

(2014) 09 MAD CK 0347
In the Madras High Court
Case No : Writ Petition No. 16914 of 2012

J. Periyasamy

APPELLANT

Vs

The Chief General Manager

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0347

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Judgement

D. Hari Paranthaman, J.—The petitioner's father was employed as a Messenger in the respondent Bank. He expired on 12.12.2001 while he was in service. The petitioner made an application on 03.04.2003 for compassionate appointment due to the death of his father on the ground that his father was the sole breadwinner of the family and that he was employed in a lower cadre in the Bank. The request of the petitioner for compassionate appointment was rejected by the 2nd respondent by order dated 24.09.2004 stating that the service record of the father of the writ petitioner was a blemished one on account of disciplinary action taken against him, while he was in service. The said order is extracted hereunder:

"With reference to your application for an appointment on compassionate grounds on account of death of your father Sri. M.K. Jayaseelan, who was servicing as messenger in State Bank of India, we advise as under:

As the service records of your father was blemished on account of disciplinary action having been taken against him during his services, we regret to advise that you are not eligible for compassionate appointment in the Bank."

However, the petitioner did not question the aforesaid order dated 24.09.2004. But, he pursued with the Bank to know as to why the service of his father was recorded as a blemished one. Since the Bank did not furnish the details, he knocked the doors of the Bank through Right to Information Act and ultimately, he obtained the information on 06.12.2010, which is to the following effect:

"(i) The appellant's late husband M.K. Jayaseelan owned an amount of Rs. 2,050/- to one Shri S.C. Udiyakumar.

(ii) The latter filed a petition under small causes for recovery of Rs. 2,432/- with interest in the Gudiyattam Court.

(iii) The suit was decreed on 11.06.2001 for Rs. 2,432/- with interest and costs. The Bank considered this as a case of excessive borrowing by the employee and treated the same as minor misconduct as per the applicable Service Rules.

(iv) Charge Sheet dated 12.12.2001 seeking explanation from M.K. Jayaseelan as to why a punishment of "censure" should not be imposed, was signed by the Disciplinary Authority.

(v) There is no evidence on record of the Charge Sheet having been served on M.K. Jayaseelan who expired on the same date i.e. 12.12.2001.

(vi) On the demise of M.K. Jayaseelan, the Disciplinary Authority decided to drop further disciplinary proceedings in the matter."

2. While the petitioner was pursuing under the Right to Information Act, he made another representation dated 12.10.2010 to the respondent Bank to give him compassionate appointment. According to the petitioner, he also made various other representations before making this representation on 12.10.2010. However, the acknowledgements are not produced for these representations. He has stated in the representation dated 12.10.2010 about the earlier rejection order dated 24.09.2004 and also his efforts to get details of the alleged blemished record mentioned in the order dated 24.09.2004 about his father's service. Since there was no response for the said representation, the petitioner filed W.P. No. 27806 of 2010 seeking to dispose of the said representation. This Court, by order dated 11.11.2011, disposed of W.P. No. 27806 of 2010, directing the respondent Bank to pass orders on the representation of the petitioner dated 12.10.2010. Pursuant to the order of this Court dated 11.11.2011 in the above said writ petition, the impugned order dated 09.01.2012 was passed rejecting the request of the petitioner for compassionate appointment giving two reasons, namely, (i) that the service record of the petitioner's father was a blemished one and (ii) that the scheme of compassionate appointment was discontinued from 04.08.2005 onwards and that the present scheme, only provides, in appropriate cases, for payment of ex-gratia lumpsum amount, in lieu of providing compassionate appointment. Hence, the present writ petition.

3. The respondent Bank has filed counter affidavit refuting the allegations. It is averred that the charge memo dated 12.12.2001 was signed by the Disciplinary Authority, as against the petitioner's father and hence, the service of the petitioner's father was a blemished one. The other averment is that the scheme providing compassionate appointment was no longer available with the respondent Bank and the present Scheme that came into effect from 04.08.2005 only provides for payment of ex-gratia lumpsum amount, in lieu of

compassionate appointment, in appropriate cases. It is stated that since the petitioner has made a belated application, he is neither entitled to seek compassionate appointment nor payment of lumpsum amount. According to the respondent Bank, the order dated 24.09.2004, rejecting the request of the petitioner, was not challenged and therefore, it attained finality. It is also averred that the petitioner is not eligible for the benefits under the new Scheme as the application seeking compassionate appointment was rejected on 24.09.2004 itself, before the introduction of the new Scheme, which came into effect on 04.08.2005. Hence, when the petitioner's request has been rejected already by order dated 24.09.2004 and the said order has also attained finality, the petitioner cannot revive his claim, which has been closed earlier, by making a fresh application.

