

(2001) 01 KL CK 0029
In the High Court Of Kerala
Case No : W.A. No. 3375 of 2000

General Manager, Personnel Wing, Canara Bank and Others	APPELLANT
Vs	
Priya Jayarajan P.P.	RESPONDENT

Date of Decision : 29-01-2001

Acts Referred:

Constitution of India, 1950 — Article 15, 16

Citation : (2001) 1 ILR (Ker) 496 : (2002) 2 LLJ 1026

Hon'ble Judges : M.R. Hariharan Nair, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : M.C. Sen, for the Appellant; P.K. Vijayamohanan, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—This appeal has been preferred by the General Manager, Personnel Wing, Canara Bank, Head Office, Bangalore, along with two other officials challenging an order of the learned single judge allowing a writ petition preferred by a widow for compassionate appointment in the service of the Canara Bank.

2. This case presents the following facts: The petitioner, Priya Jayarajan, is the wife of late C.M. Jayarajan, a clerk working at Badagara branch of the Canara Bank. Jayarajan died in a road accident in the evening of May 4, 1998, leaving the widow and two minor children aged 7 and 3 years impecunious and destitute. The petitioner made application on June 9, 1998, for compassionate appointment in the service of the Canara Bank a premier banking institution where her husband had worked dutifully. The application was routed through the branch office where her husband was working. The application was recommended by the branch office, but rejected by the second respondent stating as follows:

"The financial position of your family has been examined in depth by competent authority and it is found that there are no indigent circumstances warranting providing employment on compassionate grounds to the dependant of the

deceased. Hence, your application has not been considered favourably."

3. Unexpected rejection of the request put the widow into gloom and despair. She then preferred a review petition dated February 1, 1999, before the first respondent-General Manager, Personnel Wing of the Canara Bank, Bangalore, stating as follows:

"I had expected a favourable order from you as a relief to the extreme and unforeseen hardship in the life of a widow and her two kids. My ordeal began with the premature demise of my husband leaving behind 7 years old son and three years old daughter. I have no other income to foster and educate the children.

My husband had availed housing loan facility from the bank. No substantial amount is left after meeting the liabilities with the bank and outside agencies/person. Even day-to-day life is a nightmare to this hapless woman. Now, life has come to grief and become burden without a ray of hope in nearby future.

I have a humble request to review the decision. I pray for your mercy and beg to consider my application favourably."

4. Her request fell on deaf ears. She was informed by letter dated March 11, 1999 by the second respondent as follows:

"The financial position of your family has already been examined in depth by the competent authority and it is found that there are no fresh grounds to reconsider your request for employment on compassionate grounds in the bank.

Hence, your request has not been considered favourably."

5. The obdurate and remorseless attitude of the bank led the destitute widow to approach this Court.

6. The claim was found to be genuine by the learned single judge by exercising discretion in favour of the hapless woman and gave a direction to the Canara Bank to give employment assistance to her. The learned single judge's view did not appeal to the bank and the matter was carried in appeal before us. We heard counsel on either side.

7. Before we deal with the various legal issues we will deal with the factual position as well as the scheme framed by the Canara Bank for giving employment assistance on compassionate grounds. The scheme of employment assistance on compassionate ground applicable to the petitioner is the scheme framed in the year 1993 after supersession of all the earlier circulars, instructions, guidelines, etc. The object of the scheme is to give compassionate employment to help dependants of the Canara Bank employees who die or become permanently disabled while in harness, to overcome the immediate financial difficulties faced by dependants of the deceased employee on account of the sudden stoppage of the main source of income. The employment under the scheme would be considered only if there are indigent circumstances

necessitating employment to one of the dependants and the deceased employee's service record is unblemished. For this purpose, the wife/ husband stands first in the eligibility for getting compassionate employment. Clause 3.2 of the scheme says that in case the dependant of the deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority provided a request is made to the bank by the family of the deceased employee and the same may be considered subject to rules prevailing at the time of consideration. Clause 3.3 says that in case the member of the family sponsored for appointment desires to wait till he/she attains certain educational qualifications, his/her candidature may be considered provided the date so stipulated is within four years from the date of death of the employee. Clause 10 of the scheme deals with special provisions which are as follows:

"If the applicant is employed elsewhere, and if the job in our bank is going to help him/her financially, such request may also be entertained as per norms.

If any member of the family is already employed with us, we may consider giving employment to another member of the family depending on the merits of individual cases."

8. The petitioner applied on the basis of the above mentioned scheme. In the covering letter sent along with the application form she has stated as follows:

"As informed earlier my husband Sri C.M. Jayarajan (39231) clerk of Badagara branch lost his precious life in a road accident in the evening of May 4, 1998. Though not fully relieved from the shock inflicted upon me by the cruel hands of fate I am realising that the life ahead of me is much harder and more responsible.

