

(2002) 11 AHC CK 0045
In the Allahabad High Court
Case No : C.M.W.P. No. 39989 of 2001

Raghvendra Singh Rathore

APPELLANT

Vs

Managing Director, Punjab National Bank and Others

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Citation : (2003) 2 AWC 1064

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : S.P. Singh and Kamlesh Singh, for the Appellant; Tarun Verma, K.L. Grover, Ramesh Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—By means of the present petition, the petitioner has canvassed the validity of the order dated 2.3.2000 contained in Annexure-1 to the petition thereby refusing to appoint the petitioner on compassionate ground under the Rules.

2. The matrix of the facts is that Rajendra Singh Rathore, who held the post of Head Cashier in Punjab National Bank of Branch District Mainpuri, was spirited away by death on 11.5.1998. After the death of aforesaid Rajendra Singh Rathore, mother of the petitioner moved an application on 22.6.1998 praying for giving appointment to the petitioner (the eldest son of the deceased) on compassionate grounds. According to the allegations in the writ petition, the petitioner was called for interview for the post of Peon which was held on 10.5.1999 but subsequently, a communication was received by means of letter dated 2.3.2000 thereby declining appointment to the petitioner on compassionate ground.

3. To begin with, learned counsel for the petitioner canvassed that albeit the fact that the petitioner fully meets the requirement envisaged for appointment under the relevant Rules, the opposite party passed a laconic and one-liner order

without assigning any reason and without any indicia of application of mind thereby declining appointment to the petitioner. Learned counsel also decried the attempt at supplementing the order by means of counter-affidavit stating the order itself does not divulge any reason and as a result lacks in validity and commends itself to be quashed.

4. Heard learned counsel for the petitioner and reckoned with the materials on record. From a perusal of the counter-affidavit, it transpires that there exists a rule and scheme formulated by the Bank for compassionate appointment of the dependent of the employees dying-in-harness. I have perused the said rule contained in Annexure-C.A. 1 in which are postulated conditions and relevant factors to be observed for eligibility for compassionate appointment. On the other hand, the opposite parties have tried to give justification by means of the allegations made in para 7 of the counter-affidavit in vindication of one-liner order.

5. Before sifting the rival contentions, it would be useful to have acquaintance with the relevant Rule/Scheme which is excerpted below :

"2. Object of the scheme.--The object of the Scheme is to consider compassionate employment to the dependent of an employee dying in harness leaving his family without any means of livelihood. Mere death of an employee in harness would not however, entitle his dependants to such employment. Bank will consider compassionate employment only in such cases where it is satisfied that the financial condition of the family of the deceased employee is such that but for the provision of employment to his dependant, the family will not be able to meet the crisis it faces at the time of death of the said employee.

4. Appointment under the scheme:

4.1. The bank may, at its discretion, appoint in the bank in any of the posts mentioned hereunder, the widow/widower or a son or daughter of a deceased employee of the bank or a near relative nominated by the widow/widower on whom she/he will be wholly dependent and who would give in writing that he or she should look after the family of the deceased employee or a brother or sister in the case of unmarried employee. If the widow/widower or son or daughter or near relative or a brother or a sister, as the case may be, fulfils the criteria for appointment under the Scheme, provided that nomination of a near relative by widow/widower shall be considered only when the deceased employee has left behind no children of his own eligible for appointment.

4.2. If the husband of a deceased female employee is fully dependent on his wife and is incapable of maintaining himself either for the reasons of accident or sickness or otherwise, he may also be considered for such appointment.

4.3. The appointment under this Scheme shall be made only in clerical and subordinate cadre which are as under :

Clerical cadre :

(i) Clerk, Cashier, Telephone Operator ;

(ii) Stenographer, Machine Operator ; Typist and such other post in clerical cadre.

4.4. Subordinate cadre :

(i) Peons ; and

(ii) Chowkidars and such other posts in the subordinate cadre.

5. Sanction for appointment.--Appointment under the Scheme shall not be made without prior sanction of either of the following executives :

(i) Chairman and Managing Director ;

(ii) Executive Director ; and (iii) General Manager.

