
(2012) 01 OHC CK 0030
In the Orissa High Court
Case No : Writ Petition (C) No. 9245 of 2008

Mihir Kumar Bal

APPELLANT

Vs

Reserve Bank of India and Others

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 01 OHC CK 0030

Hon'ble Judges : B.P. Das, J;B.K. Nayak, J

Bench : Division Bench

Advocate : B. Mohanty, S. Patra and P. Mohanty and A. Panda, for the Appellant;
K. Pattnaik, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—The grievance of the petitioner is against the order dated 31.3.2008 passed by the Deputy General Manager, R.B.I. (Annexure-20) refusing to extend him the benefit of compassionate appointment being the dependant son of Krushna Chandra Bal, who while serving in the Reserve Bank of India (R.B.I.) died. The brief facts leading to this writ petition tend to reveal that the father of the petitioner, namely, Krushna Chandra Bal, while working as a Daftary in the Kolkata Office of R.B.I. died on 4.1.1987. After the death of said Krushna Chandra Bal, the Currency Officer of R.B.I., Kolkata, issued a letter on 28.1.1987 in the name of the mother of the petitioner requesting her to forward them the death certificate of her husband for necessary action. It is not disputed that the mother of the petitioner died much prior to the death of his father, i.e., on 11.4.1983. After receiving the aforesaid letter, the petitioner forwarded the death certificate of his father to the Chief Manager, R.B.I., O.P.2, and on 16.2.1987 he made a representation to O.P.3-Manager, R.B.I., to give him an appointment on compassionate ground commensurate with his qualification, i.e., Matriculation pass. O.P.3, Manager, R.B.I., by letter dated 20.5.1987 (Annexure-3) directed the petitioner to furnish a copy of the document to the effect that he is the legal heir

of late Krushna Chandra Bal. In response thereto, the petitioner furnished the legal heir certificate to O.P.3. Thereafter, the petitioner requested the opposite parties by making several communications to extend him the benefit of compassionate appointment but nothing was done. Ultimately, when the petitioner went to the Kolkata Office of R.B.I. to enquire about the fate of his representation, he was told by the Bank officials that the matter was held up as one Mukti Rani Bahal claiming to be the wife of late Krushna Chandra Bal had represented for appointment on compassionate ground. The petitioner raised objection to the aforesaid claim of said Mukti Rani Bahal.

In the meantime, said Mukti Rani Bahal filed T.S.No.161/1989 in the Court of 2nd Munsif, Howrah, for a declaration that she was the legally married wife of late Krushna Chandra Bal, father of the petitioner. The said suit was decreed vide judgment dated 24.7.1992, against which the petitioner preferred an appeal being Title Appeal No. 178/1992 before the District Judge, Howrah. The appeal was ultimately allowed on contest by judgment dated 24.6.1993 by setting aside the judgment and decree passed by the 2nd Munsif, Howrah and the suit was remanded for trial afresh. Thereafter, the Title Suit was dismissed for default on 20.7.1994. Long thereafter, said Mukti Rani Bahal filed a misc. case for restoration of the Title Suit but the same was dismissed on 18.1.2003 on the ground of delay. According to the petitioner, the said order of dismissal having not been challenged had attained finality.

It is further submitted that the petitioner was issued with a Succession Certificate by the Civil Judge (Sr.Divn.), Cuttack in Succession Misc. Case No. 7/1993, vide Annexure-15, in respect of the estate of his father, which according to the petitioner, establishes that he is the successor of his father, late Krushna Chandra Bal. When no action was taken in respect of the claim of the petitioner for compassionate appointment, he filed O.J.C. No. 3443/1995 before this Court enclosing all the documents including his annual income praying for a direction to the R.B.I. for compassionate appointment, which was disposed of on 6.2.2008. The relevant portion of the said order is quoted herein below :-

.....According to the Learned Counsel for the petitioner, O.P.No.4 is not the wife of the deceased and the wife of the deceased died in the year 1983, i.e., prior to the death of the father of the petitioner and the petitioner is the son through the deceased wife. Now both the petitioner as well as O.P.No.4, according to the Learned Counsel for the Reserve Bank of India, has claimed appointment under the Rehabilitation Assistance Scheme. The Reserve Bank of India is having a Scheme for the same. We dispose of this writ application with a direction to the O.Ps.-Reserve Bank of India to consider the case of both the petitioner as well as O.P.No.4 in accordance with the Scheme and take a decision within a period of two months from today.

