(2004) 01 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No. 126 of 2004 (Arising out of SLP (C) No. 2644 of 2003)

General Manager (D and PB) and Others APPELLANT

Vs

Kunti Tiwary and Another RESPONDENT

Date of Decision : 05-01-2004

Acts Referred:

Citation : (2004) 3 LLJ 1136 : (2004) 7 SCALE 155 : (2004) 7 SCC 271 : (2004) SCC(L&S) 943 : (2004) 3 UPLBEC 2534

Hon'ble Judges : Ruma Pal, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. The respondent No. 1 is the widow and the respondent No. 2 is the son of K.N. Tiwary, an erstwhile employee of the State Bank of India. K.N. Tiwary died while in harness on 16.1.1998. About a month after his death the respondent No. 1 applied to the appellant for appointment of the respondent No. 2 in the appellant's services by way of compassionate appointment. The Branch Manager wrote to the respondent No. 1 saying that the application had been registered and that a fresh proposal should be made when the respondent No. 2, who was a minor then, attained majority, The respondent No. 2 attained majority on 25th February, 2000 and the application for compassionate appointment was revived. The Deputy General Manager of the Zone where the late K.N. Tiwary was working, recommended the respondent No. 2's case for compassionate appointment and the recommendation contained a footnote in the printed format for appointment on compassionate grounds. The printed format inter alia indicated the details regarding the deceased employee, the terminal benefits, immovable property, investments and liabilities as well as pension paid. The provident fund which was received by the respondent No. 1 on the death of the late K.N. Tiwary was Rs. 333410 (Rupees three lakhs thirty three thousand and four hundred and ten). She also received gratuity of Rs. 173987/- and amount of

1,01,344 by way of leave encashment. The application form also shows that respondent No. 1 owned house of an area of 3000 square feet in Sasaram District which was valued at 4.70 lakhs (approximately). As far as investments were concerned there was an investment of total amount of 66,000/- in share certificates of SBI, National Saving Certificates and Unit Trust of India bonds. On the liabilities side, it was shown that there was a housing loan which has been taken as well as festival advance and a consumer loan. The pension which was paid to the respondent was 5,583/-, inclusive of the dearness allowance. The heirs of the late K.N. Tiwary were his widow, his two sons (including R.2) and a daughter.

3. In this background the recommendation of the Deputy General Manager was:

Keeping in view the miserable condition of the family, we are of the opinion that in absence of any employment in the family, the family members will have to face crisis caused by the sudden demise of Late K.N. Tiwary and hence we strongly recommended for the employment on the compassionate ground.

4. The matter was placed before the Chief General Manager who, however, rejected the application for compassionate appointment, After noting the assets and liabilities of the late K.N. Tiwary, he was of the view that the financial condition of the family could not be termed as to be penurious.

5. Challenging this order of rejection, the respondent filed a writ petition. The writ petition was rejected by the learned Single Judge holding that the decision of the General Manager could not be said to be irrational or arbitrary. The Division Bench however overturned the decision of the learned Single Judge and allowed the appeal and consequently directed the appellant bank to appoint the respondent No. 2 in accordance with its policy.

6. The policy in question was framed by the appellant-Bank pursuant to the decision of this Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, where this Court has said that the appointment 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. This exception was to be resorted to in cases of penury where the dependents of an employee are left without any means of livelihood and that unless some source of livelihood was provided a family would not be able to make both ends meet.

7. In adoption of this principle, an office memorandum was circulated to all banks on 7.8.1996 emphasising that the observations of this Court would have to be complied with. The Indian Bank's association also adopted the Directive of this Court in Umesh Kumar Nagpal case (supra) in the scheme which was proposed for appointment of heirs of deceased employees. In that proposal it was recommended that in order to determine the financial condition of the family the following amounts would have to be taken into account:

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

c) Proceeds of LIC Policy and other investments of the deceased employee.

f) Income for family from other sources

g) Employment of other family members

h) Size of the family and liabilities, if any, etc.

8. This recommendation of the Indian Bank's Association was accepted in the scheme which was finally formulated on 1.1.1998 where the same criteria for determining the financial condition of the family was laid down. It may be noted that the express language for appointment on compassionate grounds reads as follows:

Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour Of dependents of employees dying in harness and leaving their family in penury and without any means of livelihood.

9. On the basis of the criteria as recommended by the Indian Bank's Association and adopted by the appellant-Bank, it could not be said that the family of the late K.N. Tiwary had been left in "penury" or "without any means of livelihood". The particulars of their income have been noted in their application and it certainly could not be said on the basis thereof that the respondents were living hand to mouth. The Division Bench erred in diluting this criteria of penury to one of "not very well to do".

10. In the circumstances of the case we are of the view that the learned Single Judge was correct in dismissing the writ application of the respondents.

The appeal is accordingly allowed and the decision of the Division Bench is overturned and the order of the learned Single Judge is upheld. There will be no order as to costs.