

(2006) 11 CAL CK 0062
In the Calcutta High Court
Case No : M.A.T. No. 2584 of 2004

Mithun Singha alias Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-11-2006

Acts Referred:

Citation : (2007) 2 CALLT 59

Hon'ble Judges : Tapan Mukherjee, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Subrata Ghosh, Ms. Arati Ghosh and Mr. Nirmal Roy Chowdhury, for the Appellant; Sownya Majumder, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—One Prabhat Kumar Singha of Jiagunj in the district of Murshidabad died in harness on July 22, 1996 while working as security guard in State Bank of India, Jiagunj Branch. Due to such untimely death the family consisting of the widow and children including the petitioner being the younger son suffered acute financial hardship. The elder son, however, was living separately. On September 2, 1996 the petitioner/appellant approached the State Bank of India by making an application for consideration of his prayer for employment in compassionate ground. The petitioner read upto class VIII and he was then eligible for consideration in a Group - D post. On December 26, 1996 the concerned branch manager wrote to the higher authority of the Bank recommending the case of the appellant. In the said letter it was pointed out by the concerned branch manager that the deceased employee left him surviving his widow, one unmarried daughter, one lunatic son, the petitioner being the other son who was also unemployed. It was, however, pointed out that the eldest son was residing at Calcutta separately. The branch manager asked the higher authority "to consider the case sympathetically so that one idle member of the deceased family may get job in order to provide with economic support to the family". A reminder in the nature of recommendation from the concerned branch was again sent on September 7, 2000 along with a fresh application signed by

the petitioner/appellant. The widow of the deceased by a separate letter of the said date also requested the bank to consider the prayer for compassionate appointment. The widow also by a separate letter informed the Bank that the post death benefit received by the family was spent for payment of loan and there had been further loan outstanding and the family did not have any means of livelihood. The other children of the deceased employee by a separate letter also gave their consent in favour of the petitioner/appellant. The eldest son also informed the Bank that he had been residing separately and he had no objection if the appointment was given to the writ petitioner/ appellant. By a letter dated 18th December, 2000 the Assistant General Manager of the concerned region asked for further papers from the concerned branch for consideration. The Branch Manager by his letter dated 16th February, 2001 again wrote to the regional office informing them that the application for compassionate appointment was made immediately on the death of the concerned employee and requested the regional office to consider the application "favourably" in view of the "distress condition" of the family.

2. By a letter dated March 2, 2001 the regional office rejected the prayer of the petitioner. The content of the said letter is as follows:

With reference to above, we return herewith all the papers as the Appropriate Authority of the Bank has declined your propose Please acknowledge receipt of the same.

3. From the aforesaid content it appears that the Bank did not assign any reason whatsoever while rejecting the prayer for compassionate appointment. The unfortunate widow again wrote to the Bank for reconsideration by her letter dated April 2, 2001. There was no response. Her Advocate wrote to the Bank making a similar prayer on February 14, 2003. Such prayer was also declined by the Bank by their letter dated March 7, 2003, the content of which is quoted below:

With reference to your letter dated 14.2.2003 addressed to Jiaganj Branch and a copy endorsed to this office, we have to inform you that the appropriate authority has declined the proposal of compassionate appointment of Sri Mithun Singh, S/o, Late Pravat Kumar Singh, Ex-Bank Guard of our Jiaganj Branch and the same has been advised to the applicant long back. Therefore, the allegation made in para 2 of the letter under reference is not at all true.

4. The appellant approached this Court by filing instant writ petition, on April 11, 2003.

5. Writ application was contested by the Bank by filing affidavit in opposition. One Pradip Kumar Dutta claiming to be the Assistant General Manager of the Bank filed the affidavit-in-opposition on behalf of the Bank/respondent. It was contended on behalf of the Bank in the said affidavit that there had been no legal right which could be enforced by the writ petitioner in the said proceeding.

6. On perusal of the said affidavit it appears that although the Bank authority did not assign any reason whatsoever earlier to the filing of the said writ petition while rejecting the claim for compassionate appointment they tried to justify their conduct by assigning reason in the said affidavit.

7. Paragraphs 7, 8, 9 and 10 of the said affidavit being relevant, herein is" quoted below:

7. The authorities have considered the service sheet of Late Prabhat Kumar Singha and found that he was a very indisciplined employee and was charge sheeted and a punishment of stoppage of two increments was inflicted upon him during 1976-77 which was subsequently released from 1981.

