on medical grounds saying that he is suffering from tuber closes and diabetes. His eye sight has deteriorated. He also simultaneously prayed for his retirement from service on medical grounds (Annexure-PC) and employment for his son who is a Matriculate so that he could become bread earner for the family. He was medically examined by a Medical Board consisting of the Medical Specialist and Surgeon of Deen Dayal Upadhy Hospital, Shimla. The Board certified that Anant Ram was permanent incapacitated for further service of any kind in the Department, to which he belonged, because of diabetes retinopathy (Annexure-PD). The Zonal Office of the Bank conveyed to the Branch Manager of the Bank at Sawra by its letter dated August 5, 1999 (Annexure-PE/1) that Anant Ram has been granted permission for retirement with effect from June 15, 1999 on medical grounds. The Zonal Office also asked for necessary documents and application for appointment of the petitioner on compassionate grounds on the prescribed proforma.

2. On July 26, 1999, the petitioner applied for appointment in place of his father.

The Zonal Office asked Anant Ram to complete certain formalities. Anant Ram by a communication dated November 20, 1999 (Annexure-PH) was informed that his representation for compassionate appointment of his son, the petitioner, has been rejected by the Competent Authority in view of the Supreme Court judgment, Anant Ram, father of the petitioner, responding to the letter of November 20, 1999 once again requested the authorities to reconsider the case for compassionate appointment of his son (Annexure-PI/1). This representation was again rejected by a communication dated January 12, 2000 (Annexure-PJ/1) with the reasons :

(a) The appointment on compassionate grounds requested by the above employee who has voluntarily taken retirement on medical grounds, cannot be linked with voluntary retirement this this family member should be appointed in his place. Besides this, the family circumstances of Shri Anant Ram are not such that his request may be reconsidered.

(b) Sh. Anant Ram has received Rs. 3,88,515/- (P.F, Rs. 2,01,234 + Gratuity Rs. 1,14,740/- + pension computation Rs. 72,571/-) in total whereas the payable liabilities are Rs. 2.06 lacs.

(c) Sh. Anant Ram is getting Rs. 2500/- as pension after the computation of pension.

3. Anant Ram in the meanwhile expired. His widow Sumitra Devi wrote to the Chairman of the respondent Bank representing that Anant Ram had left three sons and two daughters who were studying in School and Colleges and there are no other means of income except the pension to educate her children and marry them. She requested that her son Devinder Singh, the petitioner, may be employed in the Bank so that the family is looked after. This representation was rejected by the Chief Manager (Personnel & HR) by his communication to the mother of the petitioner dated May 23, 2000. The mother of the petitioner was informed that the case has been re-examined for compassionate appointment of her son Devinder Singh but in view of the family income, residential house and agricultural land with the family, the compassionate appointment could not be given.

4. The petitioner assails the decision of the Bank on the grounds that the letters of rejection of request for compassionate appointment "Annexure-PH", "PJ" and "PL" being illegal, arbitrary, discriminatory, unreasonable and violative of Articles 14 and 16 of the Constitution are liable to be quashed.

5. The case of the petitioner is that the petitioner being eligible and qualified for appointment on compassionate grounds, after the retirement of his father on medical grounds on June 15, 1999 should have been given employment by the Respondent Bank.

6. The respondents in their return contest the petition. The allegations made in the petition are controverted. The stand of the Bank is that the Bank has

formulated a Scheme for appointment of dependents of deceased employee/ employees retired on medical grounds which has been amended from time to time. The Scheme which was formulated by the Bank on January 15, 1998 lays down a Policy under which financial consideration of the family of the employee, retired on medical grounds, are necessarily to be taken into consideration. The object for granting compassionate appointment, it is pleaded, is to enable the family to tide over the sudden crises due to the death of bread earner. The mere death of an employee in harness does not entitle his family member to such employment. Compassionate appointment can only be granted when Bank is satisfied that the financial condition of the family is such that but for the provision of employment, the family will not be able to tide over the crises.

Anant Ram, it is stated, after his retirement on medical grounds received the following retriial benefits:

- (a) Rs. 3,88,545/- as Provident Fund, gratuity and compensation,
- (b) Rs. 1,690/- as basic pension plus dearness relief w.e.f. 16.6.1999, i.e., Rs. 3,151/-.
- (c) Anant Ram had a spacious house and 1.5 bights of agricultural land.

