(2002) 09 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 700 of 1995

Pankaj Damle APPELLANT

Vs

Bank of Maharashtra and Another RESPONDENT

Date of Decision : 17-09-2002

Acts Referred:

Citation : (2003) 2 BomCR 287 : (2003) 1 LLJ 616 : (2002) 4 MhLj 801

Hon'ble Judges : V.M. Kanade, J;R.K. Batta, J

Bench : Division Bench

Advocate : Rohit Deo, for the Appellant; N.W. Sambre, for the Respondent

Final Decision : Allowed

Judgement

R.K. Batta, J.—The petitioner has invoked the jurisdiction of this Court for directions to the respondents to appoint him in the Clerical Cadre on compassionate ground.

2. The case of the petitioner, in brief, is that his late father Shri Shridhar Jaikrishna Damle was employed with respondent No. 1 in the Clerical cadre; that his late father was suffering from an ailment of intestine for about 15 years prior to his demise, which ultimately culminated into Cancer. The petitioner''s father died on 17-6-1994. The deceased had left behind him his aged mother, his wife, two married daughters and the petitioner as the only legal heirs. The petitioner applied for appointment in the Clerical cadre on compassionate ground vide application dated 4-7-1994. Thereafter there was communication between the branch Manager and the petitioner seeking certain details which were furnished by the petitioner. Ultimately, vide letter dated 18-1-1995, the request of the petitioner was rejected on the ground that the request could not be considered. No reasons whatsoever as to why the application could not be considered were given in the said letter. The petitioner had applied for compassionate appointment in terms of ''Annexures-A and B'' which provide for compassionate appointments. In such circumstances, even an administrative body is required to

give reasons as to why the application could not be considered, but no such reasons were given by the respondent-Bank. In the return filed by the respondents on 20th September 1995, for the first time, the respondents came out with the reason of rejection which is that the father of the petitioner had served substantial terms of his service with the respondent Bank and was due to retire in a short span of time. According to the respondents, whatever appointments are referred to by the petitioner were well merited mostly for reasons such as financial difficulties and crisis and other problems. According to the respondent-Bank, it has exercised the discretion in the most judicious and reasonable manner inasmuch as it is not obligatory on the Bank that each and every application for compassionate appointment be granted. It is also stated in the return that a lumpsum amount has been released in favour of the petitioner''s family as retrial benefits which were admissible to late Shridhar Damle and that the family was under no financial crisis or difficulty inasmuch as there were ample sources of income as also property left by late Shridhar Damle.

3. Learned Advocate for the petitioner drew our attention to ''Annexures-A and B'' which are on the subject of appointment on compassionate ground. In this connection, our attention has been drawn to paragraph 2 of ''Annexure-A'' which reads as under:--

2. Appointment under the Scheme. -- The Bank may at its discretion appoint the widow or son or daughter of the deceased employee or near relative nominated by the widow who will look after family of the dependant. If deceased employee is a widow or bachelor, the bank may exercise its discretion in this regard by making enquiries of the next elder in the family. The appointment under this scheme shall be made only in Clerical/Full time Subordinate cadre. No appointment in ''Officer Cadre'' will be given.

4. Learned Advocate for the petitioner stated that the petitioner had the essential qualification for the appointment to the post of Clerical cadre. According to the learned Advocate for the petitioner, the petitioner was entitled to appointment on compassionate ground like many others who were appointed under similar circumstances which is referred in para 7 of the petition. He, therefore, submits that the petition be allowed.

5. On the other hand, learned Advocate for the respondents, urged before us that the discretion has been judiciously exercised and it does not call for any interference whatsoever since the father of the petitioner had only few years left for retirement and that lumpsum amount had already been released in favour of the petitioner''s family as retrial benefits; that the petitioner''s family was under no financial crisis or difficulty; that the dependents of deceased had ample source of income and had enough property to take care of themselves. He, therefore, contends that there is no case made out for compassionate appointment and the petition be dismissed.