8. It is stated that the assets and liabilities of the family of the deceased as per revised statement dated 31.12.1997 submitted by Sri Mithun Singha shows that the financial condition of the family of the deceased is quite sound and is more or less equivalent to the last drawn wages of the deceased employee. It is not a case that the family will not be able to meet the crisis unless the job is offered to the petitioner. Even otherwise the family has tide over the days after the death of Late Probhat Kumar Singha and as such there is no necessity of relieving the family of alleged financial destitution, There is also no emergency for compassionate appointment of the petitioner in Class-III or Class-IV. It appears from the financial statement of the family that the monthly income of the family comes to Rs.6,487.00 with three members consisting of petitioner, his mother and his brother whereas the last drawn wages of the deceased employee was Rs.4,675.00 and his gross pay was Rs.5,139.32 with which four members of the family had to be supported. A copy of the statement of the assets and liability of the family of the deceased as submitted by the petitioner is annexed heret and marked with the letter "R-I".

9. It is stated that Sri Probhat Kumar Singha expired on 22.07.1996 leaving behind his wife Smt. Josoda Rani Singha two sons and two daughters, one being married before the date of expiry and the other had been married shortly after the expiry of Probhat Kumar Singha. As a result, the number of family members is now four. Out of the said family members, one of the son of the deceased namely Sri Ram Chandra Singha is employed and is drawing a salary of Rs.1000/- per month and living separately. The said statement was given by the said Ram Charan Singha to the Bank. A copy of the said letter is annexed hereto and marked with the letter "R-2".

10. It has been considered that the monthly income of Rs.6,497/- is adequate for maintenance of a family comprising of three members having a dwelling house and financial condition of the family cannot be termed as penurious.

8. On analysis of the paragraphs quoted (supra) it appears that the deceased employee was proceeded with departmentally while he was in service and suffered a punishment of stoppage of two increments in 1976-77. We are unable to appreciate how this fact had any relevance while considering the issue of

compassionate appointment. We are of the view that such statement made by the said Assistant General Manager was nothing but an attempt to prejudice the learned single Judge.

9. In paragraph 8 it was contended that it was not the case of the writ petitioner that the family would not be able to meet the crisis unless the job was offered to the petitioner. It was also contended that as per the revised statement the financial condition of the family was sound. It was also contended that there was no emergent situation to tide over the financial hardship. According to the Bank the family was having income of Rs.6,497/- per month whereas the deceased employee's last drawn pay was Rs. 4,675/-. A statement was annexed in support of such claim. On perusal of the said statement we do not find as to how the Bank could come to a finding that the gross pay of the family was Rs. 6,497/-. Such figure is conspicuously absent in the statement annexed to the said affidavit. The Bank also annexed a "letter of the branch manager dated December 17, 1997 appearing at page 52-53 of the said writ petition. The said letter was in fact a report of the investigation done by the Branch Manager on consideration of the prayer for compassionate appointment. The Branch Manager was of the view that a sympathetic view should be taken on the said application. From the said statement it would appear that the dwelling house was constructed by the deceased employee by obtaining loan. Apart from such loan there had been other liabilities which could be met from the post death benefit received by the said family. The Branch Manager used the words "extreme financial hardship to support the prayer for compassionate appointment". Since it was an internal document, the petitioner could not annex the same in his writ petition. We are of the view that the statement contained in the said paragraph had no basis whatsoever.

10. In paragraph 9 of the said affidavit the Bank considered the factum of marriage of the unmarried daughter shortly after the expiry of the deceased employee. The Assistant General Manager was, however, conspicuously silent as to the marriage expense. In the said paragraph the deponent also stated that the elder son was drawing Rs.1000/- per month and also annexed a letter of the elder son where from it would appear that the elder son categorically contended that he had no means to look after the family and he had been residing separately at Calcutta far away from Jiaganj.

11. In paragraph 10 the deponent contended that since the monthly income of the family was Rs. 6,497/- they did not require any financial support as the financial condition could not be termed as precarious.

12. The writ petition was heard and disposed of by the learned single Judge. The learned single Judge was satisfied with the grounds disclosed in the affidavit-in-opposition and observed that there was no scope for interference. His Lordship also observed that the reasons disclosed in the affidavit were "good reasons". His Lordship dismissed the writ petition.

13. Being aggrieved by and/or dissatisfied with the Judgment and order the present appeal was filed. We heard the parties. We perused the Judgment. We carefully considered the documents referred to above and the affidavit-in-opposition filed by the Bank. After consideration we are unable to agree with His Lordship. We are of the view that the order of rejection was not only without any proper application of mind but also a result of bias which would be evident from the statement contained in paragraph 7 of the affidavit-in-opposition. It is most unfortunate that how could the Bank consider a punishment of stoppage of two increments suffered by a deceased employee in 1976-77 a relevant fact to consider the prayer for compassionate appointment of his son in 1996. We tried in vain to find out as to how the Bank could come to conclusion that the family did not need any financial support and they had monthly income of Rs. 6,497/-. Basis of this magic figure of Rs. 6,497/- is conspicuously absent in any of the pleadings and/or documents disclosed by the bank.

