
(2013) 08 MP CK 0117
In the Madhya Pradesh High Court
Case No : Writ Petition No. 382 of 2012

Nitin Lad

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2013) 08 MP CK 0117

Hon'ble Judges : S.K. Gangele, J;M.K. Mudgal, J

Bench : Division Bench

Advocate : Shishir Saxena, for the Appellant; Raju Sharma, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard. The appellant has filed this appeal against the order dt. 08/05/2012 passed by the learned Single Judge in W.P. No. 1052/2006 (S).

2. Father of the appellant was working as Assistant Clerk in the respondent No. 1 Bank. At the relevant time, he was posted at Guna. During service, he was died on 19.11.1999. On 11.12.1999, the appellant filed an application for compassionate appointment. Vide order dt. 24.6.2000, the application was rejected on the ground that the appellant did not fulfill the requisite criteria for grant of compassionate appointment. Thereafter, mother of the appellant and the appellant himself submitted representations, which were rejected, then ultimately the appellant filed Writ Petition before this court, which was registered as W.P. No. 52/2004. Learned Single Judge of this court vide order dt. 3.8.2005 quashed the order of rejection of the application of the appellant for compassionate appointment and disposed of the Writ Petition with the following directions:-

Considering the same and keeping in view of the directive issued in the case of Akeel Ahmed Khan there is no reason why similar benefit be not extended to the petitioner as the impugned order rejecting the application of the petitioner are identical to the order impugned in the case of Akeel Ahmed Khan (supra).

Accordingly taking note of the fact and circumstances the prayer made in I.A. 11455/05 is allowed. Impugned order passed by the respondent Bank is quashed and respondent is directed to reconsider the case of the petitioner in the light of observation and directive issued by the Bench of this Court in the case of Akeel Ahmed Khan (supra). Respondent Bank is directed to take action as per the aforesaid direction and decide the application afresh and communicate it to the petitioner within a period of two months from the date of receipt of certified copy of this order. For the purpose of reconsideration of the matter, petitioner is directed to place copies of the relevant documents along with a copies of the order passed by learned Single Judge Division Bench of this Court and so also order passed the Supreme Court, before the Competent Authority taking decision in the matter.

Petitioner stands disposed of with the aforesaid.

C.c. as per rules.

3. In pursuance to the order passed by this court, the respondent Bank again vide order dt. 20.12.2005 (Annexure P/1) rejected the application of the appellant for compassionate appointment on the following grounds:- Shri Chandrasen Lad who was working at Guna Branch as Assistant died on 19.11.99. The family of the deceased Shri Chandrasen Lad consist of widow and two sons. The financial conditions of the family is as under:

a a sum of Rs. 2,12,769/- has been paid as terminal benefit after deducting Rs. 3,22,127/- (Rs. 2,89,400/- towards housing loan Rs. 18,639/- towards vehicle loan and Rs. 14,088/- towards consumer loan).

b. a sum of Rs. 4,515/- p.m. was paid towards monthly pension and D.A., at the time of death of the deceased employee upto 5 years. After five years, the pension has been reduced to Rs. 1,913/- D.A. has increased. In addition thereto a sum of Rs. 200/- per month was being paid under staff mutual welfare scheme.

c. family has its own house valued at Rs. 3.5 lacs.

viii) It is well settled principle of law that the object of compassionate appointment is to relieve the family of unexpected immediate hardship and distress and to enable the family to tide over the sudden crisis. Thus, the financial condition at the time of death of the deceased employee is required to be taken into consideration. As on the date of death of the employee monthly income including notional interest income (calculated @ 9% per annum-interest rate prevalent at the relevant time) on the liquid asset available with the family was estimated as Rs. 6,577/-. Last drawn take home salary of the deceased was Rs. 8,439/-. The family consisting of four members including deceased was able to manage with Rs. 8,439/- per month.

The family consisting of three members having income of Rs. 6,577/- per month cannot be construed to be in penurious conditions.

4. In view of the above financial position, size of the family, recent decisions of the Hon''ble Supreme Court, I conclude that the financial condition of the family of the deceased is not penurious and hence the proposal/request of Shri Nitin Lad for grant of compassionate appointment is hereby rejected.

4. The appellant again filed a Writ Petition before this court, that has been rejected by the learned Single Judge vide impugned order dt. 8.5.2012 on the ground that the appellant did not fulfill the criteria mentioned in the policy of compassionate appointment, hence, there is no merit in the petition.

