(2013) 07 AHC CK 0304

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2574 (SS) of 2009

Kumari Kamini Verma APPELLANT

Vs

Canara Bank and Another RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2014) 2 ALJ 458 : (2013) 4 UPLBEC 2764

Hon'ble Judges : Devendra Kumar Upadhyaya, J

Bench : Single Bench

Advocate : Suyash Gupta and Sri R.C. Gupta, for the Appellant; Vinay Shanker and Sri B.P. Awasthi, for the Respondent

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, J.—Supplementary counter-affidavit and supplementary rejoinder affidavit filed today are taken on record. Heard Sri Suyash Gupta, holding brief of Sri R.C. Gupta, learned Counsel for petitioner and Sri Vinay Shanker, learned Counsel for respondent-Bank.

2. As to whether petitioner, who is dependent of deceased employee of respondents-Bank can be given appointment on compassionate ground under the relevant Scheme permitting such appointment is the question which needs determination by the Court in the instant writ petition.

3. Father of the petitioner late Kamal Kishore Verma, who was working as Junior Manager Grade Scale-I in respondent-Bank, died while in service on 21.5.2003. The petitioner being daughter of deceased employee appears to have applied seeking compassionate appointment under the then prevalent Scheme of compassionate appointment available in the respondent-Bank. However, by means of a letter dated 19.7.2004, the Bank authorities required the petitioner to re-submit the application alongwith certain documents and informations, pursuant to which she applied for compassionate appointment in prescribed format on 31.8.2004. During pendency of aforesaid application made by the

petitioner seeking compassionate appointment, the Scheme of employment on compassionate ground was replaced by the respondent-Bank by means of circular dated 14.2.2005 by the Scheme for payment of ex gratia lump sum amount in lieu of employment on compassionate ground. The said Scheme was circulated on 14.2.2005 and as per Clause 9, the Scheme came into force with immediate effect. Clause 9 of the said Scheme provides that all applications for compassionate appointment/grant of lump sump ex gratia amount pending as on the effective date will be dealt with in accordance with the new Scheme and further that there shall be no provision for compassionate appointment. Clause 9 of the new Scheme runs as under:

9. Effective Date of the Scheme.--The Scheme will come into force with immediate effect and all applications for compassionate appointment/grant of lumpsum exgratia amount, if any, pending as on the effective date will be dealt in accordance with the above Scheme approved by the Board. Henceforth, there shall be no provision for providing compassionate appointment.

4. It appears that on enforcement of new Scheme for payment of ex gratia lump sum amount in lieu of employment on compassionate ground which was introduced by the respondent-Bank, case of the petitioner was processed and she was informed by the Bank authorities by means of letter dated 27.4.2005 that she must submit application in the prescribed format seeking payment of ex gratia lumpsum amount in lieu of employment on compassionate ground, thus, claim of the petitioner for appointment on compassionate ground, on one hand, was rejected and as per the new Scheme she was required to furnish requisite application for payment of lump sum ex gratia amount.

5. It is not in dispute that prior to enforcement of the new scheme launched by the respondents-Bank for payment of ex gratia lump sum amount in lieu of employment on compassionate ground, the Scheme of employment on compassionate ground was in vogue which was promulgated vide circular dated 8.5.1993. The said Scheme was floated for providing employment on compassionate ground to the dependent of deceased bank employees.

6. Arguing the case on behalf of petitioner, Sri Suyash Gupta vehemently submitted that action on the part of respondent-bank in rejecting the claim of petitioner for compassionate appointment and requiring her to claim ex gratia amount is absolutely unlawful for the reason that the application by the petitioner was made prior to enforcement of the new Scheme and hence right accrued to her on the basis of old Scheme cannot be said to have been taken away by enforcing the new Scheme.

7. In support of his contention, he has placed heavy reliance on the judgment of this Court in the case of Allahabad Bank Staff Association and Others Vs. Chairman and Managing Director, Allahabad Bank and Others, , wherein it has been laid down that since in the said case application seeking compassionate appointment was made prior to enforcement of the new Scheme as such the new

Scheme could not have been applicable so far as applications seeking compassionate appointment which were pending on the date of consideration are concerned.