14. It is true that the compassionate appointment is not the rule but the exception. It is also true that it is given to tide over the emergent financial need which the family suffered on an untimely death of the sole earning member of the family. The concerned employee died in 1996. Within two months the application was made. The regional office wrote to the branch after 4 years in 2000 asking for further clarification. In 2001 the Bank by one sentence letter communicated the rejection without assigning any reason whatsoever. An application for reconsideration was immediately made. The same was not attended to. The unfortunate widow approached the Bank through her advocate and renewed her prayer when the Bank gave a reply, that too in one sentence by saying that the prayer for compassionate appointment was rejected long back. We are of the view that State Bank of India and the officials working therein had a public duty and their action should be transparent, fair and just. We are constrained to hold that in the instant case the Bank officials acted in a manner which is not expected from a public sector officials.

15.. Mr. Soumya Majumder, learned counsel appearing for the Bank, supported the stand of the Bank. In support of his submission he relied upon three Apex Court decisions. Let us consider the Apex Court decisions cited on behalf of the Bank in the present scenario:

(1) Punjab National Bank and Others Vs. Ashwini Kumar Taneja, In this case the concerned employee died leaving him surviving widow, two sons and one daughter. The widow made all application for compassionate appointment of her elder son immediately after death. The request was turned down within three months on the ground that there was no financial hardship as the family had received substantial amount after death of the concerned employee. The writ petition was filed and it was allowed by the High Court by directing consideration of the application for compassionate appointment, An appeal was filed before the Division Bench. The same was dismissed on the ground that the application for compassionate appointment could not have been rejected by taking Into account

the retiral benefits. Considering this aspect the Apex Court observed that the view taken by the learned single Judge so affirmed by the learned Division Bench should not be sustained as under the scheme the post death benefit which the family had received was a relevant factor to be considered. We do not find any application of this ratio in the instant case. Here the post death benefit was considered by the concerned Branch Manager in his report and even after taking into account such post death benefit he came to a conclusion that the family needed financial support by way of compassionate appointment as would appear from the documents referred to above.

(2) General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, In the instant case the husband of the respondent No.1 died while in employment in State Bank of India leaving the respondent No. 1 as widow, two sons and a daughter. She applied for compassionate appointment. The widow received substantial sum as and by way of post death benefit. Moreover, there had been investment under various heads. The liabilities of the family included housing loan, festival advance, consumer loan. Taking note of all the assets and liabilities of the deceased, Bank took the view that the financial condition of the family was not precarious. Moreover, apart from the retiral benefit the family was receiving pension. The Bank rejected prayer for compassionate appointment. Such rejection order was upheld by the learned single Judge, however, reversed by the Division Bench against which the SLP was filed. The Apex Court allowed the appeal and observed that the finding of the Bank that the family did not need any financial support, did not call for any interference. The observation of the Division Bench to the extent that the family was "not very well to do" was not a relevant factor to decide the issue of compassionate appointment. In the instant case the regional office of the Bank did not consider at all the liabilities so highlighted by the Branch Manager in his recommendation. Hence, we are unable to appreciate how this Judgment could be of any assistance to support the case of the Bank.

(3) State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, : The Apex Court in this Judgment observed that compassionate appointment was an exception to the general rule. In case of Government and other public sector employees all eligible candidates should be considered and should be allowed to compete with each other in accordance with the mandate of Article 14 of the Constitution. Such general rule should not be departed from except where "compelling circumstances" demand, such as, death of sole bread winner. The Apex Court also observed once it is proved that inspite of the death of the bread winner the family survived and substantial period is over such exception should not be adopted. In the instant case the concerned employee died in 1996. Immediately on death the application for compassionate appointment was made. It was kept pending for 4 years by the Bank. In 2000 further particulars were asked for and in 2001 it was rejected. Even on the date of filing of the affidavit before the learned single Judge the Bank was not able to establish that the family did not need any financial support. As we have observed earlier, the Bank was

also not able to justify their ultimate finding to the extent that the family had been earning a sum of Rs.6,497/- per month. Hence, we are of the view so long it is proved that the family did require financial support the prayer for compassionate appointment must be considered and we get support from this decision of the Apex Court to establish our view.

16. Considering the Apex Court decisions we are of the view that the Bank should have considered the application of the writ petitioner/ appellant on merit to find out whether there had been any actual financial need to support the deceased family. By keeping the said application pending for a long period the Bank was not entitled to say at a belated stage that there was no emergent need to support the family. The learned Judge, in our view, did not consider the aspect from this angle.

17. The order of the learned single Judge is set aside. The order of rejection so communicated by the Bank by letters dated March 2, 2001 and March 7, 2003 is quashed and set aside. The Bank is directed to consider the application for compassionate appointment on merits afresh in light of the observations made by us herein.

The appeal is disposed of accordingly.

There would be no order as to costs,

Urgent xerox certified copy would be given to the parties, if applied for.

T. Mukherjee, J.

18. I agree.