7. In view of these circumstances, the Bank found that the family was not in any indigent circumstances to claim for compassionate appointment.

8. The object of the Scheme for compassionate appointment to a dependent family member of an employee, as updated up to January 1, 1998, is to enable the family to tide over sudden crises due to the death of the bread earner. It says that mere death of an employee in harness does not entitle his family to such a livelihood. The object is to offer compassionate appointment only when the

9. Mr. Rajiv Shanna, learned Senior counsel for the petitioner would submit that grant of family pension and retriial benefits cannot be a ground to deny the appointment. The Supreme Court in General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, referred to Umesh Kumar Nagpal Vs. State of Haryana and Others, where the Court said that employment by way of compassionate appointment, is an exception carved out of the general rule for appointment on the basis of open invitation of application and merit. The exception is to be resorted to only in cases of penury where the dependants of an employee are left without any means of livelihood and that unless some source of livelihood was proved a family would not be able to make both ends meet. This principle was adopted by an Office memorandum which was circulated to all the Banks on 7-8-1996 emphasizing that the observations of the Court would have to be complied with. Indian Banks" Association also adopted the directive, in "Umesh Kumar Nagpal" in the Scheme providing for employment on compassionate grounds. Thus the policy circulated by the Bank was pursuant to the observations of the Supreme Court in Umesh Kumar Nagpal which provides that while considering financial condition of the family, the following amounts would have to

be taken into consideration :

- (a) Family Pension.
- (b) Gratuity amount received.
- (c) Employee's/employer's contribution to provident fund.
- (d) Any compensation paid by the Bank or its Welfare Fund.
- (e) Proceeds of LIC policy and other investments of the deceased employee.
- (f) Income of family from other sources.
- (g) Employment of other family members.
- (h) Size of the family and liabilities, if any, etc.

10. A reading of the policy mandates that for appointments in the public services are made strictly on the basis of open invitation of applications and merit. The exception is made in favour of the dependants of employees dying in harness leaving their family in penury and without any means of livelihood.

11. This position was reiterated by the Apex Court in Punjab National Bank and Others Vs. Ashwini Kumar Taneja, . In that case, the father of the respondent expired, on December 3, 1999 while working as Class-IV employee of the Bank leaving behind him, his mother the widow, two sons and one daughter. On January 5, 2000, the widow of the deceased made a representation to the Bank for employment of his elder son on compassionate grounds. The request was turned down on the ground that there was no financial hardship to the family of the deceased and they had received substantial amounts after the death of respondent's father, A writ petition was filed by the respondent before the Rajasthan High Court which was allowed with the direction to forthwith consider the case of the petitioner for compassionate appointment. The order was challenged in the Letters Patent Appeal. The appeal was dismissed observing that the retrial benefits received by the heirs of deceased employee cannot be a ground for rejecting the application for compassionate appointment. The Apex Court in an appeal by the Bank, relying upon State of Haryana and Others Vs. Rani Devi and Another, observed that the claim of the person concerned for appointment on compassionate ground is based on the premises that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 and 10 of the Constitution of India though such claim is considered as reasonable and permissible on the basis of sudden, crises occurring in the family of such employee who has served and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Their Lordships held that appointment on compassionate grounds cannot be claimed as a matter of right and reiterated that retrial benefits are necessarily to be taken into consideration while considering the prayer for compassionate appointment. Their Lordships also observed that Board of Directors of the

Petitioner Bank, as in the present case, had approved the Scheme which provides for consideration of the retrial benefits including other sources of income of the family. The Scheme was based upon the law laid down by the Apex Court in "Umesh Kumar Nagpal".

12. The respondent Bank in its sur-rejoinder categorically states that in addition to the retrial benefits amounting to rupees 3,88,545/- at the time of retirement of Anant Ram, the following sums were also received by the legal heirs of Anant Ram :

(a) Rs. 40,837 on account of arrears of salary revision, Rs. 10,288 plus Rs. 8549 on account of revision in gratuity and Rs. 22,000 as insurance claim.

13. Now looking to the income of the family, the fact that they have a good spacious house to live in, income from the land, the liabilities, it cannot be said that the family of deceased Anant Ram is in penury condition to justify employment of the petitioner on compassionate grounds under the Scheme.

No other point is urged.

In result, the petition fails and dismissed.

No costs.