5. The case of the appellant was considered by the respondent bank for compassionate appointment in accordance with the policy, a copy of which has been filed by the respondent Bank before the Writ Court as Annexure R/1. The policy prescribes that the financial condition of the family has to be taken into consideration while considering the case of the dependent of the deceased employee for grant of compassionate appointment. Following facts have to be considered in considering the financial condition of the family:-

10. Financial condition of the family

Appointments in the public service are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour of dependents of employees dying in harness and leaving their family in penury and without any means of livelihood. Determining the financial condition of the family is therefor an important criterion for deciding the proposals for compassionate appointment. The following factors should be taken into account for determining the financial condition of the family:

- i) family pension
- ii) gratuity amount received
- iii) employee''s/employer''s contribution of 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 of other sources
- viii) size of the family and verifiable liabilities if any.

5. After considering the aforesaid facts, the authority opined that the family of the appellant had income of Rs. 6577/- p.m. and at the time of death, father of the appellant was getting salary of Rs. 8,439/- p.m. for four persons. Now the family is of three persons. Hence, looking to the financial condition of the appellant, the case of the appellant could not be considered for compassionate appointment.

6. Earlier the Writ Court disposed of the Writ Petition of the appellant with direction to consider the case of the appellant in the light of the directions issued by the Division Bench of this court in Akeel Ahmed Khan in LPA No. 471/2003. Against the aforesaid order passed by the Division Bench of this court in LPA, SLP (Civil) No. 5028 of 2004 was filed before the Hon''ble Supreme Court. Hon''ble Supreme Court disposed of the SLP with the following directions:-

Leave granted.

This is a case of compassionate appointment. The High Court has directed reconsideration of the case of the respondent in the light of the three instances, namely, the instance of the Chief Manager Mr. P.K. Nath, Mr. K.J. Rajgopalan, Assistant Manager and Mr. Javed Akhtar, General Manager, Delhi Circle, where the relatives of these persons have been given compassionate appointment. The fact that the compassionate appointments were given in these three cases is not disputed by the appellants. However, they say that there are distinguishing factors between the compassionate appointment given in that case and the appellant case. We are not prepared to carry out the enquiry ourselves but the matter must be considered in by the concerned authority. It is being made clear that whatever principle was followed in granting compassionate appointment in respect of the aforesaid three employees must also be allowed as far as the appellant is concerned.

The appeal is accordingly, disposed of but without any order as to costs.

7. Hon''ble Supreme Court has clearly observed that the case of Akeel Ahmed Khan shall be considered at par with the cases of dependent of three employees mentioned in the order and subsequently Akeel Ahmed Khan was granted compassionate appointment.

8. The respondent Bank has relied on the judgment of the Hon''ble Supreme Court in the case of General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, , wherein the Hon''ble Supreme Court has considered the scheme of compassionate appointment of the bank and held as under:-

On the basis of the criteria adopted by the appellant Bank, it could not be said that the family of the deceased employee had been left in "penury" or "without any means of livelihood". The particulars of their income have been noted in their application and it certainly could not be said on the basis thereof that the respondents were living hand to mouth. The Division Bench erred in diluting that criteria of penury to one of "not very well-to do."

9. However, the respondent Bank has granted compassionate appointment earlier to three persons as per the affidavit submitted by the Bank. A copy of the comparative statement has been filed as Annexure P/12 and the following details have been submitted about the three employees.

10. The aforesaid dependents of three employees had been given compassionate appointment even their emoluments were higher in comparison to the present

appellant.

11. Hon"ble Supreme Court in the case of Director General of Posts and Others Vs. K. Chandrashekar Rao, held as under in regard to interpretation of the scheme:-

23. The 1998 Scheme floated by the Government should receive a liberal construction and application as it is stated to be a social welfare scheme and largely tilted in favour of the members of the family of the deceased employee. The purpose appears to be to provide them with recruitment on a regular basis rather than circumvent the same by adopting any other measure. That is the reason why the Government specifically states in its Scheme that efforts should be made to appoint the members of a distressed family to the post provided he/she satisfies the other parameters stated in the Scheme.

12. The respondent Bank has rejected the case of the appellant simply that the family income of the appellant was Rs. 6577/- p.m. at the time of consideration of the application. In the scheme of the compassionate appointment, the criteria has not been fixed by the respondent Bank that under what circumstances the authority shall consider the application for compassionate appointment of the dependent of the deceased employee and financial condition of the family. There is no particular limit has been prescribed. It means that the authority has to consider the case objectively in comparison to dependents of other employees, who were granted employment because if a total freedom is granted to the authority in arriving out at the amount of financial condition, then officer of the bank could fix any criteria which would be against the concept of providing compassionate appointment.

13. Hence the Writ Appeal is disposed of with the following directions:-

(i) The impugned order dt. 8.5.2012 passed by the learned Single Judge is hereby quashed.

(ii) The order of rejection of compassionate appointment dt. 20.12.2005 passed by the respondent Bank (Annexure P/1 filed alongwith the writ petition) is hereby quashed and the matter is remanded back to the respondent No. 1 Bank to consider the case of the appellant in accordance with the observations made in this order.

No order as to costs.