
(1996) 06 KAR CK 0017
In the Karnataka High Court
Case No : Writ Petition 15832 of 1994

M. Dakshina Murthy

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 27-06-1996

Acts Referred:

Citation : (1996) ILR (Kar) 3216 : (1996) 6 KarLJ 664

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Advocate : K. Subba Rao, for the Appellant; M. Ram Bhat, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

A.J. Sadashiva, J.—The petitioner is the son of late Muniyappa who was working in the respondent Bank as a Godown Keeper. The said Muniyappa passed away on 13.3.1979 while he was in service. His wife also passed away 3 days thereafter. They left behind them four sons who were all minors then. One Venkataramaiah, the brother of Muniyappa addressed a letter to the 4th respondent Bank on June 18, 1979, informing that his brother Muniyappa died on 13.3.1979 due to heart attack; His wife also died on 16.3.1979; They had four children, viz., M.D. Murthy, M.D. Rudresh, M. Muralidhar and M. Renuka Prasad. As the said children of late Muniyappa have not attained the age of 18 years, he requested to enroll their names for appointment in the Bank on compassionate grounds as and when they attain the age of majority. M. Rudresh is the first son of late Muniyappa. The petitioner is the second son.

2. The petitioner after attaining majority appear to have filed an application on 10.10.1992 seeking appointment on compassionate grounds. The said application was rejected firstly, on the ground that the Bank did not receive the claim from the dependents within one year from the date of death of employee, as per Annexure-D the communication dated 18.11.1992, secondly, on the ground that the application of the petitioner cannot be considered in the absence

of a valid and acceptable proof for having obtained permission from the competent authority to apply at a later date, as per Annexure-"E", the communication dated 30.12.1992.

3. The second communication, from the facts stated above is unsustainable in law as the uncle of the petitioner had requested the Bank within the period prescribed to enroll the names of the dependents of Muniyappa for being appointed on compassionate grounds as and when they attain majority.

4. Sri K. Subba Rao, Learned Counsel appearing for the petitioner has contended that, the rejection of the application of the petitioner solely on the ground that the application was filed 13 years after the death of his father, as the scheme prescribes that the application shall be filed within one year from the date of death of employee, is unsustainable in law in the facts and circumstances of this case. It is the contention of Sri Subba Rao, that, the petitioner could not file application within one year from the date of death of his father as he was then a minor. He filed the application within one year from the date of attaining majority. Therefore the application must be deemed to have been filed in compliance with Clause-5 of the Scheme for appointment of dependents of the deceased employees on compassionate grounds.

5. Clause-5 of the Scheme reads as follows:

"5. METHOD OF APPOINTMENT:

(a) Request for appointment under the scheme should be received by the Bank in the prescribed form as per Annexure-II within one year from the date of death of the employee. In case the dependent is a minor or does not possess suitable minimum qualification, his/her case can be considered within four years of the death of the employee, to enable him/her to so qualify in terms of age and of qualification, provided that the dependent has made a request to the Bank within a year of the death of the employee."

Sub-clause (b) & (c) are not relevant for the purpose of this case.

The Circular dated 16.3.1992 was issued by the respondent-Bank clarifying the scheme and giving revised, instructions. It is stated in the said Circular as follows:

"(i) In case the member of the family to be offered appointment is a minor, the offer of appointment may be kept open till the minor attains the age of majority provided a request to that effect is made to the Bank within the stipulated time limit.

(ii) In case a member of the family sponsored for appointment desires to/wait till he/she attains certain educational qualifications, his/her case may be considered provided the date so stipulated is within four years from the date of death of the employees."

Sri K. Subba Rao, Learned Counsel appearing for the petitioner, relying on the

revised Circular instructions has contended that the respondents have fallen into an error in rejecting the application of the petitioner solely on the ground that the application is filed 13 years after the death of the employee without considering the question that, the petitioner and his brothers were all minors at the time of death of their father. It is his further contention that during the period of minority the petitioner and his brothers suffered legal disability and as such they could not make any application and thus the petitioner is entitled to be considered under Clause (i) of revised instructions as he filed his application within one year from the date he attained majority.

6. Sri Ram Bhat, Learned Counsel appearing for respondents has contended that the application is filed 13 years after the death of the employee by which time the distress of the family ceased to exist due to passage of time. It is his further contention that the compassionate appointment would be given to the dependents of the deceased employee only to get over the financial crisis to which they are placed on account of sudden and sad demise of the Bread winner of the family. The very fact that the first son of the deceased employee is studying Engineering and the petitioner has studied upto B.Com., and the application is filed after 13 years of the death of the employee, according to Sri Ram Bhat, is sufficient to hold that the family of the petitioner is not in distress.

7. In support of his contention Sri Subba Rao, Learned Counsel appearing for the petitioner relies on the following decisions:-

- 1) Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, ,
- 2) Satyendra Kumar Parbatsinh Zala and Others Vs. Secretary, Govt. of Gujarat, Education Dept. and Others, .
- 3) Auditor General of India and others Vs. G. Ananta Rajeswara Rao, .
- 4) Jethi Devi Vs. Bhakra Beas Management Board and Another,

8. Sri Ram Bhat, learned Counsel appearing for respondents in support of his contention has placed reliance on the decision of the Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, .

9. The Supreme Court has consistently held that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV, is legally impermissible.

10. Admittedly, petitioner has filed his application 13 years after the death of his father. His elder brother who was doing Engineering did not apply within one year after he attained majority. The Bank rejected the application on the ground that the application is filed 13 years after the death of the employee contrary to the scheme.

11. It is true, in all the cases cited by Sri Subba Rao, the Supreme Court directed

the authorities to consider and appoint the petitioners on compassionate grounds. It is equally true that in all those cases the applications are filed within a reasonable time, The facts in this case are entirely different from the facts in the aforesaid cases. In view of the admitted facts, this case is covered by the principle laid down by the Supreme Court in Nagpal's case, wherein the Supreme Court has categorically held that,

"Compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

The petitioner's elder brother did not seek for employment on compassionate ground within one year from the date he attained majority. He was doing his Engineering then. The petitioner filed his application. In view of the elder brother of the petitioner failing to apply for a job on compassionate ground, it is not possible to agree with the contention of Sri K. Subba Rao, Learned Counsel for the petitioner, that the rejection of the application on the ground that the petitioner has not filed his application within one year from the date of death of his father is in violation of the revised circular. The object of granting compassionate employment is to enable the family to tide over the sudden crisis, the first person shall make use of it whenever the opportunity comes. If he fails to do so, then it cannot be passed over to the next member. If such a thing is envisaged then, there would be no time limit in a case of this nature which can be extended even to the 4th son, 18 years after the death of the employee. If the distress in which the family is placed ceased to exist by passage of time, it cannot be said that the members of the family are entitled to seek compassionate employment, in view of the specific observation of the Supreme Court that,

".....the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

12. The Supreme Court in Jagdish Prasad Vs. State of Bihar and Another, has held that:-

"The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government Servant which cannot be encouraged, de hors the recruitment rules."

13. It is admitted that the petitioner filed the application long after the death of his father. His eldest brother did his Engineering and he also studied upto II year B.Com. . His elder brother for whom the right to apply accrued did not apply within one year from the date of attaining majority. Even otherwise, in view of the decision of the Supreme Court in Jagdish Prasad Vs. State of Bihar and Another, the application of the petitioner is not entitled to be granted, as it would result in a "different mode of recruitment".

14. In the result, this petition fails and accordingly dismissed.

In the circumstances of the case, there is no order as to costs.