8. On the other hand, learned Counsel appearing for the Bank has submitted that the judgment rendered by this Court in the case of Allahabad Bank (supra) does not have any application to the facts of instant case for the reason that the new Scheme introduced by Allahabad Bank for grant of ex gratia amount in lieu of employment on compassionate ground does not contain any provision akin to the provision contained in Clause 9 of the new Scheme made applicable in the Canara Bank which inter alia provides clearly and unambiguously that all the applications for compassionate appointment pending as on the effective date will be dealt with in accordance with the new Scheme and further that there shall be no provision for compassionate appointment. Hence, in absence of any provisions akin to the provisions contained in Clause 9 of the new scheme of Canara Bank, the judgment of this Court in the case of Allahabad Bank (supra) does not come to the help of petitioner.

9. In support of his contention, Sri Vinay Shanker, learned Counsel for Bank has also placed reliance on the judgment of Hon''ble Apex Court in the case of State Bank of India and Another Vs. Raj Kumar, , wherein interpreting similar provisions as contained in Clause 9 of the new Scheme of Canara Bank, the Hon''ble Apex Court has categorically held that all pending applications will be considered under the new scheme.

10. From perusal of the material available on record and having regard to the arguments made by learned Counsel appearing for respective parties, what emerges to be considered by the Court is as to whether in the light of judgment of this Court in the case of Allahabad Bank (supra), the case of petitioner can be said to be covered by the old scheme.

11. As noted above, the new Scheme of Canara Bank specifically and unambiguously provides that all pending applications shall be dealt with in accordance the new scheme and also that there shall be no provision for providing compassionate appointment. So far as the case being relied upon by learned Counsel for petitioner i.e. the case of Allahabad Bank (supra) is concerned, it is noteworthy that the new Scheme introduced in Allahabad Bank for grant of lump sum ex gratia amount in lieu of employment on compassionate ground does not contain any provisions equivalent of the provisions contained in Clause 9 of the new Scheme of Canara Bank. The Scheme for payment of ex-gratia amount in lieu of employment on compassionate ground in Allahabad Bank was introduced by means of letter dated 4.2.2005, which has been brought on record by learned Counsel for petitioner through supplementary counter-affidavit dated 6.7.2013.

12. A perusal of the aforesaid Scheme introduced by Allahabad Bank reveals that the said Scheme does not contain any provisions which can be said to be

equivalent to the provisions contained in Clause 9 of the new Scheme introduced in Canara Bank.

13. Clause 12 of the new Scheme introduced and made applicable in Allahabad Bank only says that Scheme will come into force on 18.12.2004. It does not contain any such clause which says that pending applications, from the date of promulgation of the new Scheme, are to be considered in accordance with new scheme. The said new scheme introduced in Allahabad Bank, though circulated by means of circular dated 4.2.2005 only provides that scheme shall come into force retrospectively with effect from 18.12.2004, meaning thereby, it will be deemed to have commenced from 18.12.2004, whereas so far as the new Scheme made applicable in Canara Bank is concerned, the same has come into force with immediate effect, that is to say, with effect from the date Scheme was circulated i.e. with effect from 14.2.2005.

14. This Court in the case of Allahabad Bank (supra) has considered the matter of the claimant on compassionate appointment in the light of facts of the said case and relying on the judgment of Hon''ble Apex Court in the case of State Bank of India and Others Vs. Jaspal Kaur, , has held that since both, on the date application was made as well as on the date on which application was finally considered by the Bank, the Scheme, as was applicable, provided for compassionate appointment, as such the Scheme circulated on 4.2.2005 which scrapped the provisions for compassionate appointment has no application qua the case of petitioner.

15. In the instant case, in my considered opinion, judgment rendered by this Court in the case of Allahabad Bank (supra) does not have any application for the reason that under the new Scheme floated by Allahabad Bank, no provision similar to the provision contained in Clause 9 of the new Scheme introduced in Canara Bank exists. Moreover, it is also worth noticing that the Hon''ble Apex Court in the case of State Bank of India and another v. Raj Kumar (supra) while taking note of the provision of the new Scheme introduced by the State Bank of India and also discussing the law laid down by the Supreme Court in the case of State Bank of India and others v. Jaspal Kaur (supra), has categorically laid down that the new Scheme specifically provided that all pending applications will be considered under the new Scheme and therefore, it has to be held that new Scheme which came into force on 4.8.2005 alone will apply even in respect of pending applications.

16. The Hon''ble Apex Court has noted down the provisions as regards the date of application of new Scheme introduced by State Bank of India. Clauses 14 and 15 of new Scheme introduced by State Bank of India, as noted down by Hon''ble Apex Court in the case of State Bank of India and another v. Raj Kumar (supra), are quoted herein below:

14. Date of effect of the Scheme and disposal of pending applications.-- Applications pending under the Compassionate Appointment Scheme as on the

date on which this new Scheme is approved by the Executive Committee of the Central Board will be dealt with in accordance with the new Scheme for payment of ex gratia lump sum amount provided they fulfill all the terms and conditions of this Scheme.

