

(2006) 09 AHC CK 0054
In the Allahabad High Court

Rajesh Kumar Pandey

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 13-09-2006

Acts Referred:

Citation : (2007) 6 AWC 6364 : (2007) 2 AWC 1791

Hon'ble Judges : Pradeep Kant, J;B.B. Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pradeep Kant and B.B. Agarwal, JJ.—The delay of 43 days in filing the appeal has been appropriately explained by the appellant. The objections against the said prayer of condoning of delay are not sufficient to deprive the appellant his right of appeal to challenge the impugned orders which are per se illegal. The delay is, therefore, condoned.

2. After condoning the delay we have proceeded to hear the appeal on merits with the consent of the parties' counsel.

3. The appellant had claimed appointment on compassionate ground as his father Sri Jagadamba Prasad Pandey died in harness, while working with the Bank of India in one of its Branches at Lucknow. The Bank refused to consider the case for compassionate appointment after observing that since the father of the petitioner was awarded punishment for gross misconduct of misutilizing leave fare concession facility, therefore, the appellant cannot given compassionate appointment.

4. The learned single Judge, however dismissed the writ petition on the day of preliminary hearing as the learned Counsel for the petitioner could not find the relevant Bank Circular/Rules contemplating compassionate appointment on compassionate ground.

5. A perusal of the order passed by the learned single Judge reveals that the

petitioner's case on merits or his claim for appointment on compassionate ground in the Bank was not considered by the learned single Judge simply because the Circular of the Bank/Rules, if any, on compassionate appointment to the Bank was not available with the petitioner. It may be taken note of that the Circulars and the Rules or Directives issued from time to time in the Bank are not frequently available even to the employees and that when the person like the petitioner, who is claiming appointment on compassionate ground and is not a member of service or staff of the Bank, it was apparently difficult for him to bring all relevant circulars before the Court.

6. The Bank was impleaded as a party, who was duly represented by standing counsel of the Bank. Equal responsibility lay upon him rather it was the duty of the Bank's counsel to produce the relevant Rules/Circulars. In any case if the Circulars/Rules were not annexed with the writ petition, an opportunity ought to have been given to the parties to produce the same. The valuable rights of a person who comes to Court cannot be taken away on mere technicalities that Rules/Circulars have not been filed on day one or with the original writ petition. We, with respect, thus, do not find any reason for upholding the order passed by the learned single Judge which is liable to be set aside and is hereby set aside.

7. Since petitioner's father had died on 21.3. 2000 and the appellant has been running from one place to another for the last six years, we with the consent of the parties counsel have proceeded to consider the claim of the petitioner-appellant on merits as it does not require any additional evidence to be, brought on record in view of the specific case of the respondent-Bank that the appellant's request for compassionate appointment cannot be conceded in view of the fact that his father was awarded aforesaid punishment of stoppage of increment of two years and since he was already on the top of the scale and had availed one stagnation increment in July 1993, the imposed punishment was given the impact of postponement of all his future increments for two years.

8. This order of punishment which is on record was passed on 25th June, 1995. Jagdamba Prasad continued to work thereafter and remained in service till the year 2000 when he died. The plea of the respondent-Bank that in view of para 10(iv) of the Scheme for recruitment of dependants of Employees who died in harness does not permit the appointment of the appellant for the aforesaid reason of punishment awarded to his father does not get corroboration from the aforesaid rule.

9. Rule 10(iv) is being quoted below:

(iv) In case where the deceased employee had been awarded minor penalty or disciplinary proceedings against the employee was pending or contemplated at the time of death of the employee, which would prima facie have resulted in award of minor penalty, appointment on compassionate grounds of the dependents will be considered with the approval of the Bank's Board. In case where the deceased employee had been awarded major penalty or disciplinary

proceedings against the employee was pending or contemplated at the time of death of the employee, which would prima facie compassionate grounds of the dependents will be considered with the approval of the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division).

10. The aforesaid Rule firstly does not prohibit the employment on compassionate ground neither in the case of minor punishment nor in the case of major punishment, rather it only prescribes the requirement of approval of the Board or approval of Government of India, Ministry of Finance Department (Economic Affairs), Banking Division, as the case may be while giving appointment to the dependant of such an employee, who died in harness. The plea, therefore, taken by the Bank for rejecting the claim of the appellant is absolutely without any basis and cannot be sustained.

11. We accordingly quash the order passed by the Bank dated 1.8.2002 and also set aside the order passed by the learned single Judge dated 19.12.2002. We further direct that the appellant's case for appointment on compassionate ground in the Bank shall be considered in accordance with the relevant Scheme for recruitment of dependents of employees who die in harness on compassionate ground within a maximum period of three months from the date of receipt of a certified copy of this order.

12. Appeal is allowed. Costs easy.