

(2008) 05 RAJ CK 0057
In the Rajasthan High Court

Devi Kishan Harijan

APPELLANT

Vs

UCO Bank and Others

RESPONDENT

Date of Decision : 30-05-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2008) 119 FLR 1138 : (2009) 1 RLW 199

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—In this writ petition, petitioner is seeking direction to the respondents for providing appointment on compassionate ground and also prayed for quashing the order dated 25.4.2006 (Annex. 4), whereby, claim of petitioner for providing appointment on compassionate appointment was rejected by the respondent bank.

2. Brief facts of the case are that petitioner's father late Shri Bikha Ram was working on the post of Class IV employee (Sweeper) in the respondent Bank. He died on 27.10.99 while in service. As per petitioner, his father late Shri Bikha Ram left behind his widow Smt. Shanti, five daughters and one son (petitioner) and at the time of death of his father he was minor and being only son of deceased employee the widow of late Shri Bikha Ram submitted an application for appointment of his son on compassionate ground so as to maintain the family. The application of petitioner was forwarded to Head Office stating therein that monthly income of the family of late Shri Bikha Ram is below 60% of gross emoluments of the deceased. The case of petitioner for providing appointment on compassionate ground was not decided, therefore, repeated representations were filed by him.

3. Vide Annex. 4, it was informed by the bank to the employees' union that bank is looking into the matter and will apprise the development in this regard in due course. Thereafter, vide Annex. 5 dated 25.4.2006 the claim of petitioner for appointment on compassionate ground rejected on the ground that monthly

income of the family of deceased is higher than 60% of the gross salary of the deceased employee. Petitioner is challenging the said order on the ground that said policy cannot be made applicable upon the petitioner because he is ward of a low paid employee, who was working on Class IV post in the bank and left behind him his widow, five daughters and a son and it is not possible for the family to survive. It is also submitted that the ground of denial of appointment is totally arbitrary and illegal so also even if it is presumed that as per scheme of the bank, appointment is not possible for those families whose income is more than 60% than also as per petitioner respondents have wrongly calculated the income of family of deceased employee and has wrongly assessed that income of family is more than 60% of the gross salary of the deceased employee.

4. As per facts of the case, family of deceased Bikha Ram has received Rs. 19093/- as retrial benefits under the head gratuity, leave encashment etc. Similarly, respondents have calculated income of Rs. 500/- per month from agricultural land, which is also baseless, therefore, ground of denial of appointment is totally unwarranted and unfounded. It is further submitted that respondents are illegality calculating the income of family of deceased employee more than 60% of the total salary of the deceased employee which is against the principle of natural justice. It is further submitted by earned Counsel for the petitioner that very purpose of providing appointment on compassionate ground is to maintain the family of deceased employee and for welfare of the family the respondent bank should not implement strict formula. Therefore, it is prayed that order Annex. 5 being totally arbitrary and unconstitutional may be quashed.

5. Per contra, it is submitted by respondents that a uniform policy has been framed for recruiting the dependents of deceased employees. In the said policy it is specifically provided that no appointment on compassionate ground will be given to those dependents of deceased employees whose family income is higher than 60% of the gross salary of deceased employee. It is submitted that as per para 8(b) of Scheme after arriving at net amount remaining with the family, interest @ 11% p.a. is to be applied to arrive at monthly income of family by further taking into consideration the monthly family pension and income from any other source like rent and income from agriculture property/family business etc. is to be counted and at the time of considering the case of petitioner the amount of family pension which is Rs. 812.11 paisa, Rs. 500/- from agriculture land and net surplus of Rs. 175/- was calculated and after calculating all the amounts the total income comes to Rs. 1487.13, whereas, the gross salary of the deceased employee was Rs. 1458.48 because he was part time sweeper with the bank, therefore, application for appointment on compassionate ground was rightly considered and rejected in accordance with the scheme and there is no illegality in the order passed by the respondent.

6. Earned Counsel for the respondent further argued that as per law laid down by Hon''ble Apex Court in so many cases, wherein it has been held that appointment on compassionate ground cannot be claimed as a matter of right so also if any

scheme is framed for the purpose of assessing the means of maintenance of the family that should be strictly followed. Earned Counsel for the respondent has invited the attention of the Court towards recent judgment of Hon'ble Apex Court reported in State Bank of India and Others Vs. Jaspal Kaur, While citing the above judgment it is submitted that in para No. 23 of the judgment it is held that if any scheme is framed and claim is not covered under the scheme than there is no question of providing appointment on compassionate ground. In this case also the case of petitioner was considered in accordance with the scheme framed by the respondent bank, therefore, no interference is required in this writ petition and same may be dismissed.

7. I have heard earned Counsel for the parties. In this case admittedly a scheme has been framed by the bank for considering the claim of compassionate appointment in the event of death of any employee of the bank. Admittedly, petitioner's father was part time sweeper in the bank. It is also admitted position of the case that Late Shri Bikha Ram died while in service working on the post of part time sweeper and left behind his widow, five daughters and a son. The family of deceased employee was paid Rs. 19093/- as retiral benefits and Rs. 812/- was sanctioned as pension. While considering the case of petitioner in light of the scheme, the family of the deceased is having income more than 60% of the gross salary of the deceased employee, therefore, petitioner is not found entitled for appointment on compassionate ground.

8. In my opinion, the claim of petitioner for appointment on compassionate ground has been rejected on a hyper technical ground. Although a scheme has been framed by the bank but It Is no where stated that this scheme is applicable on part time employees. Admittedly, petitioner's father was part time sweeper and he worked for considerable period and unfortunately in the year 1999 he died while in service. In my opinion, a scheme which is framed by the bank in 1999 cannot be made applicable upon the dependents of part time employees, so also bank Is required to assess the Income while taking into account the price escalation of essential commodities, but the respondent bank Is assessing the Income as per the formula prescribed In the scheme, which Is contrary to baste principle of law so also it is violative of Article 21 of the Constitution of India. The respondent bank is expected to consider the strength of family of deceased employee. Admittedly, In this case, late Bikha Ram left behind Ms widow five daughters and a son and It is certainly difficult for such a family to survive and to meet day to day expenses out of a petty amount of family pension of Rs. 812/-, therefore, in my opinion consideration by the bank for providing appointment to the petitioner on compassionate ground is totally against the principle of natural justice. It is the duty of employer while assessing the suitability of a candidate for providing appointment on compassionate ground to consider the size of family not only the Income of the family.

9. In the peculiar facts of this case without commenting upon the scheme framed by the respondent, while exercising powers under Article 226 of the Constitution

of India, I deem It just and proper to remit this case to the respondent bank for reconsideration with expectation that at the time of reconsideration of petitioner's candidature for appointment on compassionate ground, the strait-jacket formula should not be made applicable and the respondent bank is expected to protect the welfare of family members of deceased employee.

10. In these circumstances, respondent bank is directed to reconsider the case of petitioner for appointment on compassionate ground sympathetically. The reconsideration shall be made within a period of two months from the date of receipt of copy of this order. The writ petition is disposed of as aforesaid.