6. Method of appointment.--(a) Request for appointment under the Scheme should be received by the Bank, at the earliest and in any case, not later than one year from the date of death of the employee.

(b) In case the dependent is a minor or does not possess suitable minimum qualification, his/her case can be considered at the discretion of the bank within four years of the death of the employee to enable him/her to so qualify in terms of age and/or qualification provided that the dependent has made a request to the bank within one year of the death of the employee.

7. Age limit.--The minimum age limit in all cases will be 18 years and the maximum age limit in all cases except widows will be 28 years. However, there is no upper age limit in the case of widows. Where no dependent of the deceased employee within the prescribed age limit is available for employment, the Executive Competent to approve appointment under the Scheme, at his discretion may relax the upper age limit upto a maximum of 5 years. In case of dependants belonging to S.C./ST. the existing concession for S.C./S.T. for the upper age limit will continue to apply but in any case, it shall not exceed 5 years.

8. Qualifications.--(i) (b) A dependent who can prove to the satisfaction of the appointing authority that he/she possesses the simple knowledge of reading and writing English or any other regional language shall be eligible for appointment in the subordinate cadre of the bank. This may be relaxed even further in respect of widows only provided she can perform the duties of that cadre.

(ii) Applicants would not be required to undergo written test for appointment under the Scheme, save and except that they will have to undergo a test in typewriting/machine operating/ telephone operating or shorthand writing etc. in case of appointment to the posts of Typist, Machine Operators, Telephone Operators and Stenographers respectively.

(iii) In order to assess suitability for employment for particular post the applicant will be interviewed by the Regional Manager/Chief Manager/Chief of Head Office Division or any other officer authorised in this behalf by the Executive Competent

to approve appointment under the Scheme.

(iv) The selected candidates shall be required to pass medical fitness examination and complete other formalities as per the rules of the bank regarding general candidates.

10. Financial Condition of the family.--The dependents of an employee dying in harness may be considered for compassionate appointment provided the family is without sufficient means of livelihood, specifically keeping in view the following ;

(a) Family pension ;

(b) Gratuity amount received ;

(c) Employee's/Employer's contribution to PF ;

(d) Any compensation paid by the bank or its Welfare Fund ;

(e) Proceeds of L.I.C. Policy and other investments of the deceased employee ;"

(f) Income of family from other sources ;

(g) Employment of other family members ;

(h) Size of the family and liabilities, if any, etc.

6. From a perusal of the Scheme for compassionate appointment to the dependants of an employee dying-in-harness, the intendment is too clear to be ignored that competent authority has to record reasons for satisfaction about suitability, qualification, sufficiency of means and various other factors while adjudicating upon the claim of an applicant for compassionate appointment. Such satisfaction entails a decision on the basis of material on record and in order to arrive at a just decision, the competent authority is under a duty to record reasons before coming to a conclusion. It is to be borne in mind that reasons are necessary links between materials to be considered and the conclusions for a just decision thereby accepting or refusing to accept a claim for appointment on compassionate grounds under the Scheme. It is the reason only on the anvil of which is to be assayed the validity of an order whether the order comports with the intendment of the Scheme. In a constitutionally democratic set up, being governed by the rule of law, a decision informed with reasons, will foster transparency inspiring the confidence of the people and keep at bay the arbitrariness. In the present case, the order which may appropriately be dubbed as one line squib may be quoted below :

"Aapka Bank Naukari Hetu Avedan Patra Anya "Adhikarioyon Dwara Swikrat Nahin Kiya Gaya Hai. Soochnarth Preshit."

From the perusal of the above order, it would be more than obvious that the competent authority has not assigned reasons for his conclusion and the conclusion is irresistible that it has been passed without any application of mind,

consideration of materials on record and without giving reasons. The opposite party has not drawn attention of the Court to any other order informed with reasons. On this count alone, the impugned order renders itself liable to be quashed.