In pursuance of the aforesaid order, the Deputy General Manager, R.B.I. took a decision on 31.3.2008 declining to accede to the request of the petitioner for compassionate appointment, vide Annexure-20, which is quoted herein below :-

Please refer to your letter dated February 26, 2008 on the above subject forwarding therewith a copy of the order No. 16 dated February 06, 2008 passed by the High Court of Orissa, Cuttack in the captioned case. In this connection, we advise that your request for appointment on compassionate ground has been carefully examined but it has not been found possible to accede to the same under the Bank's Scheme.

Challenging the aforesaid decision dated 31.3.2008 in Annexure-20, the petitioner has filed this writ petition under Articles 226 & 227 of the Constitution of India, inter alia, on the ground that the impugned order is an outcome of non-application of mind and it was purported to have been passed in terms of the circular dated 28.10.1994 in Annexure-17, which is not applicable to the case of the petitioner, as the same came into force long after the death of the petitioner's father, i.e., in the year 1994. According to him, his case is governed by the executive instruction issued by the R.B.I., vide circular dated 1.11.1985, basing upon which the benefit of compassionate appointment was extended to Dharani Rout, Santak Ranjan Mishra and G.Seshagiri.

2. A counter affidavit has been filed by the opposite parties through the Assistant General Manager (Personnel), R.B.I., Calcutta Office. In paragraph-4(e) of the said counter affidavit, the O.Ps. have taken a stand that there is neither any statutory obligation on the part of the Bank to provide compassionate appointment to the petitioner nor is there any circular or rule giving right to the family members of any deceased employee to get appointment in the Bank. It is also indicated in the counter affidavit and also argued by Mr.K.Pattnaik, Learned Counsel for the R.B.I. that compassionate appointment to a family member of the deceased employee was given by the Bank on sympathetic consideration and the same cannot be claimed as a matter of right. As per the policy of the Bank, the widow of the employee is given employment and son/daughter's appointment was considered only on the recommendation of the widow due to her physical inability to work. The aforesaid practice has now been codified in the executive instruction issued by the Bank with some changes, vide circular dated 1.11.1985 in Annexure-B/1. It is further stated that on the request made for such compassionate appointment, a few cases were considered purely on humanitarian ground in extreme cases based on merit of each individual case taking into consideration various factors, namely, financial position of the applicant, liability of the family and superannuation and other benefits paid to the family.

3. In the executive instruction issued by the Deputy Manager, R.B.I. in the circular dated 1st November, 1985, vide Annexure-B/1, it is provided as follows :

It has been observed that offices/departments while referring applications to Central Office for consideration for appointment on compassionate grounds, do not forward details of the late employee and his family such as composition of the dependent family, earning members, therein, if any, and their income, terminal benefits accrued to the family etc. resulting in avoidable correspondence

and thus delay in disposing of the cases by Central Office.

2. In view of the above, we advise that in future while referring such cases the offices/departments may note to include the following details/documents invariably in the relevant applications :

- i) service file of the late employee with up-to-date reports;
- ii) cause of death of the employee and a copy of his death certificate;
- iii) particulars of other family members with regard to their income, if any, whether any of the family members is already in the Bank's service;
- iv) details of terminal benefits paid/to be paid and name of the beneficiary thereto;
- v) certified true copies in support of applicant's age, educational qualification; and
- vi) vacancy position in the cadre for which the applicant is being considered.

3. Offices may appreciate that it will be conducive to speedy disposal of applications at Central Office if on obtention of the relevant details/documents as desired above, they note to add a line by way of specific recommendation based on a preliminary scrutiny of the relevant application justifying the need for compassion particularly in the case of families that are apparently not in hard financial straits.

Another document enclosed as Annexure-B/1 is the circular dated 21st July, 1988 issued by the R.B.I. requiring all its Managers & Departmental Heads to furnish to the central office all relevant particulars in the enclosed proforma while forwarding the request of the mother of the deceased employee for appointment on compassionate ground.

Annexure-C/1, the Scheme introduced in the circular dated 28th October, 1994, makes a provision for compassionate package for dependants of the deceased employee dying in harness. The said Scheme provides for payment of lump sum exgratia to the members of bereaved family or appointment of spouse of the deceased employee in the Bank.

The main objection raised by the opposite parties is that the petitioner's case cannot be considered in absence of any Scheme. In this regard Mr.K.Pattnaik, Learned Counsel for the R.B.I., refers to a decision of the apex Court in the case of National Institute of Technology & Others vrs. Niraj Kumar Singh, 2007(2) SCC 487, paragraph-14 of which reads as follows :-

14. Appointment on compassionate ground would be illegal in absence of any scheme providing therefor. Such scheme must be commensurate with the constitutional scheme of equality.