6. It is heartening to note that the respondent-Bank does realize that the

discretion has to be judiciously exercised but while exercising the discretion it was forgotten that the same has to be judiciously exercised. No reason whatsoever was given while rejecting the application of the petitioner for compassionate appointment, the reason given in letter 18-1-1995 is that the application cannot be considered. Why it could not be considered and for what reason it could not be considered is not disclosed. Probably at that time it was forgotten that the discretion has to be judiciously exercised and in case of judicious exercise of discretion reason has to be given in order to justify the exercise of judicious discretion. The reply dated 18-1-1995 on the fact of it shows arbitrary exercise of discretion. It is now well settled that even administrative authorities are required to give reasons and when the respondents have themselves stated that the discretion has to be exercised judiciously, the respondents were required to give reasons which have not been given. It was only at a late stage in the day that the respondents came out with the stand that the compassionate appointment cannot be given since the petitioner''s father had a short span of time to retire. There is no bar in the scheme that the compassionate appointment cannot be given to the dependents of an employee who had short span of tenure-life. In the case under consideration, it is stated by the petitioner that the petitioner''s father had few years of service left. This obviously cannot be a ground for rejection. The respondents have also come out with a case that retiral benefits were given to the deceased, but these retiral benefits are given in all cases where compassionate appointment is otherwise permissible. This obviously cannot be a good ground for rejection of the application. The respondents have also in the return tried to come out with a case that the family of the deceased had ample sources of income and property to take care of themselves. No material whatsoever has been placed by the respondents in order to show that any detailed enquiry was made by them in order to determine the financial condition of the deceased family. Learned Advocate for the respondents relies upon ''Annexure-C and has stated that the position of the deceased''s family was financially quite sound. There is nothing on record to show that this aspect had prevailed with the authority while taking decision as no material in respect of the same has been produced before us. However, even a look at ''Annexure-C'', it cannot be said that the condition of the family of the deceased was so financially sound that the petitioner was not having any financial crisis. The said ''Annexure-C'' shows that the petitioner''s family did not own any agricultural land or plot except only one house property at Laxmi Nagar valued at rupees one lac. The petitioner''s family had two mopeds of 1967 and 1984 models valued at Rs. 3,000/- and Rs. 1,500/- respectively. The other assets being National Savings Certificate - Rs. 20,000/-; Unit Trust of India - Rs. 5,600/- and LIC Mutual Fund - Rs. 5,000/- total Rs. 30,600/-. As against this, there are liabilities, namely, balance of housing loan - Rs.5,132/-; Festival Advance - Rs. 1,800/-; Loan from Staff Co-operative Society - Rs. 23,399/-; Loan from one Moreshwar J. Damle - Rs. 15,000/-. In view of the further clarification sought, the petitioner informed that the cheque of Rs. 29,188/- had been received and the other policy of Rs. 10,0007- had not yet been settled. It was also informed by the petitioner on further clarification from the respondents that a loan of Rs. 20,0007- had been taken against the Provident fund and that loan had also been taken from the Satish Budhe in order to meet the expenses of marriage of sister of the petitioner which took place on 13th February 1999 at Nagpur. It is also stated therein that further loan of Rs. 16,000/- had been taken from Pramod Govind Bhat and that the total borrowings of late father comes to Rs. 1,32,331/-. Therefore, the submissions made by learned Advocate for the respondents before us that the financial position of the deceased''s family was sound cannot be accepted.

7. In these circumstances, we are of the opinion that the respondents have wrongly and arbitrarily rejected the case of the petitioner for compassionate appointment though his case was covered under the scheme in ''Annexures-A and B''. We, therefore, direct that the respondents shall give an appointment to the petitioner in the Clerical cadre. The petitioner shall report on 1st October 2002 to the respondents for the said purpose. The respondents shall file compliance report before this Court by 10th October 2002. The Writ petition is allowed in aforesaid terms and Rule is made absolute in terms of prayer Clause (1).