At the time of his death my husband was the only bread earner of our family and besides me he has left behind the following near and dear ones.

1. Master Varun Jayaraj 7 years son
2. Baby Pooja Jayaraj 3 years daughter
3. Smt. Sreedevi Amma 74 years mother
4. Balaravi 48 years brother (both mentally and physically handicapped from birth).
5. Sarojam 46 years sister (widowed since 1990).

The financial position of the family is such, that they are not able to extend any help to me and kids. With the passing away of my husband, the responsibility of looking after his mother, brother and sister had fallen on me. Only if I get a job on compassionate ground I can stand on my legs and can support my dependants.

My husband had availed the bank's housing loan to construct our house at Kozhikode. To complete the construction we have availed a loan of Rs. 50,000

from Kerala State Financial Enterprises, Vadakara. Another personal loan of Rs. 25,000 was also recently availed from a close relative to complete the construction. I am furnishing this information to draw your kind attention to the financial liabilities of the family.

There is no other alternative left before me but to seek your kindness for getting a job on compassionate ground, so as to enable me to bring up my infant kids in life and to support the dependants of the family of my husband. Hence I pray your goodselfs to consider this request with utmost sympathy and provide me an employment in your great institution where my husband has worked with all dedication till his untimely demise."

9. The request of the widow was recommended by the branch office narrating with the family background/existence of indigent circumstances. The recommendation is as follows:

"Sri Jayarajan died at his young prime age on whom wife, two infant kids, aged mother, widowed sister for 19 years, mentally and physically handicapped elder brother (48 years) depended for bread. Financial position of the family is very poor and with the availment of housing loan, the family is having liability of around Rs. 3.50 lakhs with the bank, around Rs. 75,000 outside. As the employee has opted for PF instead of pension, in view of the limited years of service the amount due from bank is also very less and not enough to clear the liabilities."

10. The recommendation letter also showed that there is an outstanding liability of Rs. 1,60,281 towards housing loan availed of from the bank by the deceased employee. He has also availed of loan of Rs. 97,601 towards festival advance. An amount of Rs. 27,863 was also drawn towards OD. He has also availed of Rs. 2,570 towards flood loan from the bank. The recommendation letter also showed that for the purpose of construction of a house in the name of the wife an amount of Rs. 75,000 was sanctioned by the Kerala State Financial Enterprises towards bid amount. Ultimately, the branch recommended as follows:

"Late Mr. C.M. Jayarajan was one of the most dedicated staff of the branch, very popular with customers with his refined nature and excellent customer service. With his untimely death in the accident on May 4, 1998, the entire family who is dependent on him has lost the bread earner. The two children are aged just seven years and three years and they are not in a position to know the magnitude of the loss. The young widow has to take care of the children and husband's family. Financial position is very poor and with the availment of housing loan (first instalment of Rs. 1.50 lakhs + suppl. loan) the total liability to bank is around Rs. 3.00 lakhs exclusive outside borrowings Rs. 75,000. The house is not fully completed; but his desire to have house warming on May 10, 1998, could not be fulfilled.

Now, Mrs. Priya Jayarajan has to complete the unfinished construction and also take care of the family. She has no other option but to face the challenge ahead

to bring up the children. This is possible only if she is having a job with a regular monthly income.

We strongly recommend to consider an appointment to Mrs. Priya Jayarajan on compassionate grounds, which will be of immediate solace to the family."

11. The request of the widow and the recommendation of the branch office were turned down by the Canara Bank authorities with severity. The order was sought to be supported by counter-affidavit filed by the bank. The counter-affidavit reads as follows:

"The terminal benefits settled after recovery of all liabilities (A-B) amounts to Rs. 7,52,749.04, The petitioner has requested for carry over of the housing loan liability of Rs. 2,53,811.00 outstanding. In case the above housing loan liability is recovered, the net amount available will be Rs. 4,98,938.04. In case the request of the petitioner for carry over of the housing loan liability is permitted, the petitioner has to repay an amount of Rs. 2,080 every month as monthly repayment. The net amount available to the petitioner in that case will be Rs. 7,52,749.04. In either case the income generated out of the investments/terminal benefits is reasonable for the petitioner to take care of all the needs. Further, the family of the deceased is owning a house constructed by availing of housing loan from the bank and the dependants of the deceased are residing in that house."

12. The recommendation letter from the branch office belies the above statements made in the counter-affidavit. The facts reveal that the deceased was having liability of around Rs. 3.50 lakhs with the bank and an amount of Rs. 75,000 is due to the Kerala State Financial Enterprises. The petitioner has to look after two minor children, a boy of seven years and a daughter of three years. The letter of recommendation also shows that the deceased's widowed mother of 74 years and widowed sister of 46 years and a mentally and physically handicapped elder brother by birth of 48 years. They were all dependants on the deceased employee. The widow has to bear the brunt and look after the dependants. The family has no other income apart from the income of the deceased. The widow has also to complete the unfinished construction of the house.