4. Heard both sides.

5. It is not disputed that the father of the petitioner was employed as a Messenger and he died on 12.12.2001 while in service. It is the case of the Bank that on 12.12.2001, the date on which the petitioner's father died, a charge memo was signed by the Disciplinary Authority alleging that he committed a minor misconduct of indulging in excessive borrowing of Rs. 2,050/- from one Mr. S.C. Udayakumar and that the petitioner's father suffered a decree by Small Causes Court, Gudiyatham, for recovery of a sum of Rs. 2,432/- in the suit filed by the said person. The father of the petitioner was asked to explain as to why a punishment of censure should not be imposed on him. But, before the said charge memo could be served, the petitioner's father died on 12.12.2001. It is also admitted that on the demise of the petitioner's father, the Disciplinary Authority decided to drop further proceedings in the matter. The above said details are found in the information obtained under the RTI Act, which has been already extracted.

6. It is unfortunate that the legal heir of an employee, who was holding a lower post was denied the benefit of compassionate appointment, on the employee's death, based on disciplinary proceedings, which is said to have been initiated on the date of death of the employee and which is said to have been dropped. In fact, the charge memo was also not served and no punishment was imposed. However, the Bank described the service of the petitioner's father as a blemished one. In fact, the Bank itself decided to treat it as a minor misconduct as the alleged misconduct had nothing to do with the service of the petitioner's father in the Bank and the transaction was only with an outsider. But, on his father's death, when the petitioner approached for compassionate appointment, the same was rejected by order dated 24.09.2004 on the sole ground that the service record of the petitioner's father was a blemished one.

7. As far as this Court is concerned, from the information available under the RTI Act, I am of the view that the conclusion of the Bank that the service of father of the petitioner was a blemished one has no basis. In view of such an erroneous conclusion, the petitioner was not able to get compassionate appointment,

though, as on that date, the scheme of compassionate appointment was available. Even the Bank did not provide to the petitioner, who was really aggrieved by the order dated 24.09.2004, the details about the alleged blemished service of his father. When the service record of the father was relied on by the Bank to deny the benefit sought by the petitioner, I am of the view that the Bank should have furnished the said details to the petitioner, as otherwise, he would not be aware of the same. For this reason also, I am of the view that the order dated 24.09.2004 rejecting the request of the petitioner is bad and arbitrary. However, in the absence of any materials as to the blemished service, the petitioner did not choose to challenge the same, but, he sought to get the details under the RTI Act. In that process, he was successful on 06.12.2010. In the meantime, the scheme providing compassionate appointment was withdrawn from 04.08.2005 onwards and a new scheme came into effect on the said date, providing for payment of ex-gratia lumpsum amount, in lieu of compassionate appointment. Before he could secure the details regarding the blemished service of his father, the petitioner renewed his request for compassionate appointment on 12.10.2010. But, by the impugned order dated 09.01.2012, his request was rejected as the scheme of compassionate appointment was no longer available. Further, according to the respondent Bank, the petitioner cannot, now, seek compassionate appointment as he did not challenge the earlier rejection order dated 24.09.2004 and he cannot also claim benefit under the new scheme as the scheme had come into force only after the rejection order dated 24.09.2004 was passed.

8. The Bank, being an instrumentality of the State, in my view, cannot act in this fashion, that too, towards an employee, who was serving at the bottom level. There were no other complaints as against the petitioner's father except the alleged excess borrowing of Rs. 2,432/-, that too, from an outsider and that had cost his family, the benefit of compassionate appointment. Now, the Bank has also come up with a plea in the impugned order that the petitioner cannot seek lumpsum payment.

9. At this juncture, learned counsel for the petitioner submitted that the petitioner would be satisfied if the Bank grants either compassionate appointment to him or lumpsum amount to the family of the deceased employee, in lieu of compassionate appointment. But, on the alleged ground of blemished service of petitioner's father, the Bank cannot deny both.

10. I am in entire agreement with the submission of the learned counsel for the petitioner. The information obtained under the Right to Information Act, extracted above, regarding the alleged blemished service of the petitioner's father, makes it very clear that the impugned order is liable to be interfered with. Accordingly, the impugned order is set aside and the matter is remitted back to the Bank, to provide either compassionate appointment or lumpsum ex-gratia amount, within a period of 12 weeks from the date of receipt of a copy of this order. In the meantime, the petitioner shall also furnish the particulars, that is

sought by the Bank, to provide the aforesaid relief to him. The writ petition is disposed of accordingly. No costs.