15. Miscellaneous provisions of the Scheme

(vi) with effect from the date the ''SBI Scheme for payment of ex gratia lump sum amount'' comes into force the Bank''s Scheme of compassionate appointments shall be deemed abolished/withdrawn and no request for compassionate appointment shall be entertained or considered by the Bank under any circumstance.

17. A perusal of aforequoted provisions contained in the new Scheme promulgated by State Bank of India reveals that the said Scheme also contains provision which is worded almost similarly to the provisions contained in Clause 9 of the new Scheme introduced by Canara Bank. Thus, so far as applicability of ratio laid down by this Court in the case of Allahabad Bank (supra) to the facts of instant case is concerned, I have no hesitation to hold that in view of the judgment of Hon''ble Apex Court in the case of State Bank of India and another v. Raj Kumar (supra), the same does not have any application to the facts of instant case.

18. It is settled law that compassionate appointment is not a right; rather it is a concession.

19. In case of repeal of old scheme and introduction of the new Scheme in respect of some concession, it cannot be said that any right had accrued in favour the petitioner, which could not be curtailed by introduction of the new Scheme. Thus, argument made by learned Counsel for petitioner to the effect that right which had accrued in the petitioner on the basis of old Scheme could not have been taken away by introducing the new Scheme by the Bank authorities does not, in my opinion, holds good.

20. Lastly, learned Counsel for petitioner has submitted that had the application made by the petitioner been processed within reasonable time, he could have got compassionate appointment and it is on account of inordinate delay in processing the application that the petitioner is now being denied compassionate appointment by the respondents-bank.

21. For examining the aforesaid contention of learned Counsel for petitioner, it is to be seen as to whether there has been inordinate delay in processing the application by the Canara Bank or not.

22. Admittedly, father of the petitioner died on 21.5.2003. When the application seeking compassionate appointment was made by the petitioner to the authorities of Bank is not clear from the pleadings of record. The application, which is available on record, which has been made by the petitioner, is an application dated 31.8.2004, which according to learned Counsel for petitioner

was submitted in response to the letter dated 19.7.2004 written by bank-authorities requiring the petitioner to re-submit her application seeking compassionate appointment. The letter dated 19.7.2004 reveals that the petitioner was not only required to make application in prescribed format but was also required to furnish certain informations and documents for the purposes of the same being processed for further action in the matter of appointment on compassionate ground. Thus, application can be said to be pending before the bank authorities only on 31.8.2004 and in the meantime, the new Scheme was introduced by means of circulating the circular dated 14.2.2005. In this view, from the date of re-submission of the application by the petitioner on 31.8.2005 till introduction of the new Scheme on 14.2.2005, there appears to be lapse of five and a half months.

23. For processing the application seeking compassionate appointment, various aspects are to be seen by the respondent-bank, such as availability of vacancies, qualification of the person seeking appointment, financial condition of the family of the applicant, suitability of the applicant for appointment on a particular post etc.

24. Thus, period of five and a half months cannot, in my considered opinion, be said to be inordinate delay in processing the application of the petitioner.

25. Learned Counsel for petitioner relying on the judgment in the case of State Bank of India and another v. Raj Kumar (supra) has submitted that the said judgment is applicable to the facts of instant case for the reason that there has been inordinate delay at the end of bank-authorities in processing application made by the petitioner.

26. I cannot agree with the contention of learned Counsel for petitioner for the reason that the Hon''ble Apex Court while deciding the case of State Bank of India and another v. Raj Kumar (supra) has also taken note of judgment of Hon''ble Apex Court in the case of State Bank of India and others v. Jaspal Kaur (supra) wherein it was found and held that on account of delay of a period of about five years, cases of the individuals seeking appointment on compassionate ground could not have been decided on the basis of new Scheme.

27. In the instant case, time lapse between the date of re-submission of application and the date of promulgation of new scheme is five and half a months only, hence, the above submission of learned Counsel for petitioner also does not appeal to the Court.

28. For the discussions made and reasons given above, the writ petition deserves to be dismissed. It is accordingly dismissed.

29. It will be open to the petitioner to move an application for payment of lump sum ex gratia amount. If such an application is made, the same shall be processed and decided and actual payment shall be made within a maximum period of six weeks from the date of submission of application by the petitioner.

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