
(2011) 07 DEL CK 0293
In the Delhi High Court
Case No : Writ Petition (C) 984 of 2008

Jai Kishan

APPELLANT

Vs

Canara Bank and Another

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Citation : (2011) 07 DEL CK 0293

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Kundan Kumar Mishra, for the Appellant; Naveen R. Nath, Amrita Sharma and Darpan Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.

CM No. 22205/2010 (of the Petitioner for restoration of the writ petition dismissed in default on 22nd November, 2010).

1. The counsel for the Respondent Bank seeks time to file reply. However considering the nature of the application need is not felt to call for the reply. The counsels have been heard.

2. For the reasons stated in the application, the same is allowed. The writ petition is restored to its original position.

The application is disposed of.

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3. The writ petition seeks mandamus to the Respondent Bank to grant employment to the Petitioner on compassionate ground, as per the Scheme prevailing in the Respondent Bank. Though the writ petition also claims the relief of release of full and final pensionary and other benefits but no argument in that regard has been addressed.

4. The Petitioner is the son of one Sh. Rishi Raj employed with the Respondent Bank as a Clerk and who died on 2nd February, 2001 with about 12 years of service remaining. The said Sh. Rishi Raj at the time of his death was drawing a salary of Rs. 10,583/- per month.

5. Sh. Rishi Raj, father of the Petitioner had married twice. He left behind a son namely Sh. Sanjay from the first wife. The first wife had however pre-deceased Sh. Rishi Raj. The Petitioner is the son of Sh. Rishi Raj from his second wife.

6. The son of Sh. Rishi Raj from his first wife is stated to have given no objection for grant of compassionate appointment to the Petitioner. Similarly, the mother of the Petitioner has also given no objection. Sh. Rishi Raj from his second wife left behind besides the Petitioner, two daughters also.

7. The Petitioner in accordance with the Scheme of the Respondent Bank for providing compassionate appointment, applied to the Respondent Bank shortly after the demise of his father. However, since the Petitioner was then under age, he was asked to apply upon attaining majority. The Petitioner claims to have attained majority on 1st December, 2002 and again applied to the Respondent Bank on 18th July, 2003 for compassionate appointment. The said request was declined vide letter dated 9th April, 2005 on the ground that the Respondent Bank had formulated a Scheme for payment of lump-sum ex gratia amount and there was no provision for compassionate appointment. The Petitioner was thus advised that the Respondent Bank could not consider his request for compassionate appointment.

8. Notice of the writ petition was issued. The Respondent Bank in its counter affidavit has stated that though a Scheme for compassionate appointment was in force since the year 1976 but was scraped and substituted on 14th February, 2005 with a Scheme for payment of ex gratia lump-sum amount in lieu of appointment on compassionate ground. It is a term of the said Scheme that upon coming into its force, all applications for compassionate appointment pending as on the date of the coming into force of the Scheme will be dealt with in accordance with the new Scheme.

9. At first blush it appeared that since the Petitioner had applied on 18th July, 2003 when the Scheme for compassionate appointment was in force and further since it was the Respondent Bank which kept the said application pending for over one year and/or till the substitution of the Scheme for compassionate appointment with the Scheme for ex gratia payment, the Scheme which had come into force after nearly two years of the application filed by the Petitioner could not deprive the Petitioner of consideration of his case for compassionate appointment. However I find the matter to be no longer res integra. The Supreme Court in State Bank of India and Another Vs. Raj Kumar, set aside the order of the High Court holding that the old Scheme (i.e. of compassionate appointment) applied to pending applications and the new Scheme (i.e. of ex gratia payment) was only prospective in operation. The Apex Court reiterated

that appointment on compassionate grounds is not a source of recruitment; on the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all the eligible persons to participate in the selection process; that the dependants of employees who die in harness do not have any special claim or right to employment, except by way of concession that may be extended by the employer under the Rules or by a separate Scheme, to enable the family of the deceased to get over the sudden financial crisis; that the claim for compassionate appointment is therefore traceable only to the Scheme framed by the employer for such employment and there is no right whatsoever outside such Scheme; an appointment under the Scheme can be made only if the Scheme is in force and not after it is abolished/withdrawn; that when a Scheme is abolished, any pending application seeking appointment under the Scheme will also cease to exist, unless saved; the mere fact that an application was made when the Scheme was in force will not by itself create a right in favour of the applicant. It was further held that where the earlier Scheme is abolished and the new Scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new Scheme, then the new Scheme alone will apply. It was yet further held that as compassionate appointment is a concession and not a right, the employer may wind up the Scheme or modify the Scheme at any time depending upon its policies, financial capacity and availability of posts.

10. The present case is squarely covered by the judgment aforesaid pertaining to the same schemes. Unfortunately, the counsel for the Respondent Bank in spite of seeking time did not invite attention thereto. In view of the said direct judgment, reliance by the counsel for Petitioner on *Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another*, is of no avail.

11. Though the writ petition cannot succeed owing to the aforesaid but I may also mention another reason for which it was felt that the Petitioner has disentitled himself to the relief. In spite of refusal of the Respondent Bank on 9th April, 2005, the present writ petition was filed only in or about February, 2008 i.e. after nearly three years. The Supreme Court in *Eastern Coalfields Ltd. Vs. Anil Badyakar and Others*, has held that compassionate appointment is not a vested right which can be exercised at any time in future; compassionate appointment cannot be claimed and offered after a lapse of time and after the crisis is over; compassionate appointment is intended to enable the family to tide over the sudden crisis or distress.

12. Notice may also be taken of *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, and *Union of India (UOI) and Others Vs. Bhagwan Singh*, and the judgment of a Single Judge of this Court in *Municipal Corporation of Delhi Vs. Bhoori Lal and Another*, wherein it has been held that Courts are not empowered to give direction for compassionate appointment and are only entitled to direct consideration for compassionate appointment.

13. Before parting with the case, another plea of the Respondent Bank may also be noticed. It is their case that upon rejection of the claim for compassionate appointment, the mother of the Petitioner had applied under the new Scheme for ex gratia payment but was not found entitled thereto also for the reason of drawing pension of approximately Rs. 4300/- per month and being in receipt of termination benefits of over Rs. 4 lacs of late Sh. Rishi Raj. No grievance in this writ petition of the rejection if any of the claim for ex gratia payment has been made.

14. There is thus no merit in the writ petition, the same is dismissed. no order as to costs.