(2018) 11 UK CK 0185

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 464 Of 2003

Manoj Thakur APPELLANT

Vs

State Bank Of India And Others RESPONDENT

Date of Decision : 19-11-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2018) 11 UK CK 0185

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Vivek Pathak, D.S. Patni

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.

1. This is second round of litigation for the petitioner. In the first round of litigation, his writ petition which was for appointment on compassionate grounds, was allowed by this Court vide order dated 14.06.2012, but in the appeal the order dated 14.06.2012 was set aside vide order dated 18.05.2015 and the matter was remanded to this Court. The petitioner and respondents have been heard on more than one occasions. The facts of the case are as follows.

2. The father of the petitioner was a record keeper in the State Bank of India, Branch Ranipur, Dehradun. On 13.10.1999, while he was travelling along with his daughter and the present petitioner the ill fated vehicle in which they were travelling met with an accident in which the father of the petitioner (deceased employee) and the sister of the petitioner died. The petitioner survived in the accident but became physically disabled upto 40 % due to the injuries sustained in the accident.

3. At the relevant time, it is an admitted fact, that the father of the petitioner was working as a record keeper and his gross salary was approximately Rs.14,000/- per month, but since he had taken a number of loans, the net salary

which he was receiving was less i.e. Rs.2,183/-. He had left behind his widow, two sons and a daughter. Whereas one son and the daughter were minor, the petitioner was major. The petitioner promptly applied for appointment on compassionate ground to the authorities. The fact that there was a prompt application by the petitioner is not in dispute.

4. The scheme prevalent at the relevant time for compassionate appointment was the Scheme of 1998 known as "Scheme for Appointment on Compassionate Grounds for Dependents of Deceased Employees/Employees Retired on Medical Grounds". As per the said Scheme not only there should be a vacancy on which such appointment can be made but the eligibility of the candidate has also to be taken into consideration and apart from this the financial condition of the family also has an important bearing. In order to gauge what is the financial condition of the family, the following factors have to be determined which are as follows:

"i. Family pension.

ii. Gratuity amount received.

iii. Employee's/employer's contribution to Provident Fund.

iv. Any compensation paid by the Bank or its welfare fund.

v. Proceeds of LIC Policies and other investments of the deceased employee.

vi. Income of family from other sources.

vii. Income of other family members from employment or otherwise.

viii. Size of the family and liabilities, if any."

5. Vide order dated 06.02.2001, the application of the petitioner for appointment on compassionate ground was rejected. The order dated 06.02.2001 states as under:

"Appointment on Compassionate grounds to Sh. Manoj Thakur S/o late Sh. Vinod Thakur Record Keeper with reference to Z.O.S.L. No. 21/3400 Dtd 11.01.2001, we enclose herewith the photocopy of the notes/observations of the Supreme Court on compassionate appointment. Hence, the declination proposal (sic decline proposal) for your appointment is self explicit."

6. Along with this, there is an appraisal of the financial condition of family, wherein as per the bank appraisal report, the total liabilities of the family have been calculated to the tune or Rs. 6.16 Lakh and the terminal benefits which the family was to be given such as provident fund, gratuity etc. were to the tune of Rs.4.51 Lakh. It was also said that the family has an immovable property worth Rs. 4.90 Lakh. The total family pension was calculated as Rs.5,800/- per month.

7. As far as the liability of the family of the deceased employee was concerned, it was much more than the total terminal benefits which were to be received by the family, as per the calculation of the Bank itself. Whereas the total liabilities

against the family were Rs.6.16 Lakh, the total terminal benefits to be received by the family were Rs.4.51 Lakh, apart from monthly family pension of Rs.5,800/- per month. This as per the bank was sufficient for the family and on receiving of these funds cannot be said that the family was in penury. This has been the determination of the bank and the bank authorities. There is no consideration also of the fact that the deceased employee who died in harness has left behind the family of four persons which includes a widow and a son who is partially disabled.

8. Since the petitioner was not given appointment on compassionate ground, he filed a writ petition before this Court. The writ petition was earlier allowed by this Court vide order dated 14.06.2012, against which the bank preferred a special appeal. The special appeal was allowed by the Division Bench on ground that the impugned order dated 06.02.2001 and the appraisal report dated 15.12.2000 were not challenged by the petitioner. The Division Bench remanded the matter to this Court for fresh appraisal.

