

(2004) 01 MAD CK 0063
In the Madras High Court
Case No : Writ Petition No. 130 of 1999

L. Venkatachalam

APPELLANT

Vs

The United Commercial Bank

RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Citation : (2004) 01 MAD CK 0063

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : P. Mohana Krishnan, for Vijay Narayan, for the Appellant; D. Mukundan, for R-2, for the Respondent

Judgement

P.D. Dinakaran, J.—The Petitioner is the second son of Mr. C.T. Lakshmanan, who was employed in the Respondent bank. Since Mr. C.T. Lakshmanan was suffering from parkinson disease, he submitted an application to the Respondent bank on 16.08.1996, seeking voluntary retirement from the services of the bank and also requesting to give appointment to his second son on compassionate grounds. The bank, by letter dated 02.06.1997 while accepting the voluntary retirement of the father of the Petitioner, rejected the request for appointment on compassionate grounds, quoting the financial condition, as well as the fact that his other dependent son was gainfully employed. Aggrieved by the said proceedings, the Petitioner has filed this writ petition for Writ of Certiorarified Mandamus to quash the said proceedings and also for a direction to the Respondents to give employment to the Petitioner.

2. Clause 5(x) of the Scheme provides for appointment of Dependants of deceased employees of the Respondent bank on compassionate grounds, which is reproduced hereunder:

In case a widow, son or daughter is already in the employment, whether in the Bank or elsewhere, the Bank may, at its discretion, consider giving employment to another son or daughter of the deceased employee after taking into account

the individual circumstances of each case i.e., the income of the member of the family already employed, the size of the family, the assets and liabilities of the family and other relevant consideration".

(Emphasis supplied)

3. Learned Counsel for the Petitioner contends that the mere fact that the dependent of the employee was employed cannot be a sole ground to reject the request of the employee for compassionate appointment for his second son and that each case has to be examined separately, particularly when the dependent has already employed, but living separately. In other words, it is contended that the very provision itself would become redundant.

4. Per contra, Mr. Mukundan, Learned Counsel for the second Respondent has submitted that the employment on compassionate grounds is purely a right, which flows on the scheme framed by the bank. If the scheme excludes certain category of employees from the zone of consideration for employment on compassionate grounds, viz., in the case of employees whose widows, son or daughter has already in service whether in the Bank or otherwise, such employees are not entitled to claim employment on compassionate grounds as a matter of right. In the instant case, it is not disputed that the first dependant of the employee had already been employed. Therefore, the proceedings of the Respondent, refusing to give employment to the second dependant of the employee on the ground that the first dependant of the employee is already in service is justified in law.

5. I have carefully considered the rival submissions of both the parties.

6. It is true that the Court has no power to ignore the provisions of the scheme while considering the request of the employee of in the bank. Any sympathetic consideration is | to be weighed only within the scope of the scheme. It is also well settled law that in the cases of compassionate appointments, each case has to be viewed on its own facts and circumstances as there cannot be any hard and fast rule interpreting Clause 5(x) referred to above. There is a clear indication in Clause 5(x) to the effect that the management should take into account the financial condition and other relevant considerations. In my considered opinion, the other relevant considerations includes the fact whether the dependent, already employed, is supporting the family of the employee of the bank, who opted for voluntary retirement on medical grounds even before he attained his superannuation.

7. In view of the fact that the management has failed to consider the said aspect, I am inclined to quash the impugned order and permit the Petitioner to make a detailed representation to the management within a period of 30 days from the date of receipt of a copy of this order. The management, on receipt of the said representation shall take appropriate decision, of course after taking into consideration the spirit of the provisions relating to the appointment on compassionate grounds, as early as possible, in any event within a period of 12

weeks from the date of receipt of the representation.

8. The writ petition is ordered accordingly. No costs.