7. Reverting to allegations made in para 7 of the counter-affidavit, it is worth noticing that a falling attempt has been made by the learned counsel to vindicate the one-liner order. The allegations contained in para 7 of the counter-affidavit may be abstracted below for ready reference :

"That the contents of paragraph 2 of the writ petition are misconceived hence denied. In reply it is submitted that the request of Smt. Shakuntala Devi wife of late Rajendra Singh for the appointment of petitioner Raghvendra Singh on compassionate grounds was turned down after considering the financial position of the family and the same was communicated by letter dated 2.3.2000. The family of late Rajendra Singh was paid Rs. 74,635.47 under the Head of "Provident Fund". Rs. 1,26,833 as gratuity, Rs. 83,088.08 as leave encashment, Rs. 24,000 as Ex-gratia and Rs. 40,000 as Benevolent Fund. Apart from this against L.I.C. Policy Rs. 44,260.00 were also received by them. It is further submitted that the family of late Rajender Singh is also having its own house, having market value of more than Rs. three lakhs. Apart from receiving all the above amount, the family of Late Rajendra Singh is also getting monthly pension of Rs. 4,474."

In the light of the allegations aforestated, now the question that begs consideration is whether the order passed by the competent authority could be bolstered up by fresh grounds invented subsequently. Normally, merit of an order could be adjudged as it is on the basis of the reasons disclosed therein and it cannot be lent Justification on the crutches of fresh grounds invented subsequently, as in the instant case, by filing counter-affidavit and for the view. I am taking, I derive considerable support from certain observations made by the Apex Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, the quintessence of which is when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

8. Learned counsel vehemently canvassed that the allegations made in para 7 of the counter-affidavit cannot be invoked in aid of the order rejecting the petitioner's application for appointment on compassionate ground under the Scheme. He further submitted that the deceased employee was survived by his widow, unmarried and unemployed daughter and two unemployed and unmarried sons without any means to fall back upon. Learned counsel further submitted that it is a strange justification as sought to be made out by way of allegations as contained in para 7 of the counter-affidavit that payment made to the family of

the deceased on the counts of provident fund, gratuity, leave encashment, ex gratia and benevolent fund, etc. have been regarded to be sufficient means of livelihood for the family by the competent authority. Now the question arises as to what is the concept of livelihood. The livelihood has been defined, in the Webster dictionary, to be means of subsistence. The concept underlying the appointment on compassionate ground ex facie appears to be that the family of a deceased employee who is recipient of a stable income to meet day-to-day expenses of food, etc. upon the death of earning deceased employee, is exposed to the consequences resulting from deprivation of the stable income and it is in this perspective that the provisions of compassionate appointment were conceived. The family of deceased requires certain income to meet day-to-day expenses for fooding, etc. which they were getting prior to the death of the deceased so that they may maintain themselves and live with human dignity and these factors are crucial for decision whether family requires appointment on compassionate ground. Here in the instant case, it would appear from the impugned order as also the allegations contained in the counter-affidavit (supra) that what weighed heavily with the competent authority in declining appointment to the petitioner, was payment of Gratuity, Provident Fund, Ex Gratia, Leave encashment, etc. ignoring the underlying object of appointment on compassionate ground. In the circumstances, the conclusion is irresistible that the competent authority has not applied its mind and allowed various other extraneous considerations to go into decision-making. In the present case, I forbear from expressing any opinion as to the merit of appointment on compassionate ground and relegate the matter to the competent authority to decide the matter in the light of the observations attended with the direction that the authority shall assign reason for his conclusion in the matter.

9. As a result of foregoing decision, the petition succeeds and is allowed. The impugned order dated 3.2.2002, is quashed followed by direction that the competent authority shall pass fresh speaking orders considering the materials on record and the observations contained in the body of this judgment within a period of three months from the date of production of a certified copy of this order. Needless to say that the authority shall afford opportunity of hearing to the petitioner. The petitioner will be at liberty to furnish fresh materials including case law in support of his case before the competent authority who shall consider and decide the matter accordingly.