(2013) 02 MAD CK 0191

In the Madras High Court

Case No : Writ Petition No. 21733 of 2004

Kumudhini Sudhakar and Another APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Citation : (2013) LabIC 2998

Hon'ble Judges : A. Arumugha Swamy, J

Bench : Single Bench

Advocate : Balan Haridas, for the Appellant; Rajinish Pathiyil, for the Respondent

Final Decision : Dismissed

Judgement

A. Arumugha Swamy, J.—The petitioner has approached this Court with a prayer for issuance of a writ in the nature of certiorarified mandamus to quash the order dated 04.5.2004 bearing No. DGM:PER:NO:415, wherein the application for compassionate appointment was rejected on the ground that the family is not considered to be under Penurious conditions and indigent as per the guidelines received from Government of India based on the judgment of the Hon''ble Apex Court in case of Umesh Kumar Nagpal Vs. State of Haryana and Others,). According to the petitioners, they are similarly placed and the cause of action is the same and the relief prayed for is the same. The father of the second petitioner was employed in the respondent Bank as Branch Manager and he died while he was in service on 02.8.2002. Since the family is in penurious conditions, the petitioners made an application for compassionate appointment by letter dated 09.10.2002 in the prescribed format. But the respondent rejected the application on the ground that the first petitioner is drawing family pension of Rs. 7,573/- and also taking into assumed interest on 80% surplus and totalling in all sum of Rs. 11,533/- as the total income of the family. Hence, the petitioners are before this Court.

2. The learned counsel for the petitioner contended that: the respondent cannot

take into account the pension while determining the financial position of the deceased family. The learned counsel for the petitioner further submitted that the respondent failed to take into account the liabilities of the deceased employee for considering the case of Compassionate Appointment. The learned counsel for the petitioner also produced the judgment of the Hon''ble Supreme Court in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, to the effect that the family Benefit Scheme such as, payment of Gratuity, payment of lumpsum of Provident fund, Family pension etc., cannot be equated with the benefit of compassionate appointment. Therefore, the learned counsel for the petitioner prays that the writ petition has to be allowed.

3. The learned counsel for the respondent Bank submitted that for determining the eligibility for compassionate appointment, all the sources of income derived by the person has to be taken into account. The learned counsel for the respondent bank further submitted that the respondent, after taking into consideration all the aspects, has come to the conclusion that the petitioners are not coming under the definition "Penury". The learned counsel for the respondent Bank also produced the judgment of the Hon''ble Supreme Court in State Bank of India and Another Vs. Somvir Singh,] to substantiate the said contention. Therefore, the learned counsel for the respondent prays that the writ petition has to be dismissed.

4. The petitioners are mother and son of the deceased employee. Admittedly, the father of the petitioner, namely, Mr. Aruna Sudhakar, was employed in the respondent Bank as Branch Manager and he died in harness. Therefore, the petitioners, after complying with all the formalities, have applied for compassionate appointment and the same has been rejected by the respondent Bank on the ground that the family is not considered to be under Penurious conditions and indigent as per the guidelines received from Government of India based on the judgment of the Hon''ble Apex Court in case of Umesh Kumar Nagpal Vs. State of Haryana and Others,). According to the petitioners, they are similarly placed and the cause of action is the same and the relief prayed for is the same.

5. According to the respondent Bank, the petitioners have not come under the definition of Penury as they are holding the valuable property worth about Rs. 5.4 lakhs. According to them, the respondent bank have already paid the terminal benefits to the deceased family and the first petitioner is drawing family pension. According to them, the petitioners are getting the income of Rs. 7,533/- and therefore, the guidelines received from the Government of India based on the Judgment of Hon''ble Supreme Court is not applicable to them. The respondent Bank also relied on the judgment of the Hon''ble Supreme Court in State Bank of India and Another Vs. Somvir Singh, wherein it has been held as follows:

11. The scheme for appointment of dependants of deceased employee on compassionate grounds framed by the appellant Bank inter alia provides that in

making assessment of the financial condition of the family which is an important criterion for determining the eligibility to compassionate appointment, the following factors are required to be taken into consideration:

(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;

(e) Proceeds of LIC Policy and other investments of the deceased employee;

(f) Income for family from other sources;

(g) Income of other family members from employment or otherwise;

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

6. According to the petitioners, while determining the financial position, the Family benefit Scheme cannot be taken into consideration. According to them, they are repaying the loan availed by the deceased and therefore, they are coming under the definition of "Penury". The learned counsel for the petitioner relied on the judgment of the Hon''ble Supreme Court in Balbir Kaur and another v. Steel Authority of India Limited and others to substantiate his case. In the said judgment, it has been held as follows:--

14. It is significant to note that the Employees'' Provident Funds & Miscellaneous Provision Act of 1952 is a beneficial piece of legislation and can amply be described as social security statute, the object of which is to ensure better future of the concerned employee on his retirement and for the benefit of the dependents in case of his earlier death. As regards the provisions of the payment of Gratuity Act, 1972 as amended from time to time, it is no longer in the realm of charity but a statutory right provided in favour of the employee.

7. From the perusal of the entire papers, it is seen that the second petitioner applied for the post of sub staff. The learned counsel for the respondent produced the statement of Assets and liabilities of the deceased employee. From the reading of the said statement, it is clear that the deceased employee availed Housing loan and personal loan and the petitioners are repaying the same. Therefore, I am of the view that the petitioners are coming under the definition "penury".

8. According to the respondent that they have already paid a sum of Rs. 5.42 lakhs to the deceased employee towards terminal benefits and the first petitioner is receiving a sum of Rs. 7,573/- towards family pension and therefore, they are not entitled for compassionate appointment as per the judgment of the Hon''ble Supreme Court in State Bank of India and another v. Somvir Singh cited supra.

9. Admittedly, the petitioners are repaying the loan availed by the deceased

employee. Therefore, the judgment relied on by the learned counsel for the petitioners not applicable to the facts of the present case, as in that judgment, there is no mention about the deceased liabilities. But in this case, it is evident from the statement produced by the respondent that the petitioners are having liabilities. Therefore, the above judgment is not helpful to the present case.

10. According to the petitioners while determining the financial condition, the family benefit scheme should not be taken into account for which, the learned counsel for the petitioners produced the judgment of the Hon''ble Supreme Court in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, In the said judgment, it is clearly stated that the family benefit scheme cannot be equated with the benefit of compassionate appointment.

11. Of course, the family pension and the terminal benefits cannot be equated for the death of the bread winner. Therefore, the judgment relied on by the petitioner is squarely applicable to the present case. Under such circumstances, I am inclined to allow the writ petition. Accordingly the writ petition is allowed and the respondent is directed to appoint the second petitioner on the compassionate ground within a period of three weeks from the date of receipt of a copy of this order. No costs.