13. The Canara Bank rejected the request of the widow on the plea that on the death of the deceased she was given certain terminal benefits. We are of the view that those benefits are legitimately due to her and not on compassion.

14. We may in this connection refer to a recent decision of the Apex Court in *Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others*, . The Supreme Court in that case was dealing with the application made by the widow for employment under the compassionate appointment scheme applicable to the Steel Authority of India. The contention was raised that since she is entitled to get family benefit scheme assuring monthly payment to the family of the deceased employee the request for compassionate appointment cannot be

acceded to. This point was accepted by the Orissa High Court but reversed by the Apex Court stating as follows at p. 7 of LLJ:

"But in our view this family benefit scheme cannot be in any way equated with the benefit of compassionate appointments. 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."

15. The Apex Court also examined the constitutional philosophy behind the principle of offering compassionate appointment. The Apex Court held as follows Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, :

"The employer, being the Steel Authority of India, admittedly, an authority within the meaning of Article 12, has thus an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution but has the authority in the facts of the matters under consideration acted like a model and an ideal employer. It is in this factual back-drop, the issue needs an answer as to whether we have been able to obtain the benefit of constitutional philosophy of social and economic justice or not. Have the lofty ideals which the founding fathers placed before us any effect in our daily life - the answer cannot, however, but be in the negative--what happens to the constitutional philosophy as is available in the Constitution itself, which we ourselves have so fondly conferred on to ourselves. The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning. A person dies while taking the wife to a hospital and the cry of the lady for bare subsistence would go unheeded on certain technicality. The breadearner is no longer available and prayer for compassionate appointment would be denied, as "it is likely to open a Pandora's box" - this is the resultant effect of our entry into the new millennium. Can the law Courts be mute spectators in the matter of denial of such a relief to the horrendous sufferings of an employee's family by reason of the death of the bread earner ?"

16. We are of the view that over and above what the Apex Court has reminded us, we cannot forget the constitutional philosophy enshrined in Articles 15 and 16 of the Constitution of India. When a request made by a widow for compassionate appointment is granted the constitutional objective of strengthening and improving the status of women could be achieved. By granting compassionate employment to a widow in this case we can strengthen and improve the status of the woman and could also achieve gender equality especially in a case where the widow has satisfied all the requirements of the

compassionate appointment scheme. The Apex Court while dealing with Clause (3) of Article 15 in Govt. of Andhra Pradesh Vs. P.B. Vijaykumar and another, held as follows at p. 1651:

"The insertion of Clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women. An important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3), is not whittled down in any manner by Article 16."

17. We can, therefore, look at the claim of a widow for compassionate appointment in the light of the constitutional principles as well.

18. We are of the view that the Canara Bank authorities have committed a grave error in not entertaining the application preferred by the widow and lost sight of the horrendous suffering of the widow who is to look after the minor children, widowed mother of the deceased, widowed sister and a mentally and physically handicapped brother of the deceased by birth. All of them were under the care and support of the deceased.

19. We may in this connection also refer to some of the provisions in the scheme which would indicate that the granting of terminal benefits to the dependant of a deceased employee is not of much consequence in considering the applications for compassionate appointment. Clause 3.2 of the scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if the terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the age of majority. So also in the case of a member of the family sponsored for appointment desires to wait till he/she attains certain educational qualifications, his/her candidature would be considered provided the date so stipulated is within four years from the date of death of the employee. This would also indicate that the granting of terminal benefits is of no consequence. Further, we may also notice Clause 10 which deals with special provisions. It is stated that if the applicant is employed elsewhere, and if the job in the bank is going to help him/her financially, such requests may also be entertained as per norms. Further, if any member of the family, is already employed with the bank, the bank may consider giving employment to another member of the family depending on the merits of the individual. Conjoint reading of all those clauses would show that

granting of terminal benefits is of no consequence in the matter of considering the claim for compassionate appointment. In view of the abovementioned circumstance we have no hesitation to hold that the petitioner is legally entitled to have her application considered for compassionate appointment in the service of the Canara Bank.

20. We, therefore, find no reason to disturb the findings of the learned single judge and dismiss the appeal for the reasons indicated hereinbefore. The Canara Bank should forthwith consider the application of the widow and pass orders within a period of three weeks from today. We express our deep anguish and concern at the insensitive and obdurate manner in which the Canara Bank authorities had dealt with the request of a widow placed in an infelicitous circumstance with two minor children of ages 7 and 3, aged mother of 74 years, a brother of 48 years (both mentally and physically handicapped by birth) and a widowed sister of age 46 years of the deceased.