(2003) 05 KL CK 0020

In the High Court Of Kerala

Case No : O.P. No. 21630 of 2002 (Y)

Mahesh Kumar M. APPELLANT

Vs

Canara Bank and Another RESPONDENT

Date of Decision : 30-05-2003

Acts Referred:

Citation : (2003) 3 LLJ 499

Hon'ble Judges : K. BalaKrishnan Nair, J

Bench : Single Bench

Advocate : H.B. Shenoy, B. Ashok Shenoy, Lakshmi B. Shenoy and Abu Mathew, for the Appellant; M.C. Sen, M.P. Sreekrishnan and Shahna Karthikeyan, for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair, J.—The petitioner is an applicant for appointment under the Dying in Harness Scheme in the 1st respondent Bank. His father, who was a Clerk in the said Bank, died while on duty on October 10, 1998. The deceased employee left behind him, his wife, two children, two sisters and his aged mother. The petitioner is one of the children. One of the sisters of the deceased employee is mentally retarded. All the six members of the family are unemployed. Therefore, the petitioner submitted Ex. P1 application for appointment on compassionate ground on November 13, 1998. By Ext. P2 communication dated February 27, 1999, the Senior Manager of the 1st respondent Bank called for certain particulars from the petitioner. By Ext. P3 reply, the details called for were furnished. Later, the petitioner was served with Ext. P4 communication dated June 30, 1999 which reads as follows:

"The financial position of your family has been examined in depth by the competent authority and it is found that there are no indigent circumstances warranting providing employment on compassionate grounds to the dependent of the deceased. Hence your application has not been considered favourably."

The aggrieved petitioner filed Ext. P5 representation praying to reconsider Ext. P4 before the General Manager of the 1st respondent Bank. By Ext.P6 communication, he was informed that his application is engaging their attention and he will be informed as soon as a decision is taken by the competent authority. Again, he was called upon to furnish certain, details by Ext. P7 such as assets/income/income derived from the assets etc, of the members of the family. The details called for were furnished by Ext. P8 reply. When there was no further steps from the side of the respondents, this Original Petition was filed seeking appropriate reliefs. The petitioner challenges Ext.P4 and also seeks a direction to appoint him.

2. The respondents have filed a counter affidavit. The first contention raised therein is that the petitioner does not have any vested right to be enforced. Since no right is infringed, he is not entitled to get any remedy from this Court. It is submitted that by way of Provident Fund, Gratuity, leave encashment and Death Relief, Rs. 2,53,079.11 has been paid to the widow of the deceased employee from the Bank. It is also submitted that the family received an amount of Rs. 95,195/- from the Life Insurance Corporation and also Rs. 40,300/- towards National Savings Certificate. It is also pointed out that a monthly pension of Rs. 4,670.24 is being paid to the mother of the petitioner. It is further pointed out that in view of the new policy adopted by the Bank in the light of the decision of Apex Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, the petitioner cannot be given appointment. They rely on Ext.R2A guidelines issued by the Government of India to the banks based on the above said decision of the Apex Court.

3. The petitioners have filed a reply affidavit controverting the contentions of the respondents. I heard both sides. The learned counsel for the petitioner relied on the decisions of this Court in General Manager, Personnel Wing, Canara Bank and Others Vs. Priya Jayarajan P.P., and Vasantha Kumari Vs. Canara Bank, . Reliance is also placed on the decision of the Apex Court in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, . The respondents relied on the decision of the Apex Court in Umeshkumar Nagpal''s (supra) case mentioned above.

4. The total amount received by the petitioner''s family on the death of the employee will come to Rs. 3,88,574/-. The family pension presently being received including dearness relief will come to Rs. 4,670.24. As evident from Ext. P8, in another 2 years, the said amount will come down to 50%. Having regard to the cost of living these days, a monthly pension less than Rs. 5,000/- for the maintenance of a family consisting of 6 members is grossly inadequate. The total amount received in cash is also not a very huge amount. The petitioner, in his reply affidavit, has pointed out that substantial portion of the money received has been spent for clearing the outstanding liabilities. Therefore, having regard to the financial position of the family, the prayer of the petitioner for employment is normally justified. If the stand of the Bank accepted, no dependent of a deceased employee of the Bank will be eligible to get employment under the

Dying in Harness Scheme. All employees will get Provident Fund, Gratuity etc. The dependents of pension optees will get family pension also. If the deceased employee is not a pension optee, then the provident fund amount will be correspondingly higher. But, Courts are loath to accept the interpretation which will make the scheme of appointment under the Dying in Harness scheme redundant and unworkable. A Division Bench of this Court in Priya Jayarajan''s case mentioned above relying on the decision of the Apex Court in Steel Authority''s case (supra), has held that the payment of terminal benefits cannot be taken as a ground for rejecting employment under the Dying in Harness scheme. In the decision reported in Suma Mohan Vs. Union Bank of India, , this Court has reiterated that the grant of family pension or payment of other terminal benefits cannot be treated as a substitute for providing employment assistance.

5. No one has a case that the petitioner''s family is having any other income. In view of the above position, the stand taken by the respondents is unjustified. The technical contention raised that the petitioner does not have any legal right to get appointment is also plainly untenable. The power of the respondents under the scheme to give appointment to the dependents of a deceased employee is a power coupled with a duty which creates a corresponding right in the dependent. The concept of "power coupled with a duty" has been explained by the Constitution Bench of the Apex Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , which was reiterated in L. Hirday Narain Vs. Income Tax Officer, Bareilly, . In the light of the concept of power coupled with duty explained in those decisions, the stand of the respondents that the petitioner does not have any legal right to get appointment cannot be accepted. In view of the above position, the Original Petition is allowed. Ext. P4 is quashed. The respondents are directed to reconsider the claim of the petitioner for appointment in accordance with law in the light of the observations made herein above within two months from the date of receipt of a copy of this judgment.