9. The petitioner has by now challenged both the orders in the writ petition.

10. Learned counsel for the petitioner has relied upon the decision of Hon'ble Apex Court in the case of SBI v. Jaspal Kaur [(2007) 9 SCC 571, wherein the Hon'ble Apex Court had stressed that compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

11. In the seminal decision by the Hon'ble Apex Court in the case of Canara Bank and another v. M. Mahesh Kumar reported in (2015) 7 SCC 412, the Hon'ble Apex Court has discussed such appointment in detail. Various judgments of Supreme Court earlier has been discussed and relied upon. The earlier decision relied upon was of Sushma Gusain v. Union of India, (1989) 4 SCC 468, where the Supreme Court in para 9 has held as follows:

"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

12. Thereafter the Hon'ble Apex Court in the case of Canara Bank (supra) has placed reliance of its earlier decision in the case of MGB Gramin Bank v. Chakrawarti Singh, (2014) 13 SCC 583, wherein the Hon'ble Apex Court held as follows:

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 o the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years."

(emphasis supplied)

13. Definitely later the Hon'ble Apex Court in the case of Canara Bank (supra) has relied upon its earlier decision in the case of Umesh Kumr Nagpal v. State of Haryana, (1994) 4 SCC 138, wherein the Hon'ble Apex Court had emphasised that the compassionate appointment cannot be claimed as a matter of right and has laid down certain conditions where it could be made. These are as follows:

"(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/ incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and to not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

(emphasis supplied)

14. The learned counsel for the bank has relied upon the 1998 Scheme and would stress that the financial condition of the family was such that appointment could not have been given to the petitioner. One of the important elements for

determination by the bank therefore was the appraisal of the financial condition of the family. Appointment, as per the bank, according to Scheme could only be given if the employee who has died in harness has left his family in penury and without any means of livelihood. In order to determine this condition, the criteria which have to be seen are - family pension to be given to the family, gratuity amount received, Employee's/Employer contribution to provident fund, etc.

15. As we have seen the amount of money the family has received on the above accounts i.e. the pension, gratuity, etc. is less than the liability of the family as per the appraisal of none else but the authorities of the bank itself. Therefore in my considered view the Scheme which was liable to be made applicable in case of the petitioner and the family for appointment on compassionate ground has not been applied in its letter and spirit. In any case the reasoning given by the bank while holding that the family is not living in penurious condition also suffers from Wednesburry Principle of reasonableness. Penury means "extreme poverty". This aspect of extreme poverty has again to be seen in the context of the family and the bread winner, who has died in harness. The gross income of the deceased at the time of his death was around 14,000/-per month. With this income he was running a family of 6 persons. Not only his family has been deprived of its sole bread winner but it has got financial liability as well which is in the form of loan, which the family has to pay to the bank. The entire amount the family has received has already gone in order to pay the debt to none other but the Bank itself.

16. The learned counsel for the bank though has apprised this Court that now in 2005 the bank has only a scheme for ex gratia payment and there is another circular of 2011 and 2014 by which only under exceptional circumstances such as where the death has occurred in a terrorist attack, etc. and the deceased employee is below 30 years such an appointment can be made. The learned counsel fairly, however, fairly admits that these are not the scheme which would be applicable in the case of the petitioner and the scheme of 1998 would be applicable in the case of the petitioner.

17. In view of the above, this Court is of a considered view that it was a fit case where the petitioner was eligible for appointment on compassionate ground under the 1998 Scheme itself. The rejection of the application of the petitioner for appointment on compassionate ground itself is not proper and is without a proper application of mind. The death of the employee was also extremely tragic. Not only the employee but his minor daughter too died in the accident. The petitioner, also sustained injuries in the same accident. These factors have not been taken into consideration.

18. Consequently, writ petition succeeds and is hereby allowed. Impugned orders dated 06.02.2001 and 15.12.2000 are hereby quashed. A mandamus is issued to the respondents to forthwith give appointment to the petitioner on the post, which are available for such appointments, considering the qualification of the petitioner.