4. In the case at hand, though there was no specific scheme floated by the RBI

for providing employment on compassionate ground, the RBI was following an in-house guidelines incorporated in the 1985 circular in Annexure-B/1. That apart, the case of the petitioner cannot be thrown away or rejected on the ground that there was no scheme formulated by the RBI to provide appointment on compassionate ground in view of the stand taken by the RBI in its own communications. After the death of the petitioner's father, the RBI by letter dated 28.1.1987 (Annexure-2) advised his mother-Manorama Bal to forward the death certificate of her husband for necessary action. Thereafter the RBI with reference to the petitioner's application for compassionate appointment issued a memo dated 20.5.1987 (Annexure-4) to the petitioner advising him to furnish copy of the document showing that he is the legal heir of late Krishna Chandra Bal. In the communication dated 18.5.1990 (Annexure-8), the RBI intimated the petitioner that his request as well as the request of Smt.Mukti Rani Bahal for appointment on compassionate ground was under its active consideration. The Govt. of India, Ministry of Finance, Department of Economic Affairs (Banking Division), in the communication dated 25.7.1990 (Annexure-9) intimated the Prime Minister's Office that the RBI has reported that because of the counter claim of the petitioner's step mother, it has asked the widow of the deceased to prove her claim and for that reason the petitioner's request for compassionate appointment could not be considered by the RBI. In the copy of the aforesaid communication sent to the petitioner, the petitioner was advised to submit legal proof of his claim to the exclusion of Smt.Mukti Rani Bahal to enable the RBI to consider his request. By letter dated 25.6.1991 (Annexure-10), the RBI intimated the petitioner that his claim vis-?-vis the claim of Smt.Mukti Rani Bahal for appointment on compassionate ground was under examination and he would be suitably advised when final decision would be taken in the matter. In view of the stand taken by the RBI in the aforesaid communications, it cannot be said that the petitioner is not entitled to compassionate appointment for want of any scheme to that effect.

As we have already indicated, and it is also not disputed that following the 1985 circular, the R.B.I. has extended the benefit of compassionate appointment to certain dependants of the deceased employees similarly situated like the present petitioner. So the impugned order dated 31.3.2008 passed by the R.B.I. in Annexure-20 rejecting the application of the petitioner for compassionate appointment on the ground that the case of the petitioner does not come within the scheme of the R.B.I. is absolutely unsustainable. The documents filed with the counter affidavit by the O.Ps. refer to the 1985 circular, which makes it evident that some guidelines were consciously followed by the R.B.I. in giving appointment on compassionate ground. So even though there was no specific scheme to the effect, the guidelines so adopted then for the purpose of giving appointment on compassionate ground are no less than a scheme and the benefit of the same can be extended to the petitioner. Hence, the decision of the apex Court in the case of National Institute of Technology & Others vrs. Niraj Kumar Singh, 2007(2) SCC 487, in which some benefits were granted, is not

applicable to the facts and circumstances of the present case.

The plea of the O.Ps. that the cases, in which benefits were granted to certain other persons, are exceptional and they cannot be equated with the petitioner, for which no reason has been given in the counter affidavit, does not deserve acceptance.

5. As to the objection of the O.Ps. that there is delay and laches on the part of the petitioner as in the meantime 25 years have lapsed, we find that the petitioner had approached the Bank authorities for compassionate appointment immediately after the death of his father but the matter was locked up in litigation and delayed in passing the impugned order by the R.B.I. We find no laches on the part of the petitioner to approach the authorities for the benefit as claimed by him.

During the course of hearing, a contention was raised that the practice prevailing then was that only the spouse of the deceased employee was entitled to get appointment and in case of the disability of the spouse and on his/her authorization, another member of the family would get the said benefit. The case in hand is a peculiar case because the wife of the deceased employee, the father of the petitioner is pre-deceased him. So the question of recommendation by the spouse in this case absolutely does not arise. An impracticable proposition was made by the Learned Counsel for the R.B.I. that as per the principles prevailing then after the death of the employee, if his spouse is pre-deceased, nobody from his family will get the benefit of compassionate appointment even if the other family members are in distress, which does not impress us and we reject the same.

6. Mr.K.Pattnaik, Learned Counsel for the R.B.I., further submits that the father of the petitioner had furnished a declaration stating Mukti Rani Bahal to be his second wife. As to this, it may be made clear that there is nothing before us to show that Mukti Rani Bahal is the wife of the deceased employee. That apart, as the R.B.I. itself has rejected the claim of said Mukti Rani Bahal, now it cannot resist the claim of the petitioner on the ground of said Bahal's claim. Considering the facts and circumstances of the case, we allow this writ petition and set aside the order dated 31.3.2008 passed by the Deputy General Manager, R.B.I. (Annexure-20) and direct the opposite parties to take steps for compassionate appointment of the petitioner in a post suitable to his qualification within a period of three months from the date of communication of this order. No cost.