
(2020) 08 MP CK 0287
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6860 Of 2017

Preety Sinha

APPELLANT

Vs

State Bank Of India And Others

RESPONDENT

Date of Decision : 30-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Evidence Act, 1872 — Section 108

Citation : (2020) 08 MP CK 0287

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : N.P. Choudhary, Ashish Shrotri

Final Decision : Disposed Of

Judgement

1. This petition filed under Article 226 of the Constitution assails the orders dated 24.10.2016 and 30.01.2017 (Annexure-P/1) whereby the claim of the petitioner for grant of compassionate appointment was rejected by the respondent-State Bank of India (SBI).
2. The admitted facts between the parties are that the petitioner is widow of Late Sanjay Kumar Sinha, who was working as Middle Management Grade II in the respondent-Bank in its Panna Main Branch, District Panna. The petitioner's husband died in harness on 31.03.2016. The petitioner preferred applications for grant of compassionate appointment which was rejected by the impugned orders.
3. The core issue involved in this case is : as to whether as per the applicable policy of compassionate appointment, the petitioner has a right of consideration for such appointment. The parties are at loggerheads on the question of applicability of a particular policy of compassionate appointment.
4. Shri N.P. Choudhary, learned counsel for the petitioner pressed his argument based on the policy dated 11.08.2014 (Annexure-P/6). This policy is admittedly issued by the "Indian Banks' Association". By taking this Court to relevant

clauses of the policy, Shri Choudhary urged that the petitioner has a right of consideration for compassionate appointment. The respondents have erred in not accepting the request of the petitioner and committed an error in holding that the petitioner does not have any right of consideration as per policy in vogue because a dependent of an employee is entitled to get compassionate appointment :

(i) where an employee dying while performing his official duty, as a result of violence, terrorism, robbery or dacoity or;

(ii) where an employee dying within five years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a dependent spouse and /or minor children.

5. In view of diametrically opposite stand taken by the learned counsel for the parties, the aspects which need determination is : as to which policy is applicable ? Pertinently, Shri Ashish Shroti, learned counsel for the respondent-Bank placed reliance on Clause 5 of the policy dated 13.05.2011 (Annexure-R/2). Clause 5 reads as under:

"5. Applicability:

The Scheme of compassionate appointment will be applicable in the following cases:

iii. Employee dying while performing his official duty, as a result of violence, terrorism, robbery or dacoity.

iv. Employee dying within five years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a dependent spouse and/or minor children."

[Emphasis Supplied]

6. It is argued that the case of the petitioner does not fall within the ambit of Clause 5. The petitioner's husband although died in harness but did not die while performing his official duty and died as a result of violence, terrorism, robbery or dacoity. Therefore, the case of the petitioner is not covered as per Clause 5(iv).

7. In his rejoinder submission, Shri N.P. Choudhary placed heavy reliance on certain documents which are filed along with an application for taking additional documents on record. It is urged that the Bank has appointed a sizable number of dependents of Bank employees who died in harness and these appointments were made despite the fact that they are not covered as per Clause 5 of the policy on which Shri Shroti has placed heavy reliance.

8. Shri Shroti, learned counsel for the respondent-Bank, faced with this contended that all the appointments on which reliance is placed by Shri Choudhary were made before issuance of the policy of 2014. Thus, those examples cannot be pressed into service. Apart from this, the documents

aforesaid do not reflect whether the persons who are benefited by getting compassionate appointment were covered under Clause 5 or not. Shri Shrotri fairly submits that although petitioner is not entitled to get compassionate appointment, she may be entitled to get ex gratia payment in lieu of appointment but for this purpose, no application is preferred by the petitioner.

9. Lastly, Shri N.P. Choudhary, learned counsel for the petitioner placed reliance on a recent order of Supreme Court in the case of Bharat Coking Coal Limited and others Vs. Ruda Devi and others (SLP (Civil) No.8963/2020).

10. No other point is pressed by learned counsel for the parties.

11. I have heard learned counsel for the parties at length and perused the record.

12. During the course of hearing, despite repeated query from the Bench, learned counsel for the petitioner did not address the Court regarding the applicability of the policy which was issued by the Indian Banks' Association. In other words, learned counsel for the petitioner has not taken pains to satisfy and establish that the policy on which his whole argument is based is applicable on the respondent-Bank. On the contrary, the respondent-Bank placed reliance on their own policy. In Para 5.6 and 5.7 of the return, it is mentioned that the IBA Circular was adopted by the respondent-Bank with certain modifications. The modification contains Clause 5 aforesaid which makes compassionate appointment possible only when two conditions are satisfied. In view of the aforesaid, I am unable to hold that policy issued by the Indian Banks' Association is applicable. This is trite that the compassionate appointment can be given strictly as per the applicable policy. The petitioner, as discussed above, is unable to show that as per the applicable policy of the Bank, the petitioner has any right of consideration. Thus, no fault can be found in the impugned orders whereby claim of the petitioner was rejected.

13. So far additional documents filed by the petitioner are concerned, there is no iota of pleadings about the said documents in the writ petition or in the rejoinder. The appointments which were made as per those documents are prior to 2014 and even prior to death of the petitioner's husband. For this reason also, the said documents will not improve the case of the petitioner.

14. So far reliance on the case of Ruda Devi (supra) is concerned, there is no application of said order in the facts and circumstances of the said case. In Ruda Devi's case (supra), the employee was abducted and murdered. Thereafter, the learned Single Judge of the High Court by applying Section 108 of the Evidence Act, 1872 directed to consider the case of the claimant in the light of relevant clause of National Coal Wage Agreement III. The employer assailed the said order with a delay of six years. Supreme Court in this backdrop, dismissed the SLP. The point involved in the instant case is not covered by the judgment of Ruda Devi (supra).

15. The petitioner has filed the order of this Court passed in WP. No.1233/16

(Surekha Reagalwar vs. Bank of India) and pleaded that the said order is squarely applicable in the present case. However, I find no merit in the said contention because in the said case, the employee died on 31.03.2012 and policy of compassionate appointment came into being on 29.09.2014. While interpreting Clause 8.2 of the Policy, this Court opined that the Bank needs to consider and decide the application for compassionate appointment as per circular dated 29.09.2014.

16. As noticed above, in the instant case, this Court came to the conclusion that the policy of the respondent-Bank issued in November 2014 is applicable and as per Clause 5 of the said policy, the claim of the petitioner is not covered. The petitioner's husband died on 22.02.2016 i.e. much after the issuance of the said policy. At the cost of repetition, it is relevant to mention here that compassionate appointments which were allegedly approved by document dated 08.12.2015 shows that last appointment was approved in the year 2005. Thus, this document is of no assistance to the petitioner.

17. In view of the aforesaid analysis, I find no reason to interfere in the present matter. However, in view of the stand taken by Shri Shrotri, I deem it proper to observe that if petitioner prefers an application for grant of ex gratia payment, it will be lawful for the respondents to consider and decide the said application within 60 days from the date of communication of this order. Needless to emphasize that if the petitioner is found eligible and entitled for grant of said payment, the said payment shall be made to her within the aforesaid period.

18. Petition is disposed of.